

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

POST-HEARING BRIEF OF COMMISSION STAFF

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I. INTRODUCTION

1 Puget Sound Pilots (PSP) filed this general rate case seeking to increase the rates it
charges marine shippers to provide the services of harbor pilots under Washington’s pilotage
act.¹ As initially filed, PSP sought to increase its revenue requirement by roughly \$12.6 million;
that requested increase has grown to roughly \$15 million over the course of this proceeding.

2 After performing its analysis of PSP’s results of operations, Staff recommends that the
Commission decline to find that PSP’s requested revenue requirement produces the “fair, just,
reasonable, and sufficient” rates required by the legislature and instead adopt the proposed
revenue requirement increase shown justified by Staff’s review, or roughly \$3.8 million.

II. BACKGROUND

3 PSP filed this, its second general rate case at the Commission, in June 2022. As filed,
PSP sought authority to recover roughly \$12.6 million in incremental revenue,² and it coupled
that request with a petition for interim rate relief³ that the Commission later denied.⁴

4 The Pacific Merchant Shipping Association (PMSA) and TOTE Maritime Alaska sought,
and were granted, leave to intervene.⁵ Those parties, along with Staff, filed responsive testimony
in February 2023, the parties filed rebuttal or cross-responding testimony on March 2023,⁶ and,

¹ See generally chapter 88.16 RCW.

² Carlson, IC-1T at 28:7-8.

³ *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, Petition of Puget Sound Pilots for Interim Rate Relief and Request for Expedited Consideration (June 29, 2022).

⁴ *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, Order 03, 7-9 ¶¶ 23-31 (Aug. 26, 2022) (hereinafter “Order 03”).

⁵ Order 03 at 2 ¶ 5.

⁶ *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, Notice of Revised Procedural Schedule, Attachment A (Nov. 2, 2022).

after significant motions practice,⁷ various witnesses testified live for cross-examination during a three day hearing held in early April 2023.⁸

5 At the close of the evidentiary record in this matter, PSP had increased its request for incremental revenue to roughly \$15 million.⁹ Staff, for its part, recommends a more modest rate increase of approximately \$3.8 million.¹⁰

III. DISCUSSION

A. The Commission’s Ratemaking Authority Over Pilotage Services

6 The Commission regulates the rates and services of public service companies, including utility companies and common carriers.¹¹ In 2018, the Legislature extended the Commission’s authority to include the power to set the rates charged by harbor pilots.¹²

7 Pursuant to the Legislature’s delegation of authority, the Commission must “establish in tariffs the rates for pilotage services provided under chapter 88.16 RCW.”¹³ As with the tariffs of other public service companies regulated by the Commission,¹⁴ these tariffs must provide for “fair, just, reasonable, and sufficient” rates.¹⁵

⁷ E.g., *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, Respondent Puget Sound Pilots’ Emergency Motion in Limine to Preclude the Introduction of Attorney-Client Privileged Material in Evidence (Mar. 28, 2023); *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, Commission Staff’s Motion in Limine to Deny Admission of Puget Sound Pilots’ March 24, 2023, Supplemental Filing (Mar. 27, 2023); PMSA’s Motion to Strike Evidence for Failure to Comply with Discovery Obligations (Mar. 14, 2023).

⁸ The transcript for the first day’s hearing is incomplete because the court report arrived late. Accordingly, the ALJ’s disposition of Staff’s motion in limine and PMSA’s two motions to strike are, accordingly, not recorded. Staff recommends that the Commission’s final order record the ALJ’s decision to complete the record.

⁹ PSP’s Response to Bench Request No. 2(1).

¹⁰ See Staff’s Response to Bench Request No. 9, Attachment 5.

¹¹ See generally Titles 80 and 81 RCW.

¹² See generally LAWS OF 2018, ch. 7.

¹³ RCW 81.116.020(1); *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-190976, Order 09, 13 ¶ 50 (Nov .25, 2020) (hereinafter Order 09).

¹⁴ E.g., RCW 80.28.010.

¹⁵ RCW 81.116.020(3); Order at 13 ¶ 50.

8 The Commission typically interprets that ratemaking standard to mean “rates that are fair to customers and the Company’s shareholders; just in the sense of being based solely on the record developed in a rate proceeding; reasonable in light of the range of possible outcomes supported by the evidence; and sufficient to attract necessary capital on reasonable terms.”¹⁶ It has applied the same interpretation to the setting of pilotage rates,¹⁷ reading the “customers” as “the shippers” employing the harbor pilots’ services and “the company” as the pilots providing the service.¹⁸

9 The Commission sets pilotage rates employing the same general principles used to set the rates of public service companies.¹⁹ That means rates set to provide enough revenue to cover the pilots’ expenses and provide them the opportunity, with efficient operations, to earn a reasonable distributed net income.²⁰ The Commission derives this revenue requirement revenue, initially, from the booked results of operations for a year-long test period.²¹ It may make restating and pro forma adjustments to those test-year results to correct for infirmities or imperfections in the historic data²² or to modify the test-year results on a case-by-case basis for known and measurable post-test-year expenses or revenues not offset by other factors.²³ After determining the appropriate revenue requirement, the Commission then sets rates at “level[s] designed to recover” that “revenue requirement . . . based on sales,” with “historic and projected vessel traffic reflect[ing] the sales at issue.”²⁴

¹⁶ Order 09 at 23 ¶ 43.

¹⁷ Order 09 at 12 ¶ 43.

¹⁸ Order 09 at 12 ¶ 43.

¹⁹ Order 09 at 15-16 ¶¶ 54-58.

²⁰ Order 09 at 10 ¶ 36, 17 ¶ 64.

²¹ Order 09 at 9 ¶ 35.

²² WAC 480-07-510(3)(c)(i).

²³ WAC 480-07-510(3)(c)(ii).

²⁴ Order 09 at 16 ¶ 58.

10 PSP seeks with this filing to revise its currently-effective tariff. It, accordingly, bears the burden of establishing that its currently-effective “tariff rates are not fair, just, reasonable, and sufficient”²⁵ such that new rates are warranted.

B. Contested Issues

11 Staff and PSP contested a number of issues here:

- The best achievable protection and Distributable Net Income (DNI)
- Callbacks
- Pension costs
- Health insurance costs
- Consulting costs
- Legal costs
- DEI Donation Costs
- Training costs
- Travel/Mileage/Promotion
- Fuel costs
- Paycheck Protection Program loan expense
- Various automatic adjustment mechanisms

12 Before turning to those specific issues, Staff must offer thoughts on PSP’s filings and its litigation of this matter, both of which affected Staff’s ability to perform its job, namely providing an independent evaluation of PSP’s filing for the record.

²⁵ RCW 81.116.030(5); *see Avista Corp.*, Dockets UE-160228 & UG-160229, Order 06, at 34 ¶¶ 60-61.

13 Staff found PSP’s initial filing lacking.²⁶ The pilots used a stale test year,²⁷ found themselves forced to move to supplement the record on multiple occasions,²⁸ and, to Staff’s great frustration, ultimately either would not or could not provide explanations about how PSP derived significant expenses.²⁹ The effort needed to address these shortcomings ultimately forced Staff to make resource-allocation decisions in reviewing PSP’s requested rate increase.³⁰

14 Perhaps more troubling, PSP obstructed Staff’s attempts to obtain the information missing from its filings or otherwise necessary to evaluate whether PSP’s filed case approximated its costs and revenues during the rate years. Staff “repeatedly” sought such information, with many of those efforts intended to address PSP’s stale test year.³¹ PSP rejected those attempts, refusing to provide data outside of 2021.³²

15 Staff does not say this lightly: it can think of no regulated transportation entity that has obstructed Staff’s efforts to audit its filings like PSP has. Nor does Staff say this lightly: PSP’s litigation tactics and refusal or unwillingness to provide Staff significant portions of the information it sought ultimately leave Staff unable to attest that PSP met its burden here, or anything close to it. With those things said, Staff asks the Commission to do two things. First, Staff asks the Commission to keep Staff’s thoughts in mind as it decides the matters at issue here. Second, Staff asks the Commission to warn PSP that similar tactics in future rate cases will meet with Commission action.

²⁶ Young, Exh. MY-1T at 4:7-8.

²⁷ Young, Exh. MY-1T at 5:9.

²⁸ Young, Exh. MY-1T at 4:13-15.

²⁹ *E.g.*, Young, TR. at 825:9-826:23, 854:8-12, 854:23-855:4.

³⁰ *E.g.*, Young, TR. at 854:13-18, 855:13-16.

³¹ Young, Exh. MY-1T at 5:11-14.

³² Young, Exh. MY-1T at 5:14-15; Burton, TR. at 706-711; *cf.* Moore, Exh. MM-63T at 4:23-5:3.

1. “Fair Just, Reasonable, and Sufficient Rates” and the “Best Achievable Protection”

16 PSP asks the Commission to reevaluate Order 09’s application of the “fair, just, reasonable, and sufficient” standard in two ways. First, PSP contends that the Commission misunderstands who “the customers” at issue are.³³ Second, PSP claims that the Commission should read the “best achievable protection” standard codified at RCW 88.46.010(1) as generally applicable within the pilotage act, and thus as informing the “fair, just, reasonable, and sufficient” standard.³⁴ It asks the Commission to set a DNI that will attract and retain the most elite mariners to reflect as much.³⁵ While PSP offers a substantial amount of testimony on these subjects,³⁶ that testimony is irrelevant: the meaning of the phrases “fair, just, reasonable, and sufficient” and “best achievable protection” is a purely legal question,³⁷ and PSP’s claim here fails based on an application of the basic tools used to answer it.

a. The Commission correctly determined that the shippers are PSP’s customers when interpreting “fair, just, reasonable, and sufficient” standard.

17 Turning to PSP’s first argument, that the Commission erred by concluding that the pilots’ customers were the shippers in interpreting the phrase “fair, just, reasonable, and sufficient,” that claim falters on the available evidence of the Legislature’s intent.³⁸

18 First, the Legislature divided authority over pilotage services, and PSP’s argument ignores that fact.³⁹ The BPC is responsible for regulating safety; the Commission is responsible for ratemaking.⁴⁰ This means that the BPC is tasked with protecting the public interest for the

³³ See Costanzo, Exh. CPC-21T at 2:9-10.

³⁴ E.g., Costanzo, Exh. CPC-21T at 2:1-6:5.

³⁵ E.g., Stoller, Exh. MSS-01T at 30:1-13; Diamond, Exh. CLD-1T at 36:23-37:4.

³⁶ E.g., Costanzo, Exh. CPC-01T at 23:14-34:18; Diamond, CLD-1T at 36:22-38:4.

³⁷ *Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

³⁸ See *Campbell & Gwinn, LLC*, 146 Wn.2d at 9 (statutes are interpreted to effectuate the Legislature’s intent).

³⁹ Order 09 at 11 ¶42.

⁴⁰ Order 09 at 11 ¶42.

generalized considerations that PSP discusses. The Commission is tasked with protecting the interests of a much more limited set of the public – ratepayers.

19 Second, the manner in which the Legislature transferred ratesetting authority to the Commission indicates that it intended the Commission to apply the standard exactly as set out in Order 09. Specifically, the Legislature required the Commission to set pilotage rates that are “fair, just, reasonable, and sufficient.”⁴¹ The Commission has, at least since the 2000s, interpreted that phrase to mean exactly what it said in Order 09,⁴² and it has considered the actual ratepayers the customers for much longer than that.⁴³ That the Legislature told the Commission to apply the long-used standard, without modifying its application, strongly indicates the Legislature intended the Commission to keep applying the phrase exactly as it long has when adjudicating pilotage filings.⁴⁴

20 Finally, if the Legislature wanted to make the “state, it[s] citizens, [and] the public interest”⁴⁵ the pilots’ customers, it had a readily available and very direct way of making that happen: it could have provided for state funding of the pilots’ services or raised revenue therefore through a tax. That it did not strongly suggests that it had no intent of altering the traditional treatment of ratepayers as the customers whose interests the Commission must balance against the public service entities when setting rates.

⁴¹ RCW 81.116.020(3).

⁴² *Wash. Utils. & Transp. Comm’n v. PacifiCorp*, Docket UE-080220, Order 05, 8-9 ¶ 31 (Oct. 8, 2008).

⁴³ *E.g., State ex rel. P. Tel. & Tel. Co. v. Dep’t of Public Serv.*, 19 Wn.2d 200, 205, 142 P.2d 498 (1943) (referring to the actual ratepayers as the customers).

⁴⁴ *Green River Cmty. Coll., Dist. No. 19 v. Higher Educ. Personnel Bd.*, 95 Wn.2d 108, 118, 622 P.2d 826 (1980) (“[m]oreover, an administrative construction nearly contemporaneous with the passage of the statute, especially when the legislature fails to repudiate the contemporaneous construction, is entitled to great weight.”).

⁴⁵ *Diamong*, CLD-01T at 36:19-20.

b. The “best achievable protection” does not inform the pilotage act generally, and thus does not inform the Commission’s ratemaking authority.

21 PSP’s second claim that the best achievable protection standard applies to the Commission’s ratemaking authority fails on the text of the pilotage act, which should compel the Commission to reject PSP’s argument for two reasons, as well as on the division of authority over pilotage services discussed above.

22 As just noted, the Legislature defined “best achievable protection” in RCW 88.46.010(1), and it incorporated that definition into the pilotage act in two specific places, both dealing with Board of Pilotage Commissioners (BPC) tug-escort rulemakings.⁴⁶ The term means “the highest level of protection that can be achieved through the use of best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable.”⁴⁷ The Legislature provided a list of factors that go to whether a measure constitutes the “best achievable protection,” specifically its: (1) incremental protection, (2) technological achievability, and (3) cost.⁴⁸

23 Beginning with the textual evidence, PSP’s argument that the “best achievable protection” standard informs what constitutes a “sufficient” Distributable Net Income (DNI) has no basis in the legislative definition of the phrase.⁴⁹ Best achievable protection is something gained through the use of technology, staffing levels, training procedures, or operational methods. DNI is none of those. PSP appears to try to overcome this plain-text stumbling block

⁴⁶ RCW 88.16.250(3)(a), .260(3)(d).

⁴⁷ RCW 88.46.010(1).

⁴⁸ RCW 88.46.010(1)(a)-(c). The Director of the Department of Ecology must consider those factors when deciding whether something constitutes the best achievable protection. RCW 88.46.010(1).

⁴⁹ See RCW 88.46.010(1).

by contending that DNI affects staffing quality. But that is irrelevant: the legislature defined the best achievable protection in relation to staffing levels, not staffing quality.

24 Second, the Legislature incorporated the best achievable protection standard into the pilotage act in two very specific ways, both of which dealt with BPC rules.⁵⁰ The Legislature’s provision for the application of the best achievable protection standard in the context of the BPC’s tug escort rules, and only those rules, impliedly excludes a more general application of the standard to the pilotage act.⁵¹

25 Third, PSP’s argument falters on the scope of the Commission’s authority over pilotage services. Unlike the other industries regulated by the Commission, the Commission has no rulemaking authority over pilotage services.⁵² The Legislature left that authority with the BPC.⁵³ Any attempt to justify something not explicitly required as the best achievable protection by a BPC rule will inevitably involve, at some level, determining whether it actually constitutes the best achievable protection. For example, if the best achievable protection warrants a high DNI, the Commission will need to determine whether the candidates recruited or retained by way of that DNI offer the best achievable protection. The Commission lacks the institutional competence to make those evaluations, and it should leave them to the BPC, as it has left other safety or operational matters.⁵⁴

26 Finally, as the Commission pointed out in Order 06 of this docket,⁵⁵ any compliance obligation PSP might have related best achievable protection standard would only have an

⁵⁰ RCW 88.16.250(3)(a) (requiring the BPC to promulgate rules incorporating the BAP standard), .260(3)(d) (same).

⁵¹ *Wash. Natural Gas Co. v. Public Util. Dist. No. 1*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969) (“[w]here a statute specifically designates the things or classes of things upon which it operates, an a=inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expression unius est exclusio alterius – specific inclusions exclude implication.”).

⁵² Order 09 at 11 ¶ 42.

⁵³ Order 09 at 11 ¶ 42.

⁵⁴ Order 09 at 32 ¶ 106.

⁵⁵ Order 06 at 6 ¶ 19-7 ¶ 24.

indirect impact on rates. This is not a novel concept; all companies that are rate-regulated by the Commission are subject to a host of other laws and regulations. The Commission does not engage in deliberations about what level of compensation might be needed to meet those other legal standards, and those standards do not in any way alter the fair, just, reasonable, and sufficient standard. Rather, the cost of complying with those other legal requirements are already be reflected in the proposed revenue requirement, either through the test year or in the form of a pro forma adjustment. And here Staff specifically notes that the Company admitted at the evidentiary hearing that it had not identified any discernable cost PSP had incurred to comply with the best achievable protection standard.⁵⁶

2. DNI

27 If the Commission refuses to read the best achievable protection standard into the pilotage act generally, and it should, it must then set rates based simply on a DNI set to provide sufficient compensation to ensure the availability of the pilotage services called for by state law.⁵⁷

28 The evidence there strongly indicates that the DNI set by the Commission in Order 09 is sufficient. The Puget Sound has been blessed historically with a good pool of candidates seeking to become licensed pilots,⁵⁸ and the situation is not different post-Order 09.⁵⁹ Many from that pool have historically taken and passed the pilot examination, qualifying them to enroll in the BPC's training program,⁶⁰ and the situation is not different post-Order 09.⁶¹ Those pilots, once

⁵⁶ Costanzo, TR. at 226:10-227:17.

⁵⁷ RCW 81.116.020(3).

⁵⁸ Order 09 at 46-48 ¶¶ 150-156.

⁵⁹ See Royer, Exh. JR-6 at 19 (40 candidates applied for the 2021 pilot examination; 37 were qualified for the written and simulated portions).

⁶⁰ See Order 09 at 47 ¶ 154.

⁶¹ Royer, Exh. JR-6 at 19 (11 pilots passed both portions of the pilot exam); see Royer, Exh. JR-6 at 20 (five pilots who passed the 2018 examination are currently in training).

they have passed the BPC’s training program, will be “elite,” and offer “the best possible protection of Puget Sound.”⁶²

29 Given the sufficiency of the DNI currently embedded in rates, the Commission should leave it unchanged.

3. **Callback Expense**

30 PSP’s results of operations included callback expense. As Staff explained in PSP’s last rate case, and the Commission agreed in its order in that case,⁶³ PSP’s attempts to fund callbacks already performed by its pilots in future rates involves impermissibly charging customers twice for the same service.⁶⁴ Staff, accordingly, recommends removing the callback expense.⁶⁵ PSP concedes the issue,⁶⁶ and the Commission should remove the expense.

4. **Pension Costs**

31 PSP seeks to adjust its results of operations by pro forming an additional \$902,438 in pension costs into the revenue requirement.⁶⁷ The Commission should reject that adjustment, for three reasons.

32 First, PSP failed to carry its burden of showing those costs are properly included in its tariff rates. As Staff has noted, it can only “conduct[] its review of the information provided in this case.”⁶⁸ PSP provided Staff with basically unreviewable data with regard to its pension costs,⁶⁹ and the consequences of doing so fall on it.⁷⁰

⁶² Klappernich, TR. at 145:7 – 147:7.

⁶³ Order 09 at 67 ¶ 225 (“To allow PSP to recover its ‘callback liability’ in future rates would cause ratepayers to pay twice for services rendered, which violates basic ratemaking principles.”).

⁶⁴ MY-1T at 7:1-11; Order 09 at 69-72 ¶¶ 229-240.

⁶⁵ Young, Exh. MY-1T at 9:19-20.

⁶⁶ Burton, Exh. WTB-08T at 6:13-16.

⁶⁷ Young, Exh. MY-1T at 22:8-13.

⁶⁸ Young, Exh. MY-1, 6:9.

⁶⁹ Young, TR. at 854:23-855:4.

⁷⁰ Young, Exh. MY-1T at 6:9-12.

33 Second, and regardless, PSP’s pension costs are not known and measurable at this point. The Commission has ordered PSP and PMSA to enter into mediated discussions concerning the future of PSP’s pension.⁷¹ Those discussions have not yet run their course, and what PSP’s pension will ultimately look like has not been decided.⁷² Accordingly, any pro forma pension costs embedded into rates would be estimated or projected.⁷³ And such estimates or projections are by definition not known and measurable.⁷⁴

34 PSP contends that the Commission must include all pension costs in rates based on a Washington Supreme Court decision. PSP is wrong.

35 The case, *State ex rel. Pacific Telephone and Telegraph Company v. Department of Public Service*,⁷⁵ involved a number of challenges to an order of one of the Commission’s forerunners. One of these concerned *employee* pension expenses incurred by a public service company.⁷⁶ While the Supreme Court did require the Public Service Commission to include those costs in the revenue requirement, it specifically noted that it did so based on the facts of that case and it left the Commission free to revisit the issue based on a different record.⁷⁷

36 That time has come. PSP is an unincorporated association of marine pilots who provide service to vessel operators under Washington’s compulsory pilotage act.⁷⁸ “Every PSP pilot” thus carries “out his or her pilotage assignments as an independent contractor.”⁷⁹ PSP must take

⁷¹ Order 09 at 123 ¶ 463.

⁷² Order 03 at 2-5 ¶¶ 8-14.

⁷³ Young, MY-1T at 22:17-20.

⁷⁴ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-090704 & UG-090705, Order 11, 11-12 ¶ 26 (Apr. 2, 2010).

⁷⁵ 19 Wn.2d at 200.

⁷⁶ *P. Tel. & Tel. Co.*, 19 Wn.2d at 252.

⁷⁷ *P. Tel. & Tel. Co.*, 19 Wn.2d at 260 (“[w]e make this ruling, as we make others, upon the record before us. If at some future time the department is called upon to reconsider the question of pensions, and the evidence discloses a different state of facts, the department will be free to reexamine the matter.”).

⁷⁸ Burton, Exh. WTB-01T at 2:22-26.

⁷⁹ Carlson, Exh. IC-1T at 5:6-8.

the bitter with the sweet of this organizational structure: while it ensures that neither PSP nor any other member pilot will be liable for the actions of one of its pilots,⁸⁰ it places the pilots outside the realm of the type of employee compensation structure at issue in *Pacific Telephone and Telegraph*, as the Commission has already recognized.⁸¹ *Pacific Telephone and Telegraph* thus should not decide the question before the Commission here, leaving it free to reject PSP's adjustment.

5. Health Insurance Costs

37 PSP also seeks to embed in rates nearly \$1.88 million dollars in health insurance expenses into rates, with that amount including an adjustment a pro forma component of \$240,778 for rising premium costs.⁸² Staff recommends that the Commission not treat those costs as an expense, but instead address them in the pilots' DNI.

38 As just discussed, PSP is an association of independent contractors. The Commission in PSP's last general rate case determined that "organizational structure militate[d] against any expectation that PSP should provide medical insurance for member pilots."⁸³ Hand-in-hand with that determination, the Commission found that "[i]t is fair, just, and reasonable for these independent contractors to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots' behalf from PSP's organizational operating expenses."⁸⁴ To give effect to that determination, the Commission in Order 09 required PSP to begin transitioning from treating phasing insurance expense as one paid by PSP expense and to one paid by the pilots themselves.⁸⁵ Specifically, while the Commission allowed PSP to treat

⁸⁰ Diamond, CLD-1T at 19:20-23:2.

⁸¹ E.g., Order 09 at 75 ¶ 250 (discussing the provision of medical benefits).

⁸² Young, Exh. MY-1T at 24:4-7.

⁸³ Order 09 at 75 ¶ 250.

⁸⁴ Order 09 at 76 ¶ 253.

⁸⁵ Order 09 at 76 ¶ 254.

insurance expenses as an expense in the first rate year of the last approved rate plan, it permitted PSP to only treat 50 percent of the insurance expense as an organizational expense during the plan's second year, with the "remaining 50 percent . . . accounted for as pilot compensation rather than an operating expense."⁸⁶

39 Staff, in making its recommendation, has followed the Commission's determinations and directives from Order 09 to their logical conclusion.⁸⁷ The Commission should adopt it.

40 PMSA claims that Staff's adjustment overinflates DNI because the reduction of PSP's costs naturally increases DNI, and the Commission ordered half of PSP's medical insurance costs paid through DNI for the second rate year under Order 09.⁸⁸ PMSA's concern is unwarranted. Staff took the DNI as ordered in the first rate year in Order 09 and adjusted into that DNI the entirety of PSP's medical insurance costs, rather than transferring some incremental amount that might have double counted the half-completed transfers of costs.⁸⁹ There is no double counting.

6. Consulting Costs

41 PSP seeks to include in rates significant consulting costs, including payments of \$64,071.84 to Walter Tabler and \$53,625.00 to RedCloud Consulting.⁹⁰ Staff recommends that the Commission remove those expenses through a restating adjustment.

42 PSP contracted with Mr. Tabler to consult on the implementation of Order 09.⁹¹ That workload is not the kind of "normal, recurring expense" that reflects PSP's rate year

⁸⁶ Order 09 at 76 ¶ 254.

⁸⁷ *E.g.*, Order 09 at 76 ¶ 254 ("After the two-year rate plan, we expect PSP pilots to fully fund their medical insurance expenses from the compensation received through the DNI.").

⁸⁸ Moore, Exh. MM-63T at 14:15-16:8.

⁸⁹ Young, Exh. MY-1T at 24:4-8.

⁹⁰ Young, Exh. MY-1T at 24:16-17.

⁹¹ Young, Exh. MY-1T at 24:21-25:2.

operations.⁹² It would also basically double staffing expense if included in the test year as Mr. Tabler, PSP's former executive director, basically acted in that capacity as a consultant while the organization replaced him.⁹³ It is precisely the kind of expense that the Commission will restate out of test-year operations when calculating a revenue requirement.⁹⁴

43 PSP, however, claims that the Commission should include the Tabler consulting costs because, while his test-year services “involved a non-recurring issue,” it intends to have an ongoing relationship with him as a vendor.⁹⁵ The Commission should reject that argument. PSP offers nothing to support its claim that it will have an ongoing relationship with Mr. Tabler, such as a consulting contract.⁹⁶ Nor does it offer any evidence that the test-year expenses will be representative of any future consulting done by Mr. Tabler, or that PSP would incur these expenses in the rate year rather than in some far future time.⁹⁷ And, indeed, PSP appears to admit that Mr. Tabler's future consulting will likely involve non-recurring issues that would not be appropriate to embed into rates.⁹⁸ Given the paucity of evidence supporting any claim of ongoing work, the Commission should remove the expense.

44 PSP contracted with RedCloud for similar reasons, namely regarding the implementation of Order 09.⁹⁹ But PSP suspended RedCloud's work due to concerns about the costs involved.¹⁰⁰ As with the Tabler Consulting contract, RedCloud's work does not involve the kind of normal

⁹² Young, Exh. MY-1T at 25:13-14.

⁹³ Young, Exh. MY-1T at 25:15-17.

⁹⁴ WAC 480-07-510(3)(c)(i).

⁹⁵ Burton, Exh. WTB-08T at 9:10-11.

⁹⁶ See Burton, Exh. WTB-08T at 9:15-19.

⁹⁷ See Burton, Exh. WTB-08T at 9:15-19.

⁹⁸ Burton, Exh. WTB-08T at 9:15-19 (indicating that Tabler's future consulting “*may* involve non-recurring issues”) (emphasis added).

⁹⁹ Young, Exh. MY-1T at 25:2-5.

¹⁰⁰ Young, Exh. MY-1T at 25:5-6.

test year expense that the Commission considers as predictive of rate-year expenses.¹⁰¹ And PSP's suspension of RedCloud's work means that it can show nothing that "would contribute toward the provision of pilotage services" for its payments.¹⁰²

45 PSP urges the Commission to include the RedCloud expenses based on its intent to resume the project.¹⁰³ Again, PSP provides little in the way of evidence to support this intent, such as an amended contract, work order, or even informal evidence such as email or other communication discussing the resumption of the project.¹⁰⁴ Again, on the record before it, the Commission should remove the expense.

7. Legal Costs

46 Staff proposed two restating and one pro forma adjustment to PSP's books to address legal costs. The parties largely agree on two of them, but have disputes as to the third. The Commission should accept Staff's adjustments, as corrected at hearing.

47 The parties agree on the methodologies of two of the adjustments, R-11 and PF-3, disagreeing only on the amounts.¹⁰⁵ The Commission should incorporate them into the final revenue requirement using the updated numbers provided by Staff witness Simmons at hearing, which eliminate the effect of a double removal error by both parties.¹⁰⁶

48 PSP contests Staff's second restating adjustment, which provides the amortization amount for PSP's rate case costs.¹⁰⁷ Specifically, PSP objects to Staff's removal of 2023's amortization expense, claiming that it is inappropriate to do so given that 2023 will be the rate-

¹⁰¹ Young, Exh. MY-1T at 25:22.

¹⁰² Young, Exh. MY-1T at 25:20-21.

¹⁰³ Burton, WTB-08T at 25:16-20.

¹⁰⁴ Burton, WTB-08T at 25:16-20.

¹⁰⁵ Burton, Exh. WTB-08T at 20:10-18.

¹⁰⁶ Simmons, Tr. at 815:18-22; Staff's Response to Bench Request No. 6.

¹⁰⁷ See Burton, Exh. WTB-08T at 21:1-22:10.

effective year.¹⁰⁸ But PSP ignores the meritorious reason Staff removed that expense: it is embedded in current rates.¹⁰⁹ If that amount is not removed, PSP will double recover it when the Commission approves new rates based on the incremental revenue requirement here.¹¹⁰

8. DEI Donation Expenses¹¹¹

49 PSP seeks to pro form \$20,000 in expenses for Diversity, Equity, and Inclusion donations into rates. Staff recommends that the Commission reject the adjustment as not known and measurable.¹¹² When it asked PSP for data showing a known and measurable expense, PSP could only provide “budget forecasts,” not the type of “certainty” in spending necessary for a known and measurable expense.¹¹³ The Commission should reject the adjustment.

9. Training Costs

50 Staff recommends adjusting PSP’s results of operations to pro form in roughly \$201,034 for training costs. That adjustment, which consists of three separate components, contributes to a fair, just, reasonable, and sufficient revenue requirement, and the Commission should accept it.

51 The first component involves averaging the costs of attending the different training schools used by PSP.¹¹⁴ Staff selected the average as appropriate given that PSP offered no training schedule or other document indicating that it knew which particular school it was sending its employees to over the rate years,¹¹⁵ and its unwillingness to provide expenses outside

¹⁰⁸ Burton, Exh. WTB-08T at 22:9-10.

¹⁰⁹ Simmons, Exh. JNS-1T at 14:1-3.

¹¹⁰ See Simmons, Exh. JNS-1T at 14:1-3.

¹¹¹ This adjustment concerns only PSP’s DEI donations, not its DEI training expenses.

¹¹² Simmons, Exh. JNS-1T at 10:10.

¹¹³ Simmons, Exh. JNS-1T at 10:10-15.

¹¹⁴ Simmons, Exh. JNS-1T at 16:2-3.

¹¹⁵ Simmons, Exh. JNS-1T at 16:3-5.

of the 2021 test year would have prevented Staff from sifting through other years to look at attendance trends.

52 PSP asks the Commission to reject this component based on two arguments. First, PSP seems to argue that Staff only averaged five of the school costs.¹¹⁶ Staff plainly averaged the costs of all six schools to calculate its adjustment.¹¹⁷ PSP also contends that the average doesn't reflect the fact that it chooses the best of the best training schools.¹¹⁸ But PSP does not explain why it needs to train its pilots at only the best schools, and that is exactly the kind of expense gold plating that the Commission has explicitly vowed to eliminate in rate cases.¹¹⁹

53 Staff's second component reflects PSP's use of three placeholder in-training pilots involved an event that was not known and measurable.¹²⁰ PSP claims, on rebuttal, that four pilots will attend training.¹²¹ PSP demands of Staff what the Commission has previously rejected, namely a continuous audit of its operations well into a rate case.¹²² PSP offered this evidence on rebuttal, and Staff had no meaningful opportunity to provide testimony about it. The Commission should reject PSP's arguments.

54 Finally, Staff amortized the costs of Bridge Resource Management for Pilots training over five years given that pilots take those classes every five years.¹²³ PSP urges the Commission to reject that component based on its claim that multiple pilots take the class yearly, and then

¹¹⁶ Burton, Exh. WTB-08T at 28:18-21.

¹¹⁷ Simmons, Exh. JNS-9 at 1.

¹¹⁸ Burton, Exh. WTB-08T at 29:7-9.

¹¹⁹ *E.g., Wash. Utils. & Transp. Comm'n v. Sno-King Garbage Co., Inc.*, Dockets TG-900657 & TG-900658, Fourth & Fifth Supplemental Orders, at 19 (Dec. 1991) (the Commission's vow to "do whatever is necessary to discourage gold plating of rate case expenses.").

¹²⁰ Simmons, Exh. JNS-1T at 16:6-7.

¹²¹ Burton, Exh. WTB-08T at 29:13-18.

¹²² *E.g., Wash. Utils. & Transp. Comm'n v. Cascade Nat. Gas Co.*, Docket UG-200568, Order 05, at 86 ¶ 287, 87-88 ¶ 291 (May 18, 2021); *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705 (consolidated), Order 11, at 14-15 ¶ 32 (Apr. 2, 2010).

¹²³ Simmons, Exh. JNS-8T at 16:8-10.

again, “typically” five years later.¹²⁴ Again, PSP provided no training roster that would allow Staff to vet its argument, and its reluctance to allow Staff access to data from outside of the 2021 test year would have prevented Staff from verifying its claims. The Commission should reject PSP’s argument.

10. Travel/Mileage/Promo/Marketing & Employee Reimbursements

55 Staff made restating adjustments to remove expenses for which ratepayers should not bear the burden and to match the per-books amounts and the general ledger.¹²⁵ PSP concedes the removal of the items contested by Staff, save for the portion involving \$150 in firewood, which it claims it incurred in order to provide service, and the adjustment to match the per-books numbers with the general ledger.¹²⁶ After reading PSP’s rebuttal testimony,¹²⁷ Staff concedes the remaining issues (the firewood and the adjustment to match the per-books numbers with the general ledger).

11. Fuel Costs

56 Staff and PSP agree that the Commission should base its revenue requirement off the 12-months’ average fuel cost available closest to the rate year.¹²⁸ The Commission should require PSP to make a compliance filing to update its fuel costs just before the rate effective date.¹²⁹

¹²⁴ Burton, Exh. WTB-08T at 29:22-30:4.

¹²⁵ Simmons, Exh. JNS-1T at 7:12-9:2.

¹²⁶ Burton, Exh. WTB-08T at 13:16-16:6.

¹²⁷ Burton, Exh. WTB-08T at 14:19-16:6.

¹²⁸ Burton, Exh. WTB-08T at 18:13-15.

¹²⁹ WAC 480-07-880.

12. The Paycheck Protection Program (PPP) Loan

57 PSP seeks to adjust into rates the expenses incurred with payments toward the PPP loan it took out.¹³⁰ The Commission should accept Staff’s adjustment to PSP’s net income, which washes out PSP’s adjustment.

58 The PPP was a COVID-19-era assistance program intended to provide “small businesses with the resources they need to maintain their payroll, hire back employees who have been laid off, and cover applicable overhead” during the troubled early months of the pandemic.¹³¹ PSP took out a PPP loan and made at least one payment on it.¹³² The Small Business Administration has, however, forgiven the loan and any payments do not reflect rate year expenses.¹³³ They are not known and measurable in the rate year as there is no effect in the rate year.¹³⁴

59 PSP contends that the Commission must allow the adjustment, because to do otherwise would be retroactive ratemaking.¹³⁵ PSP is flatly wrong. PSP took out the PPP loan after Order 09.¹³⁶ The Commission will thus adjudicate, in the first instance, the validity of an expense that it could not have considered, for a test-period that it has never addressed,¹³⁷ for rate years that it has also never addressed.¹³⁸ The adjustment thus cannot involve retroactive ratemaking, because that doctrine requires that a cost already has been included in rates.¹³⁹ The Commission should

¹³⁰ Simmons, Exh. JNS-1T at 11:7-10.

¹³¹ U.S. Department of Treasury, PAYCHECK PROTECTION PROGRAM, *available at* <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program> (last visited Apr. 25, 2023).

¹³² See Burton, Exh. WTB-08T at 16:21-17:3.

¹³³ Simmons, Exh. JNS-1T at 11:7-10.

¹³⁴ Simmons, Exh. JNS-1T at 11:15-19.

¹³⁵ Burton, Exh. WTB-08T at 17:15-16.

¹³⁶ See Burton, Exh. WTB-08T at 16:22-17:2.

¹³⁷ Order 09 at 3 ¶ 22.

¹³⁸ Order 09 at 3 ¶ 22.

¹³⁹ *Town of Norwood v. FERC*, 53 F.3d 377, 381 (D.C. Cir. 1995) (“The retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. If a utility includes an estimate of certain costs in its rates and subsequently finds out that the estimate was too low, it cannot adjust future rates to recoup past losses.”) (internal quotation omitted, emphasis omitted).

eliminate the costs involved from rates given PSP witness Burton's agreement with Staff's position that the PPP loan should not have any positive or negative impact on rates going forward.¹⁴⁰

13. Juan De Fuca Maintenance

60 PSP proposes a restating adjustment for its preventative maintenance for its boat, the Juan De Fuca.¹⁴¹ Staff proposed amortizing those costs over five years.¹⁴² After considering the rebuttal testimony of PSP witness Burton¹⁴³ and further discovery, Staff concedes that these are annual costs that should not be amortized.

14. The Adjustment Mechanisms

61 PSP proposes five automatic adjustment mechanisms for its tariff.¹⁴⁴ These mechanisms: (1) true up actual revenue to the approved revenue requirement, (2) adjust rates for changes in the number of pilots, (3) adjust rates for changes to the cost of living, (4) adjust rates to ensure collection of adequate revenues for PSP's pension, and (5) adjust rates to collect revenues to fund the transition to a new pension plan.¹⁴⁵ On rebuttal, PSP proposes a further adjustment mechanism addressing the BPC's training program through the testimony of witness Sandy Bendixen.¹⁴⁶ The Commission should decline to approve each of those adjustment mechanisms save the COLA.

¹⁴⁰ Burton, TR. at 714:6-715:7.

¹⁴¹ Young, Exh. MY-1T at 26:1-8.

¹⁴² Young, Exh. MY-1T at 26:11-14.

¹⁴³ Burton, Exh. WTB-08T at 11:14-15.

¹⁴⁴ See Young, Exh. MY-5T. PSP initially proposed seven automatic adjustment mechanisms; the other two mechanisms concerned expenses and capital improvements for the Port Angeles pilot station and the pilot boat. Id. PSP withdrew those two proposals on rebuttal. Carlson, Exh. IC-8T at 18:17-19.

¹⁴⁵ Carlson, Exh. IC-1T at 30:22-31:18.

¹⁴⁶ Bendixen, Exh. SB-9T at 1:11-14, 8:1-10.

a. The revenue requirement true-up mechanism.

62 PSP first proposes a mechanism to “true up revenue collections to the revenue requirement assumption in the UTC’s Final Order.”¹⁴⁷ The Commission should reject this proposal as anathema to ratemaking principles and ineffective as designed.

63 First, PSP’s revenue true up mechanism “subverts contrary bedrock principles of ratemaking.”¹⁴⁸ As the Commission has noted, it regulates public service entities as a surrogate for market regulation.¹⁴⁹ It attempts as much as possible to provide similar incentives as market competition does.¹⁵⁰ To that end, the Commission offers regulated entities the *opportunity*, given prudent and efficient management, to earn an approved rate of return, rather than a guarantee that it will do so.¹⁵¹ The proposed adjustment mechanism, however, adjusts the Commission approved revenue requirement in a way that guarantees PSP the Commission approved revenue requirement, and thus the pilots’ DNI.¹⁵² That guarantee would eliminate any incentive for prudent and efficient management.¹⁵³ The Commission should reject it as it has rejected other similar attempts to obtain such a guarantee.¹⁵⁴

64 Second, setting aside questions of its propriety, PSP’s proposal would not work in practice. PSP intends the adjustment mechanism to true up the revenue requirement based on the actual number of ship movements.¹⁵⁵ But PSP’s tariff is not based simply on the number of vessels piloted during the rate year. Some of its rates depend on the tonnage of the ship

¹⁴⁷ Carlson, Exh. IC-1T at 30:23-31:2.

¹⁴⁸ Young, Exh. MY-1T at 12:2-3.

¹⁴⁹ Order 09 at 9-11 ¶¶ 34-39.

¹⁵⁰ Order 09 at 10 ¶ 39.

¹⁵¹ Young, Exh. MY-1T at 12:5-6; Order 09 at 9-10 ¶ 36.

¹⁵² Young, Exh. MY-1T at 12:6-11; *see PSP* at n.298.

¹⁵³ Moore, Exh. MM-1T at 208:1-22; *see Young*, Exh. MY-1T at 12:11-12.

¹⁵⁴ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-151871 & UG-151872, Order 06, 30-31 ¶¶ 104-05 (Nov. 16, 2016).

¹⁵⁵ Carlson, Exh. IC-7; Young, Exh. MY-1T at 11:12-14.

moved.¹⁵⁶ The adjustment mechanism does not account for that extra rate variable and thus would not adequately ensure “that the adequate revenue shortage or overage would be recovered or credited in the subsequent period.”¹⁵⁷

65 PSP, in rebuttal, argues only that the Commission should approve the automatic adjustment mechanism because it improves administrative efficiency.¹⁵⁸ But Staff does not object to the use of properly designed adjustment mechanisms, which can improve administrative efficiency;¹⁵⁹ Staff objects to this particular mechanism, which is designed to subvert bedrock ratemaking principles.¹⁶⁰ The Commission should not buy efficiency at the cost of those principles.

b. The licensed pilots true up mechanism.

66 PSP next proposes a mechanism that “automatically increases or decreases the tariff based upon the cost of either a new licensee or a retirement.”¹⁶¹ These costs would include the pilots’ DNI and benefits.¹⁶² The Commission should reject this adjustment mechanism for three reasons.

67 First, the proposed adjustment mechanism effectively violates the Commission’s rules. The Commission has long recognized the importance of considering offsetting factors when attempting to craft fair rates involving post-test-year costs in order to avoid overstating the

¹⁵⁶ Young, Exh. MY-1T at 11:10-20.

¹⁵⁷ Young, Exh. MY-1T at 11:17-20.

¹⁵⁸ Titone, MJT-1T at 3:7-5:2.

¹⁵⁹ Young, Exh. MY-1T at 10:5-61; Moore, Exh. MM-1T at 204:15-20.

¹⁶⁰ Young, Exh. MY-1T at 12:1-12; Moore, Exh. MM-1T at 208:1-209:8.

¹⁶¹ Carlson, IC-1T at 2:2-3.

¹⁶² Young, Exh. MY-5 at 1.

revenue requirement.¹⁶³ Yet PSP seeks to adjust into rates some fairly significant costs without any consideration of those offsetting factors.¹⁶⁴ The Commission should reject that attempt.

68 Second, the adjustment mechanism violates the principle that PSP’s customers should generally be indifferent to the number of pilots it employs. PSP customers pay it for the service of piloting their vessels into Washington’s harbors. As such, those customers “should not care if one pilot moves all the ships, or some pilots move none of the ships.”¹⁶⁵ But the proposed adjustment mechanism does not comport with that indifference – “adding pilots,” or retiring pilots, would unfairly “cost the customers more for the same given number of ship movements.”¹⁶⁶

69 Finally, the proposed adjustment mechanism suffers from the same fundamental flaw as PSP’s first proposed adjustment mechanism. The mechanism works to guarantee “a fixed ‘per pilot’ revenue requirement and subsequent distributable net income.”¹⁶⁷ Again, that would subvert the incentive for efficient and prudent management that the Commission attempts to provide all regulated entities.¹⁶⁸

70 Again, PSP appears to defend the second adjustment mechanism on rebuttal by reference to the efficiencies it provides.¹⁶⁹ Again, the Commission should not buy efficiency at the cost of unfair rates that subvert longstanding ratemaking principles.

¹⁶³ See *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-090704 & UG-090705, Order 11, 11-12 ¶¶ 25-30 (Apr. 2, 2010); see WAC 480-07-510(3)(c)(ii) (“[p]ro forma adjustments give effect for the test period to all known and measurable changes that are not offset by other factors”).

¹⁶⁴ Young, Exh. MY-1T at 13:14-18.

¹⁶⁵ Young, Exh. MY-1T at 14:2-3.

¹⁶⁶ Young, Exh. MY-1T at 14:4-5.

¹⁶⁷ Young, Exh. MY-1T at 14:8-11.

¹⁶⁸ See Young, Exh. MY-1T at 14:8-11; Moore, Exh. MM-1T at 209:13-210:15.

¹⁶⁹ Tritone, Exh. MJT-1T at 3:7-5:2.

c. The COLA mechanism.

71 PSP next proposes a COLA adjustment mechanism. Staff recommends that the
Commission approve “a COLA,” but it recommends requiring further action from PSP.¹⁷⁰

72 As with most things, the details of the COLA matter. PMSA opposes the COLA
mechanism on the basis that any automatic adjustment should not apply to the tariff rates, but
only to limited categories of expenses embedded in those rates.¹⁷¹ Staff shares those concerns,¹⁷²
at least to some extent. Accordingly, Staff recommends that the Commission authorize PSP to
make a compliance filing¹⁷³ that applies a COLA to specific expenses.¹⁷⁴ The parties to this case
should have the right to review and recommend changes to ensure that the adjuster produces fair,
just, reasonable, and sufficient rates.

d. The pension adjustment mechanisms.

73 PSP further proposes two annual adjustment mechanisms intended to recover the
estimated costs of funding PSP’s current (pay-as-you-go) and future (fully-funded) pension
plans. The Commission should reject both.

74 In Order 09, the Commission directed PSP to collaborate with PMSA to develop a fully-
funded pension plan. As noted above, that directive has not yet born fruit.¹⁷⁵ The Commission
should decline to take action concerning PSP’s pensions (current or future) until it knows what

¹⁷⁰ Young, Exh. MY-1T at 15:12.

¹⁷¹ Moore, Exh. MM-63T at 21:16-22:4.

¹⁷² See Young, Exh. MY-11T at 6:3-6 (“Staff believes the function of automatic adjusters is to streamline the filing process and avoid (or defer) the cost of an adjudication to provide a rate increase when expenses increase.”); Young, Tr. at 849:16-20.

¹⁷³ See generally WAC 480-07-880.

¹⁷⁴ See Young, Exh. MY-11T at 6:10-11 (“Staff reiterates its initial recommendation that the Commission approve a COLA, even if it is not specifically the adjuster proposed by PSP.”).

¹⁷⁵ Indeed, PMSA moved to dismiss this filing over what it believed to be noncompliance with the Commission’s directive. See generally *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-220513, PMSA’s Motion to Dismiss (July 7, 2022).

those pensions will look like.¹⁷⁶ Accordingly, the Commission should reject the adjustment mechanisms to avoid prejudging the issues and incenting parties to circumvent its directives.¹⁷⁷

e. The BPC training program adjustment mechanism.¹⁷⁸

75 Finally, PSP asks the Commission to create a mechanism for the BPC to change the pilot training surcharge through a filing.¹⁷⁹ The Commission should reject that proposal, which no party had a chance to respond to.

76 The Commission does not allow parties to present new proposals on rebuttal because such proposals rob other parties of the chance to vet the proposal, impairing the Commission's ability to set fair, just, reasonable, and sufficient rates.¹⁸⁰ PSP did not propose this adjustment mechanism until rebuttal.¹⁸¹ The Commission should reject it.

IV. CONCLUSION

77 The Commission should reject PSP's proposed revenue requirement increase and approve Staff's.

Respectfully submitted, this 28th day of April, 2023.

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¹⁷⁶ Young, Exh. MY-1T at 17:2-5.

¹⁷⁷ Young, Exh. MY-1T at 17:2-10.

¹⁷⁸ As noted in footnote 8, the transcript does not contain the ALJ's decision striking the testimony offering this proposal. Staff addresses it out of an abundance of caution.

¹⁷⁹ Bendixen, Exh. SB-09T at 8:1-10.

¹⁸⁰ *Wash. Utils. & Transp. Comm'n v. Avista Corp.*, Dockets UE-160228 & UG-160229, Order 04 at 5 ¶ 12 (Oct. 10, 2016).

¹⁸¹ Bendixen, Exh. SB-09T at 8:1-10.