BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. MURREY'S DISPOSAL COMPANY, INC. D/B/A OLYMPIC DISPOSAL, Respondent.	DOCKET TG-230778

POST-HEARING BRIEF OF COMMISSION STAFF

October 2, 2024

ROBERT W. FERGUSON
Attorney General

/s/ *Jeff Roberson*, WSBA No. 45550
Senior Assistant Attorney General
(360) 810-0509
jeff.roberson@atg.wa.gov

/s/ *Colin O'Brien*, WSBA No.
Assistant Attorney General
(360) 586-6413
colin.obrien@atg.wa.gov

Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128

CONFIDENTIAL PER PROTECTIVE ORDER – REDACTED VERSION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Administrative Authorities

Other Authorities

I. INTRODUCTION

1 This case presents three major questions for the Commission's consideration: (1) how much should the rates set for a solid waste collection company reflect its expected rate-year expenses and revenues, (2) how should the Commission handle severance payments, and (3) what showing does a solid waste collection company need to make to justify the prudence of its decisions to incur costs?

2 With regard to the first question, because the Commission sets rates to allow common carriers like solid waste collection companies the opportunity to recover their rate expenses and earn a reasonable return on money put into the venture to serve the public, the answer to the first question should be some variant of "quite closely." As concerns this filing, that means that the Commission should remove deductible expense paid by Murrey's Disposal Company (Olympic) for a casualty loss unlike any the company has ever experienced and which is unlikely to experience again in the rate year.

3 Concerning the second question, the Commission should conclude that allowing a solid waste collection company to include severance payments within their operating expenses is contrary to public policy and remove those expenses. Allowing companies to pass severance costs to ratepayers deadens the deterrent effect tort liability is intended to serve. Applied here, that means the Commission should remove severance expense from Olympic's revenue requirement. And even if the Commission concludes that common carriers may theoretically recover severance payments, it should disallow the payments at issue given the almost non-existent record provided by the company to justify them.

4 Finally, with regard to the third question, as a matter of fairness to the ratepayer, the Commission should require companies to show some level of ratepayer benefit

commensurate with the costs in order to recover them. Where a company claims benefits based on subjective beliefs, the Commission should stringently apply long-adhered-to standards for prudence review and require contemporaneous records of the company's evaluation of those costs and benefits so that it can readily understand how the company weighed them. Here, the Commission should remove a number of expenses for which Murrey's either cannot demonstrate benefits or cannot show a reasoned process for weighing costs and benefits.

II. ARGUMENT

5 Based on the three main principles described above, as well as other, more specific ones discussed below, Staff recommends that the Commission adjust Olympic's as-filed revenue requirement to: (1) remove insurance deductible expense, (2) remove severance payments, (3) remove bonus and incentive expense, (4) remove expense related to community activities and specified meals provided to employees, (5) remove costs associated with an abandoned transfer station project, and (6) remove costs associated with litigation incurred before, in some cases years before, the test period. Staff discusses each adjustment below.

A. General Ratemaking Principles

6 Pursuant to a delegation of authority from the Legislature, the Commission regulates entities who transport persons or property within Washington for compensation.[1] The public service laws define every such company as a "common carrier,"[2] and solid waste collection companies, like Olympic, fall within the scope of that definition.[3]

[1] RCW 80.01.040(2); RCW 81.01.010.
[2] RCW 81.04.010(11).
[3] RCW 81.04.010(11), *see* RCW 81.77.010(1), (9).

7 The public service laws prescribe a comprehensive scheme for the regulation of common carriers,[4] with specific provisions governing the operations of solid waste collection companies.[5] As concerns the prices at which they offer services, regulated carriers may only charge fair, just, reasonable, and sufficient rates.[6] The Commission or aggrieved persons can complain to allege that a carrier's rates fail to meet that standard.[7] If the Commission finds the carrier's rates unfair, unjust, unreasonable, or insufficient (or some combination thereof) after a hearing, it may fix fair, just, reasonable, and sufficient rates that the carrier must observe going forward.[8]

8 When considering whether rates meet the fair, just, reasonable, and sufficient standard, the Commission may consider countervailing factors. One is "[t]he public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of facilities, equipment, and service."[9] The other is "[t]he carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost"[10] of providing service, "plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit for the carrier."[11]

---

[4] RCW 81.28.010-.900.
[5] *See generally* RCW 81.77.010-.210.
[6] RCW 81.28.010.
[7] RCW 81.04.110.
[8] RCW 81.28.230.
[9] RCW 81.04.250(2).
[10] RCW 81.04.250(3).
[11] RCW 81.04.250(3).

9 With that said, the Commission generally requires that rates be cost-based in order to meet the fair, just, reasonable, and sufficient standard.[12] The Commission calculates such rates in an adjudication by determining the carrier's revenue requirement, which is the dollar amount intended to allow the carrier to recover its expected rate-year costs and afford it an opportunity to earn a reasonable return on its investment, assuming prudent management.[13] Importantly, the opportunity is simply that, and not a guarantee that the carrier will earn an authorized return.[14] The Commission then sets rates for each rate class that it expects will recover the revenue requirement over the course of the rate year.[15]

10 Calculation of the revenue requirement begins with the results of operations booked by the carrier during a 12-month test period.[16] This starting point reflects the assumption that a carrier's recent performance provides a reasonable forecast of its rate-year expenses and revenues.[17] That assumption may not always hold true and the Commission's rules allow for restating and pro forma adjustments to the test-year results to better match test-year and expected-rate-year expenses and revenues.[18] Restating adjustments "adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings."[19] Pro forma adjustments, on the other hand, "give effect for

---

[12] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-151871 & UG-151872, Order 06, 7 ¶ 26 (Nov. 16, 2016).
[13] *Wash. Att'y Gen.'s Office, Public Counsel Unit, v. Wash. Utils. & Transp. Comm'n*, 4 Wn. App. 2d 657, 660-61, 423 P.3d 861 (2018).
[14] *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co.*, Dockets UE-140762, UE-140617, UE-131384 & UE-140094, Order 08, 9 ¶ 19 & n.19 (Mar. 25, 2015).
[15] *Wash. Utils. & Transp. Comm'n v. Puget Sound Pilots*, TP-190976, Order 09, 16 ¶ 58 (Nov. 25, 2020).
[16] *People's Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 810, 711 P.2d 319 (1985) ("*POWER*").
[17] *Wash. Utils. & Transp. Comm'n v. Bremerton-Kitsap Airporter, Inc.*, Docket TC-001846, Fifth Supplemental Order, 2002 Wash. UTC Lexis 276, * 28 (Aug. 2, 2002) ("[t]he purpose of [the] test-year approach is to develop a normal level of expenses that is expected to match the company's expenses in the rate year.").
[18] WAC 480-07-520(4)(a)(i), (ii).
[19] WAC 480-07-520(4)(a)(i).

the test period to all known and measurable changes that are not offset by other factors."[20] These rules codify and give effect to the principle that "[w]here an unusual situation exists resulting in test year figures that are atypical and thus do not indicate future trends, the Commission should adjust the test year data" to more accurately set rates.[21]

11 The Commission may also adjust test-year results by disallowing booked expenses for any of several reasons.[22] The Commission will, for example, disallow investments in property not used or useful for the provision of regulated service.[23]

12 The Commission will also disallow "operating expenses incurred by a utility . . . which were not prudently incurred."[24] The Commission applies a reasonableness standard,[25] looking at the decision to incur costs in the context that the carrier made it.[26] This reasonableness analysis focuses on, among other things, the need for the expense and contemporaneous documentation of the company's decision-making processes.[27] The carrier bears the burden of showing the prudence of its decisions.[28]

---

[20] WAC 480-07-520(4)(a)(ii).
[21] *Porter v. S.C. Public Serv. Comm'n*, 322 S.C. 222, 229, 493 S.E.2d 92 (1997) (internal citations omitted); *accord* Sharbono, Exh. BS-1CTr at 4:19-23.
[22] *POWER*, 104 Wn.2d at 811.
[23] RCW 81.04.330.
[24] *POWER*, 104 Wn.2d at 810.
[25] *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co.*, Docket UE-152253, Order 12, 33 ¶ 94 (Sept. 1, 2016) (explaining that, when reviewing prudence, the Commission asks "[w]hat would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision?").
[26] *Pac. Power*, Docket UE-152253, Order 12, at 33 ¶ 94.
[27] *In re Investigation of Avista Corp., Puget Sound Energy, & Pac. Power & Light Co.*, Docket UE-190882, Order 05, 12 ¶ 42 (Mar. 20, 2020) ("the Commission must determine what information was known or reasonably should have been known, when it was known, and how it was considered in the decision-making process. When evaluating prudence, therefore, the Commission must require from a regulated utility contemporaneous documentation of its decision making. . . Documentation and evidence of prudent decision making must be kept contemporaneously with a company's decision making or the Commission's ability to evaluate prudence is thwarted.").
[28] *Pac. Power & Light Co.*, Docket UE-152253, Order 12, at 33 ¶ 94.

B. The Commission Should Adjust Olympic's Revenue Requirement to Eliminate the Unusual Insurance Deductible Payment Made in the Test Year

13 Staff first recommends adjusting Olympic's results to remove "legal and deductible expenses the company recorded for insurance expenses in the test year."[29] As noted above, the Commission allows adjustments to remove "prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, . . . and to eliminate or normalize extraordinary items recorded during the test period."[30] The expense here falls within two of those categories, as discussed next. In the alternative, the Commission should amortize the insurance deductible expense over a ten-year period, which better reflects the frequency at which Olympic incurs such expenses.

1. The Commission should remove the insurance deductible expense from Murrey's revenue requirement as it is an extraordinary expense.

14 The insurance expense at issue here resulted from a fatal accident involving one of the company's vehicles.[31] Staff "reviewed the company's historical data for similar occurrences" and found only "a few incidents that were unusual, but none of like nature or financial impact."[32] In the course of that analysis, Staff reviewed the ten years spanning 2014 through 2023 and found only two accidents whose total cost exceeded $100,000. One occurred in 2014, with a total cost of $[redacted];[33] the other was the accident at issue here, with a total cost of $[redacted].[34]

15 Testimony from a Murrey's officer confirms Staff's conclusion about the unusual nature of the insurance expense here. Murrey's witness Wonderlick testified that this

---

[29] Sharbono, Exh. BS-1CTr at 7:6-7.
[30] WAC 480-07-520(4)(a)(i).
[31] *See generally* Wonderlick, Exh. JW-1T at 21:20-21:7, Exh. JW-10C, Exh. JW-12C.
[32] Sharbono, Exh. BS-1CTr at 7:16-18.
[33] Sharbono, Exh. BS-1CTr at 18:1-7.
[34] Sharbono, Exh. BS-1CTr at 18:1-7.

accident involved costs two times greater than any previous accident he had seen in his 13 years at Murrey's.[35] Moreover, he readily admitted that a repeat would likely not occur in the next few years.[36] These admissions demonstrate the extraordinary nature of the expense in question, and evidence the fact that it should be removed from the test year in line with standard Commission practice for rate setting.

16 Murrey's has argued that this extreme insurance expense is a recurring expense under the theory that the nature of the expense is recurring, even if the amount is not. However, that line of reasoning ignores the fact that WAC 480-07-520(4)(a)(i) gives two options for an extraordinary expense, normalization or elimination. Normalization should be considered less appropriate where, as admitted by Murrey's own witnesses, an expense is more than double any other prior like expense suffered by the company and unlikely to reoccur in the future.

2. The Commission should eliminate the deductible expense under ratemaking principles of proper allocation of business risk.

17 In ratemaking for solid waste cases, a company is "allowed the opportunity to earn a fair rate of return."[37] The Commission, in setting rates, is tasked with balancing "the public need for . . . service at the lowest level of charges consistent with" the provision of services[38] and "the carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost" of providing service.[39] To facilitate this balancing, the Commission has long used the Lurito-Gallagher model for solid waste companies, which allows Staff to approximate the risks that a company faces in operations

[35] Wonderlick, TR. at 128:22-129:16.
[36] *Id.* at 129:25-130:3.
[37] *Wash. Att'y Gen.'s Office, Public Counsel Unit*, 4 Wn. App. 2d at 660-61.
[38] RCW 81.04.250(2).
[39] RCW 81.04.250(3).

and thereby calculate the return needed to properly compensate the company for that risk. [40] In creating this model, the Commission uses real-world market data, inherently appropriating the market's various assumptions about risk and risk-taking behavior by companies. [41] Therefore, the Commission has inherently incorporated the model by which a company prices its goods and services.

18 As shown in Staff's testimony, standard market principles do not include the cost of insurance deductibles in the operating costs for a company.[42] These costs are allocated to the shareholders of the business.[43] This, in essence, means that any model based on that data will also assume that the cost of insurance deductibles is allocated to the shareholders of a regulated company, not to its ratepayers.[44] This is also in keeping with the principles of RCW 81.04.250(2), since a deductible is inherently an unpredictable and often-times unnecessary expense, and therefore cannot be a required cost of doing business when operating at the lowest reasonable level of expense.

19 Finally, the testimony of Murrey's witnesses also show the mismatch of risk between ratepayers and shareholders under the company's proposed allocation. As testified to by Ms. Lopes, the primary motivator for the company to control insurance costs is "to keep premiums in line" by taking on risk.[45] However, the company is not taking on risk under the company's allocation model – the ratepayer is. The company has full control over what insurance it purchases, not the ratepayer. Ratepayers would have no control over the

[40] Sharbono, Exh. BS-1T at 10:17-11:2.
[41] *Id.* at 11:2-5. *See also Policy Statement Affirming and Updating the Lurito Gallagher Model*, Docket TG-131255, at 5-6 (Dec. 3, 2020).
[42] Sharbono, Exh. BS-1T at 11:2-5.
[43] *Id.* at 11:4-7.
[44] *Id.*
[45] Lopes, TR at 205:25.

company's insurance policies, litigation strategy, or settlement amounts at a time when Murrey's witness has testified to the fact that insurance payouts are increasing exponentially.[46] Even the company's current amortization payout would be more than the low deductible plan quoted by Chubb.[47] Given the company's own statements concerning the escalating costs of major insurance losses in the transportation sector, a [redacted] deductible[48] exposes ratepayers to a massive risk of rate instability and rate shock if they were made solely responsible for paying a maxed-out expense.[49] More than that, Murrey's witness testified that she foresaw the deductible increasing in the near future, potentially exposing the ratepayers to even further risk.[50] Meanwhile, shareholders would be exposed to no increase in risk regardless of the premium or deductible chosen by the company. This complete absence of balanced risk is antithetical to the intent of the RCW and Lurito-Gallagher model, and Murrey's proposed allocation method should therefore be rejected along with the deductible expense.

3. The Commission should remove the insurance deductible expense as a below-the-line item that was incorrectly included as an operating expense.

20 The Commission "publishes a uniform system of accounts (USOA)" that sets out the "accounting, financial, and other procedures the [C]ommission uses to determine" whether a solid waste collection company's "rates are fair, just, reasonable, and sufficient."[51] Specifically, the USOA's provisions set out "accounting definitions, listings, and explanations of balance sheet and income statement accounts" used by the Commission for

[46] Lopes, TR at 204:25-205:1.
[47] Sharbono, BS-1CTr, at 18-19.
[48] Wonderlick, JW-9C, at 2-3.
[49] Murrey's witnesses have testified that it is likely or could be likely that the company could max out the deductible. Lopes, TR at 205:9-10.
[50] *Id.* at 205:13.
[51] WAC 480-07-066(1)(a).

that purpose.[52] The account relevant here, Account 4530, reads in relevant part: "This account shall include premiums paid (less dividends or refunds) for commercial insurance to protect the carrier against liability to the public and damage to the property of others. . . This account shall also be charged with the estimated or actual liability for claims not covered by commercial insurance for the same class of risk."[53]

21 The Commission should restate Olympic's operating results to remove the insurance deductible expense as a below-the line-item not appropriate for inclusion in regulated rates. The text of Account 4530, as seen above, explicitly allows the booking of "premiums paid."[54] But "Account 4530 . . . does not provide for the booking of insurance deductible payments."[55] That expense instead belongs in Account 7500 or 7600. That matters. Expenses booked in Account 4530 are above-the-line operating expenses properly included in a carrier's revenue requirement. Expenses booked in Accounts 7500 or 7600 are "below-the-line item[s]" costs that a carrier "may not pass on to ratepayers."[56] The mechanism for preventing a carrier from doing so is a restating adjustment as set out in the Commission's rules.[57] It should make one here.

22 Olympic, however, urges the Commission to decline to restate the amounts booked into Account 4530. Specifically, Olympic maintains that Account 4530 allows the booking of insurance deductible expense based on the phrase "shall be charged with the estimated or actual liability for claims not covered by commercial insurance for the same class of risk."[58]

---

[52] WAC 480-07-066(1)(b).
[53] Washington Utilities & Transportation Commission, Uniform System of Accounts for Class A and B Solid Waste Collection Companies Operating Under Certificates of Public Convenience and Necessity in the state of Washington, at 60 (1992 ed.) (USOA).
[54] USOA at 60.
[55] Sharbono, Exh. BS-1CTr at 8:9-10.
[56] Sharbono, Exh. BS-1CTr at 8:19-9:2 (internal quotation omitted).
[57] WAC 480-07-520(4)(a)(i).
[58] Wonderlick, Exh. JW-25CT at 21:1-15.

Olympic contends that sentence "is . . . designed to accept deductible charges paid before insurance is triggered, as well as liability that may be occurred beyond the policy limit."[59]

23 Staff and Olympic differ on what the phrase "not covered by commercial insurance" modifies in the text of Account 4530. Staff reads it as modifying the word "claims." Olympic reads it as modifying the words "estimated or actual liability." Staff has the better reading based on principles of interpretation, and the Commission should adopt it.

24 Initially, tribunals should attempt to interpret a text to give meaning to all the words used within it, with none rendered superfluous.[60] Under Olympic's reading, any insurance expense not falling within a policy's coverage limit is appropriate for booking in Account 4530. But, if that reading is correct, the words "for claims" in the text of Account 4530 have no meaning or effect. Staff's interpretation, conversely, gives meaning to those words by limiting the use of Account 4530 to non-premium expenses paid where no commercial insurance covers a claim, meaning where a carrier has received authorization from the Commission to self-insure.[61]

25 Further, "[w]here no contrary intention appears" in a text, "relative and qualifying words and phrases, both grammatically and legally, refer to the last antecedent."[62] This last antecedent "is the last word which can be made antecedent without impairing the meaning of the sentence."[63] Under the last antecedent rule, the qualifying phrase "not covered by commercial insurance" modifies the word "claims," as advocated by Staff, not the phrase "estimated or actual liability," as urged by Olympic. The word "claims" is the more recent

[59] Wonderlick, Exh. JW-25CT at 21:11-13.
[60] *Spokane County v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018).
[61] Sharbono, Exh. BS-1CTr at 8:6-14.
[62] *Davis v. Gibbs*, 39 Wn.2d 481, 483, 236 P.2d 545 (1951).
[63] *Davis*, 39 Wn.2d at 483.

antecedent, appearing in the sentence after the phrase "estimated or actual liability." And the Commission can see the impairment of the sentence that would occur under Olympic's reading by comparing it to Staff's. Again, under the company's interpretation, carriers may book all insurance expense in the account regardless of whether it is a premium payment, deductible expense, or liability in excess of a policy's coverage, and regardless of whether or not it has an insurance policy covering the claim. Again, under Staff's reading, companies may record the premium expense and may also record the "estimated or actual liability" for an incident where no commercial insurance covers the claim, meaning incidents involving carriers that self-insure with the Commission's authorization.

26 The difference between the two readings matters here. Olympic maintains that it has commercial insurance that covers these claims.[64] To the extent that it does, it cannot book the deductible payments in Account 4530, regardless of whether payout under the policy has been "triggered."[65]

4. Should the Commission allow normalization of the insurance expense, it should require Olympic to normalize the deductible expense over at least ten years.

27 Should the Commission choose to allow the normalization of the insurance expense, it should do so over ten years instead of the five-year amortization schedule proposed by the company. This amount, as testified to by Staff, would lessen the rate impact felt by customers while still allowing Murrey's to recover its allowable expense.[66] As shown by Murrey's witnesses, Murrey's has never experienced a comparable incident to the one currently at issue,[67] and the last incident that broke the $100,000 mark was in 2014, ten

[64] Wonderlick, Exh. JW-25CT at 22:14-15.
[65] Wonderlick, Exh. JW-25CT at 21:11-13.
[66] Sharbono, BS-1CTr, at 18-19.
[67] Wonderlick, TR. at 128:22-129:16.

years ago.[68] Therefore, it would be just, reasonable, and equitable to both the ratepayers and the company to normalize the amount over a time period commensurate with the approximate historical nature of major insurance losses for the company, which would allow the company sufficient funding to recover said expense.

C. The Commission Should Disallow Olympic's Severance Expense

28 Staff next recommends adjusting Olympic's result of operations to eliminate severance payments made by the company and claimed as an operating expense. The Commission should accept this recommendation because these payments create ratemaking problems on a theoretical level and because Olympic fails to justify the severance expense at issue here.

1. The Commission should disallow severance expense as a matter of public policy.

29 Washington, by statute or common law, limits an employer's discretion to take adverse employment action for certain reasons. The state has, for example, long banned discriminatory conduct.[69] To enforce that ban, any person may vindicate his or her right to freedom from discrimination through a tort claim.[70] And Washington allows tort claims against an employer for a termination that "frustrate[s] a clear manifestation of public policy."[71]

30 Passing severance costs on to ratepayers undercuts the public policy vindicated through these statutory or common law causes of action. The law imposes tort liability

[68] Sharbono, BS-1CTr, at 18:5-6.
[69] *See generally* Laws of 1949, ch. 183.
[70] RCW 49.60.030(2); *see* RCW 49.60.030(1)(a), (3).
[71] *Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 153-54, 43 P.3d 1223 (2002) (discussing the tort of wrongful discharge in violation of public policy).

through tort, in part, to deter wrongful conduct.[72] But if companies can secure a release to any valid claim with a payment, and then pass that cost through to ratepayers as an operating expense, any deterrent effect is eliminated.[73] The Commission should reject that result.

31 Olympic nevertheless attempts to justify severance payments on several grounds. First, the company maintains that the payment of severance secures releases from any claims brought by the employee accepting the payment,[74] controlling litigation costs, including the costs of judgments and attorney fees. [75] That defense is severely undercut by the recognition that the one litigation expense it specifically lists, attorney fees, can only be granted if the company is held liable. Again, ratepayers should not bear the costs of avoiding the costs of Olympic's torts.

32 Second, Olympic contends that its "culpability is not an issue here . . . with . . . the severance."[76] That is all true, but misleading and irrelevant. There has indeed been no finding that Olympic committed any tortious conduct here. Nor has the former employee who received severance filed suit. But the severance payment, which Olympic makes in exchange for a release of claims, literally precludes either of those two results.[77] This means that the Commission cannot know whether this payment masked wrongful conduct. Indeed, it can never know if there was wrongful conduct when a company has made a severance payment. Regardless, the simple fact that companies may pass severance costs on to ratepayers eliminates the deterrent effect lawmakers and the courts have created through tort

---

[72] *Shoemake ex rel. Guardian v. Ferrer*, 168 Wn.2d 193, 203, 225 P.3d 990 (2010); *Ford*, 146 Wn.2d at 154.
[73] *See* Black's Law Dictionary (12th ed. 2024) (defining "deterrent" to mean "[s]omething that impedes or prevents, esp., something that makes people less likely to do something when they realize it will bring them bad consequences").
[74] Wonderlick, Exh. JW-1T at 20:12-13.
[75] Wonderlick, Exh. JW-1T at 30:12-18; Sharbono, Exh. BS-2C at 13.
[76] Wonderlick, TR. at 134:5-7.
[77] Sharbono, Exh. BS-1CTr at 20:4-5.

law. The Commission should not undercut the policies of coordinate branches of government.

33 Finally, Olympic also belatedly claims that, by paying severance, it acts as a good corporate citizen and builds goodwill in former employees.[78] Washington's courts police the types of expenses that utilities may charge their ratepayers, and they generally reverse attempts to recover the costs of good corporate citizenship.[79] Severance may benefit the paying company, but that does not make ratepayers responsible for the expense.

2. The Commission should disallow the severance expense here as imprudent.

34 Even if the Commission were to conclude that severance payments were generally recoverable, Olympic fails to justify the expense here. As noted, companies may only recover prudently incurred expenses from ratepayers. And, as also noted, showing prudence requires, among other things, showing the need for the expense and providing contemporaneous documentation of the company's decision-making process. Olympic has done neither.

35 Initially, Olympic has not shown the necessity for this expense. Nothing in Olympic's opening testimony explains the factual circumstances surrounding the payment.[80] Nor does anything in the company's rebuttal testimony.[81] When Staff requested information on why this severance payment was necessary, it received only blanket statements about the benefits of severance that provided "no context" for the payment.[82] Accordingly, nothing in

---

[78] Scontrino, Exh. MPS-1T at 20:11-21:5.
[79] *Jewell v. Wash. Utils. & Transp. Comm'n*, 90 Wn.2d 775, 777-78, 585 P.2d 1167 (1978); *Okeson v. City of Seattle*, 130 Wn. App. 814, 125 P.2d 172 (2005).
[80] *See generally* Wonderlick, Exh. JW-1T; Gingrick, Exh. MG-1T; Terzic, Exh. BT-1T.
[81] *See generally*, Wonderlick, Exh. JW-25T; Lopes, Exh. BL-1T; Scontrino, Exh. MPS-1T; Terzic, Exh. BT-4T.
[82] Sharbono, Exh. BS-1CTr at 20:20-21:3.

the record indicates a likelihood that the terminated employee might file any kind of claim against the company. Indeed, nothing in the record indicates so much as any potential that he or she would do so. Without evidence to that effect, the Commission cannot conclude that the severance payment was necessary to head off litigation claims.

36 Further, and more problematically, Olympic provides no contemporaneous documentation explaining how and why it decided the payment of severance and the amount at issue were appropriate. The company has no written policies governing the process for severance payments.[83] That lack of guardrails makes review of the manner in which Olympic exercised its discretion in this particular case all the more important. But Olympic produced no cost/benefit analysis for this payment, nor for any other.[84] Nor did it provide any minutes recording how management approached the issue.[85] And that inability to provide a record of how management exercises its discretion is a structural feature of Olympic's management, which does not routinely keep minutes.[86] This evidentiary void leaves the Commission unable to determine if Olympic met its burden[87] of showing the

[83] Wonderlick, TR. at 136:10-17; Sharbono, Exh. BS-2(C) at 14 ("this process is used to assess the individual factual circumstances, risk/reward, and any precedential impacts of individual severance payments under the particular circumstances . . . While the company occasionally utilizes a formula that includes employment term and minimum and maximum contributions and outplacement assistance, there is no binding approach to crafting severance offers, 'one size does not fit all.'").
[84] Sharbono, Exh. BS-1CTr at 21:2-3.
[85] Sharbono, Exh. BS-1CTr at 21:2-3; Wonderlick at 135:18-136:1 (Q: Would [Olympic] keep minutes about something like the payments of severance? A: Not necessarily. I'm not personally involved with severance meetings and discussions. Q: Okay. Do you know if Murrey's Olympic Disposal produced any minutes when Mr. Sharbono asked for them with regard to these severance payments? A: I'm fairly certain we did not produce minutes, and I do not think there are minutes for this meeting.").
[86] Wonderlick, TR. at 127:14-18 (Q: And Murrey's said that it doesn't routinely keep minutes, correct? A: Not of these kinds of meetings that were requested, no. No. Not in general, no, there's not a lot of minutes."); id. at 135:14-20 ("Q: Okay. Previously we talked about the keeping of minutes. And your answer was that Murrey's did not routinely keep minutes, correct? A. Correct.").
[87] *Pac. Power*, Docket UE-152253, Order 12, at 33 ¶ 94.

prudence of its decision to pay severance.[88] The Commission should disallow the cost on that basis.

37 Olympic's failure to keep contemporaneous records of its decision-making also thwarts its attempt to justify the severance payment on the alternative grounds advanced by Dr. Scontrino on rebuttal.[89] No evidence suggests that the company knew of those reasons, let alone considered them, at the time it made the decision to pay severance.[90] Olympic, for example, did not cite those reasons to justify the payment when Staff initially engaged in discovery upon receiving the company's filing.[91] And no witness testified in the company's direct case that it had considered these justifications when considering the payment.[92] The

---

[88] *E.g., In re Petition of Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499 & UE-921262, 1994 Wash. UTC Lexis 68, Nineteenth Supplemental Order, *28-30 (Sept. 27, 1994) ("Each time the Commission told Puget it would have to demonstrate the prudence of its resource acquisitions in this general rate case, we assumed that a reasoned analysis existed. When we gave Puget a second chance to demonstrate prudence in this additional phase of the case, the Commission still assumed that a reasoned analysis existed -- we merely believed that Puget had not listened to the message that it must come forward with the evidence. When the Commission Staff received a briefing from Puget on its new contracts, the Commission Staff presumed that a reasoned analysis existed… It is still almost beyond the Commission's comprehension that Puget, which was the recipient of the Commission's order in the Skagit proceeding, and was aware of the Kettle Falls order, did not have a file on each of these projects in which it tracked its progress in its decision making, and the studies made to support decisions. It appears that many of the decisions were made on an ad hoc basis, with little or no structured analysis. The Commission is constrained to conclude that Puget has mismanaged its resource acquisition process. . . As the Commission Staff correctly highlights, the company's resource mix is required to be "least cost" under WAC 480-100-251. This test is not fulfilled by Puget's claim that it acquired these resources at "reasonable" cost. If Puget had bargained more strenuously and sent out proper signals about its alternatives, Puget might well have obtained the resources under these same contracts at lower prices. But because Puget was satisfied with a general, unadjusted estimate of avoided cost as a ceiling, and because it failed to document its decision-making process, we cannot know what price Puget could have obtained if it had followed a prudent course. . . The company's "robust discussions" about various resources, with "a consensus" on the decisions, are not sufficient to demonstrate prudence. The Commission Staff has challenged Puget's process as not documented and not susceptible of replication. Puget sets up the word "replicate" as a straw man -- saying that it means that Puget must reproduce in minute detail each decision making process -- then knocks the straw man down. Commission Staff made it clear that this is not what it meant by "replicate". These contracts will bind the company and its ratepayers to pay $ 6.5 billion over the next 23 years. The parties and the Commission therefore should be able to follow the company's decision-making process, knowing what elements the company used, and the manner in which the company valued those elements. Such a process should certainly be documented.").

[89] *See generally* Scontrino, Exh. MPS-1T.

[90] Sharbono, Exh. BS-1CTr at 21:2-3.

[91] Sharbono, Exh. BS-2 at 13-15.

[92] *See generally* Wonderlick, Exh. JW-1T; Gingrick, Exh. MG-1T; Terzic, Exh. BT-1T.

rationales advanced by Dr. Scontrino are therefore the type of post hoc justifications that the Commission considers irrelevant when reviewing prudence, and it should decline to consider them.

D. The Commission Should Disallow Incentive Expense

38 Staff next recommends adjusting Olympic's results of operations to remove two forms of incentive payments: the company's employee incentive plan expense and expense related to a safety event.[93] As with the severance expense, Olympic fails to justify the bonus payments as prudent, and the Commission should disallow them.

39 A subset of the Commission's prudence decisions address bonus payments. The Commission generally limits its review of bonus programs, asking "only to whether the compensation exceeds the market average [or] is unreasonable," and whether the compensation "offers benefits to ratepayers."[94] That precedent applies here, and the Commission should disallow the expense here based on that.[95]

1. The Commission should disallow the employee incentive plan payments because Olympic fails to show ratepayer benefits.

40 The first form of incentive payments at issue concern Olympic's employee incentive program.[96] Staff recommends disallowing the costs because Olympic offers nothing that shows any quantifiable benefits to its ratepayers.

---

[93] Sharbono, Exh. BS-1CTr at 22:9-13.
[94] *Wash Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991 & UG-190992, Order 08/05/03/03, at 94 ¶ 314 (July 8, 2020) (internal quotation omitted).
[95] Olympic contends that the Commission's incentive precedent does not apply because the payments are slated for line staff, not executives. Wonderlick, Exh. JW-25T at 26:21-27:17. Olympic is flatly wrong. The Commission, for example, applied the standard cited above to an incentive plan for which "all employees" were eligible, *Wash Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE-190529, UG-190530, UE-190274, UG-190275, UE-171225, UG-171226, UE-190991 & UG-190992, Order 08/05/03/03, at 89 ¶ 298, and developed the standard when reviewing an incentive plan for which only line employees were eligible. *Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-100749, Order 06, 83-84 ¶ 242 (Mar. 25, 2011). The test applies to incentive programs like the ones at issue.
[96] Sharbono, Exh. BS-1CTr at 22:23-23:5.

41 The parties' factual dispute largely centers on the showing that Olympic must make on the question of ratepayer benefits. When reviewing Olympic's filing, Staff asked the company to provide evidence relevant to that question.[97] In response, "the company stated it d[id] not track data on the effectiveness of programs."[98] Indeed, it further acknowledged that "it ha[d] no criteria for measuring whether the programs accomplish their stated goals."[99] It did, however, offer evidence concerning two other companies owned by Olympic's parent. Nonplussed, Staff offered to the company ideas to "document the ratepayer benefits to the company."[100] The company replied by generally making broad assertions of benefits, with no supporting proof,[101] and providing articles about the benefits of referral incentives.[102]

42 The Commission should conclude that Olympic failed to show the prudence of its decision to incur incentive expense. Olympic offered in discovery and in its opening testimony only the opinion testimony of two corporate officers and data about other companies. That opinion testimony was, notably, testimony about naked beliefs. Olympic provided almost nothing in the way of data that would have given the officers' opinions some basis in fact. Indeed, Olympic could not provide any such data. As just noted, Olympic informed Staff that it did not track the effectiveness of its programs and had not decided on criteria for doing so. At best then, Olympic seeks a finding of prudence based on two limited data points[103] and statements asserting that Olympic's ratepayers received benefits. But neither contextless data points nor blanket statements show that "the programs *enhance*

---

[97] Sharbono, Exh. BS-2 at 11-12.
[98] Sharbono, Exh. BS-1CTr at 23:10-11.
[99] Sharbono, Exh. BS-1CTr at 23:9-11.
[100] Sharbono, Exh. BS-1CTr at 23:13-17.
[101] Sharbono, Exh. BS-1CT at 24:3-7.
[102] Sharbono, Exh. BS-1CTr at 24:13-14.
[103] Those were an "I-rate" related to the safety program and "3 quarters of aggregated scores for the "Tooty" program." Sharbono, Exh. BS-1CTr at 24:1-3.

service or customer experience."[104] And while Olympic provides generalized data about other affiliates that might provide a basis for concluding that its ratepayers receive benefits from its incentive programs, that data has no specific link to Olympic's operations. Staff flagged this issue in its testimony,[105] something that did not pass Olympic by,[106] and yet Olympic on rebuttal offers no evidence that the company's operations are typical of any of the operations for which Olympic can establish benefits, or that the programs Olympic seeks to recover in rates are similar enough to those of the other companies to make comparisons.[107]

43 Olympic, however, contests Staff's prudence recommendation here on numerous grounds. None have merit.

44 Olympic first contends that the type of showing that Staff demands "generally requires a before and after analysis,"[108] and that it cannot do so because it has "employed versions of these incentive programs for many years."[109] This is a request that the Commission eliminate Olympic's burden of showing prudence because the company cannot carry it, something the Commission should reject. Any prudent management making an informed choice should have some kind of costs/benefits analysis forecast prepared,[110] and should follow up evaluating the prudence of its decisions by comparing the forecast to actual

[104] Sharbono, Exh. BS-1CTr at 23:4-5 (emphasis added).
[105] Sharbono, Exh. BS-1CTr at 23 n.24.
[106] Wonderlick, Exh. JW-25T at 28:9-11.
[107] *See* generally Wonderlick, Exh. JW-25T; Socontrino, Exh. MPS-1T; Lopes, Exh. BL-1T; Terzic, Exh. BT-4T.
[108] Wonderlick, Exh. JW-25T at 29:1-2.
[109] Wonderlick, Exh. JW-25T at 29:10-11.
[110] *Petition of Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499 & UE-921262, 1994 Wash. UTC Lexis 68, Nineteenth Supplemental Order, *28-30.

results.[111] That Olympic did not do so[112] leaves the Commission unable to determine that the decision to set up these programs, or to continue them, was prudent. Regardless, Olympic acknowledges that these programs have changed over time.[113] That should have allowed Olympic to determine whether program improvements produced performance improvements, or a better customer experience, which could have supported a prudence finding. But Olympic cannot produce any analysis suggesting that it ever undertook that evaluation.[114]

45 Second, Olympic contends that Staff asks it to draw statistically valid conclusions from a data set that does not allow it.[115] But Staff does not ask for a rigorous, scientifically valid conclusion about benefits; it asks for a decision-making process that it can follow. In a reasoned decision-making process, Olympic should weigh costs and benefits before taking action.[116] Part and parcel of doing so involves deciding which benefits may be attributed to an action and justifying that determination. It is this last step that Olympic has failed to accomplish. Again, it has generally provided no data on which the Commission can conclude that it has made a non-arbitrary benefit decision. And, even where it does provide data, such as when it finally provides numbers related to its employee retention program on rebuttal,[117] it does not explain why it reads the data as it does.[118] For example, with regard to

[111] *See Pac. Power & Light Co.*, Docket UE-152253, Order 12, at 34 ¶ 95.
[112] Wonderlick, TR. at 140:14-21 (Q: Two follow up questions. The first is did Murrey's ever, way back when, at the dawn of these programs, did it study their effectiveness? A: I don't think – I am not aware of any before and after results that Waste Connections has, per se, on a particular program").
[113] Wonderlick, TR. at 142:12-16.
[114] Wonderlick, TR. at 142:12-16.
[115] Wonderlick, TR. at 142:17-21.
[116] Wonderlick, TR. at 142:22-143:7.
[117] *Puget Sound Power & Light*, Docket Nos. UE-920433, UE-920499, & UE-921262, 1994 Wash. UTC Lexis 68, Nineteenth Supplemental Order, at *28-30.
[118] Wonderlick, Exh. JW-25T at 24:17-23.

the retention program, Olympic's data shows turnover falling between 2022 and 2024.[119] But that follows a society-wide trend as turnover dropped with the end of the phenomenon called the "Great Resignation."[120] Olympic doesn't explain why it sees its benefit program as causally linked to better retention, and that is problematic given that trend.

46 Third, Olympic provides testimony from Dr. Scontrino.[121] That evidence does nothing to help Olympic carry its burden of showing prudence. In Olympic's view, if it gets to the right number in the end, it has acted prudently. But that's not how prudence review works. The Commission does not use results-based hindsight when considering the decisions of a regulated company.[122] It instead looks at the process the company uses to make its decisions.[123] Here, nothing suggests that Olympic had Dr. Scontrino's study in front of it when it decided to incur incentive expense. Indeed, nothing suggests that the company had something like his evidence until it submitted its rebuttal case as it never provided it in discovery or in its opening testimony.[124]

2. The Commission should disallow the safety event expenses as Olympic fails to show they provide ratepayer benefits.

47 The other form of incentive expense relates to the "safety rodeo" that Olympic drivers who meet certain requirements may attend.[125] Again, Staff recommends removing this expense because Olympic fails to show that it benefits ratepayers.[126]

---

[119] *See, e.g., id.*
[120] *E.g.*, Wonderlick, Exh .JW-25T at 24:22-24.
[121] *See generally* Scontrino, Exh. MPS-1T.
[122] *Pac. Power*, Docket UE-152253, Order 12, at 33 ¶ 94.
[123] *Puget Sound Power & Light Co.*, Docket Nos. UE-920433, UE-920499, & UE-921262, 1994 Wash. UTC Lexis 68, Nineteenth Supplemental Order, at *28-30.
[124] Sharbono, Exh. BS-1CTr at 22:23-25:6.
[125] Sharbono, Exh. BS-1CTr at 32:18-20.
[126] Sharbono, Exh. BS-1CTr at 33:4-11.

48 On rebuttal, Olympic does not offer anything that shows a ratepayer benefit other than naked opinion testimony.[127] It provides no data with an accompanying explanation that would allow the Commission to conclude that it found benefits as a result of a reasoned process. The Commission should disallow the costs.

E. The Commission Should Disallow the Community Event Expenses as Unnecessary to the Provision of Service and Imprudently Incurred

49 Staff also recommends removing certain expenses that Olympic booked in what it calls the employee community event account. These costs involve payments for "[redacted]"[128]

50 Generally, Olympic incurs those expenses to "increase camaraderie and foster satisfaction and commitment."[129] Olympic can, as Staff noted, "readily provide . . . services without incurring those costs, and thus those costs are inappropriate for rate inclusion under RCW 81.04.250(2)."[130] That provision authorizes the Commission to consider "the public need for . . . service at the lowest level of charge" consistent with the continued provision of adequate service.[131] The Commission should disallow them.

51 Olympic makes two arguments in response. First, witness Wonderlick notes that the Company volunteered to pay half of the costs in the account.[132] That is irrelevant. Olympic need not incur these costs, and the Commission should not attribute any portion of them to ratepayers.

---

[127] *See generally*, *e.g.*, Wonderlick, JW-25T.
[128] Sharbono, Exh. BS-1CTr at 27:16-18.
[129] Sharbono, Exh. BS-1CTr.
[130] Sharbono, Exh. BS-1CTr at 28:4-11.
[131] RCW 81.04.250(2).
[132] Wonderlick, Exh. JW-25T at 35:14-18.

52 Olympic also contends that incurring these types of costs is "conducive to employee morale and retention."[133] But Olympic does not document any ratepayer benefit from the programs. Indeed, when Staff asked Olympic to justify them, Olympic stated that although its "[m]anagement" believed that the expenses at issue "lead toward greater on-the-job effectiveness and efficiency . . . this c[ould not] be demonstrated on a one-for-one transactional basis," and also that it, in fact, did not try to track those claimed benefits.[134] Again, the Commission's review is crippled by the fact that Olympic produced no memoranda or minutes that allow it to understand why management believes something without data to justify its belief, or why it decided that the benefits it claims here outweighed the costs involved. The Commission cannot find these costs reasonable given that record.

F. The Commission Should Disallow Meal Expenses as Unnecessary to the Provision of Service and Imprudently Incurred

53 Staff next recommends that the Commission remove a subset of expenses incurred to provide meals to employees. Specifically, Staff recommends removing the costs associated with "providing meals to employees who are travelling from and returning to their homes on the same day or providing meals for meetings and other activities."[135]

54 Those costs are unnecessary to Olympic's provision of service.[136] Employees would normally need to provide their own meals on the day where Olympic holds meetings or trainings, and there is no reason that they cannot do so on meeting or training days.[137] To the extent that Olympic seeks to provide those meals, its shareholders should bear the costs.[138]

---

[133] Wonderlick, Exh. JW-25T at 35:12-14.
[134] Sharbono, Exh. BS-2 at 12 (Olympic's Answer to UTC Staff DR No. 5.b, d).
[135] Sharbono, Exh. BS-1CTr at 29:15-17.
[136] Sharbono, Exh. BS-1CTr at 29:19-32:10.
[137] Sharbono, Exh. BS-1CTr at 29:19-32:10.
[138] *E.g.*, Sharbono, Exh. BS-1CT at 31:8-9.

55 Olympic, for its part, justifies the meal costs as a means of motivating employees and improving morale. Staff notes two things here. First, when Staff reviewed the company's filing, and asked about the benefits from providing meals, Olympic responded that Staff's data request "beg[ged] the issue of the indirect qualitative benefit to customers, regulated or not, in offering fringe benefits to an employee."[139] That is an admission that Olympic could not quantify the benefits of the meal programs. Second, and somewhat relatedly, in response to Staff's recommendation, Olympic provided no documents providing contemporaneous explanation of the benefits Olympic saw in providing these meals and how it weighed those benefits against the relevant costs. Absent that documentation, Olympic's decision looks like an arbitrary decision rather than a reasoned one. The Commission cannot find prudence in arbitrary action.

G. The Commission Should Disallow the Costs Associated With the Abandoned Transfer Station Project Because it Does not, and Never Did, Provide Benefits to Ratepayers

56 Staff's next adjustment removes expense associated with an abandoned transfer station project, including legal costs[140] and the costs of an engineering report commissioned for the project.[141] The Commission should remove those costs from the revenue requirement because the project is not, and never was, used and useful, and Olympic offers no pathway to it becoming so. It is thus unfair or unreasonable to ask ratepayers to shoulder any of its costs.

57 The Commission should exclude the cost of the report from the company's revenue requirement. Olympic discontinued the project because of "community, environmental, and

[139] Sharbono, Exh. BS-2 at 4-5.
[140] Sharbono, Exh. BS-1CTr at 34:17-21.
[141] Sharbono, Exh. BS-1CTr at 33:19-34:2.

cost concerns."[142] The company thus never completed the project, nor placed it into service. The project's costs thus have "no relation to services provided by the company"[143] and Olympic did not provide any "benefit to ratepayers" by incurring them.[144] Those costs are therefore "not properly attributable to ratepayers or recoverable through rates."[145]

58 Olympic makes two arguments for including the costs in rates. The Commission should reject both.

59 The company first contends that ratepayers should share in the costs of the report because they would have benefitted from the transfer station had the company successfully completed the project.[146] But Olympic's customers pay rates that include a component intended to provide Olympic's owners with the opportunity to earn a return on the money invested, with that return based in part of the risks involved with the business. The possibility that a project will not pan out is exactly that type of risk.[147] It is unfair and unreasonable to require ratepayers to compensate Olympic for the risk of project failure and then turn around and also require them to contribute to the costs of that failed project.

60 The company also contends that it "hope[s] that [it] might be able to resuscitate the project in the future."[148] But the company admits that "something would have to change before [it] would resuscitate the project."[149] And nothing in the record indicates how that change would occur.[150] As far as the Commission is concerned, the project has ended and

---

[142] Wonderlick, Exh. JW-25T at 36:6-8.
[143] Sharbono, Exh. BS-1CTr at 34:8-10.
[144] Sharbono, Exh. BS-1CT at 33:8-10; *see id.* at 35:15-16.
[145] Sharbono, Exh. BS-1CTr at 35:16-17.
[146] Wonderlick, Exh. JW-25T at 36:10-11.
[147] *See* Wonderlick, TR. at 145:11-18 ("Q: Okay. Last question: Is the risk that a venture might not pan out part of ordinary business risk? A: It often is, but we work under a regulated rate structure. So, you know, there's – if we were completely unregulated, we'd have other options available to us. Q: Tso that was a yes, a yes but? A: Yes but.").
[148] Wonderlick, Exh. JW-25T at 36:11-14, 38:17-19.
[149] Wonderlick, Exh. JW-25T at 145:9-10.
[150] Wonderlick, Exh. JW-25T at 144:17-145:10.

has no prospects of revival. It should not pass the associated costs to ratepayers, who do not benefit from their incurrence.

H. The Commission Should Disallow Olympic's Claimed Out-of-Test-Period Litigation Expenses

61 Staff's next adjustment removed legal fees associated with a dispute over the provision of service to two pulp mills on the Olympic Peninsula, heard by the Commission in Dockets TG-200650 and TG-200651 and litigated in other tribunals between 2020 and 2023. Staff removed those amounts as outside the test year, and the Commission should readily accept that adjustment as they objectively are.

62 As discussed, the Commission uses a recent period of booked data to determine the revenue that a carrier should need to earn during the rate year.[151] And, as also discussed, the Commission's rules provide for adjustment to a company's results of operations to remove, among other things, "prior period amounts."[152]

63 Staff recommends disallowing the mill hauls legal expenses based on that plain rule text. Olympic incurred the legal costs at issue between 2020 and July 2022. It did not incur them during its test year, which began on August 1, 2022. The expenses are "prior period amounts" not appropriate for inclusion in Olympic's revenue requirement.[153]

64 Olympic nevertheless contends that Staff recommends an unfair "after-the-fact claw back" of costs given that it had no pending rate case at the time it incurred the mill haul legal expenses.[154] That argument must fail for two reasons.

---

[151] WAC 480-07-520(4)(a)(i), (ii) (the use of test year data); *see generally, e.g., Wash. Utils. & Transp. Comm'n v. Murrey's Disposal Co.*, Docket TG-210912, Order 01 (Jan. 27, 2022) (discussing a test year as the test period).
[152] WAC 480-07-520(4)(a)(i).
[153] WAC 480-07-520(4)(a)(i).
[154] Wonderlick, Exh. JW-25CT at 39:9-10, 39:23-40:5.

65 First, Olympic has things exactly backward. It explicitly seeks the recovery of costs incurred before the start of the test year, in some cases long before the start of the test year. Its request is a de facto claim that the rates in effect during those rate years were insufficient to recover its costs, and a request to recover them in future rates. Olympic thus asks the Commission to engage in textbook, impermissible retroactive ratemaking.[155]

66 Second, Olympic's claims that it could not have recovered these expenses because it had no pending rate case at the time it incurred them is irrelevant, for multiple reasons.

67 Initially, that argument fundamentally misunderstands what the Commission does in a rate case. Again, the Commission does not set rates to recover past costs.[156] It uses past costs as representative sample of expected rate year expenses, and then sets rates to recover those expected expenses.[157] Where, as here, the company will not incur similar costs in the rate year, the Commission should restate the company's results of operations to remove the expense.[158]

68 Further, while Olympic did not have a pending rate case around the time it incurred these costs, its argument ignores the agency it had in this situation. Olympic controls the timing of its rate cases, and it could have filed one based on a test period that captured these costs.[159] A case filed with a 2020 or 2021 test year would not have raised restating concerns because the litigation remained active, and the company could have reasonably claimed that it would continue to incur similar expenses in the rate year. And the company's options did not end with a rate case. It could have petitioned for an accounting order to defer the costs

[155] *In re Petition of PacifiCorp*, Docket UE-020417, Third Supplemental Order, 7 ¶ 23 (Sept. 27, 2002).
[156] *Wash. State Att'y Gen.'s Office*, 4 Wn. App. 2d at 660-61.
[157] *Id.*
[158] WAC 480-07-520(4)(a)(i).
[159] *See generally* WAC 480-07-520.

for later consideration,[160] as it now appears to recognize it could have done.[161] Doing so would have shifted the incurrence of these costs into the rate year and allowed dollar for dollar recovery through an amortization process.[162]

69 At hearing, Olympic suggested that the Commission should allow recovery of the legal expense here based on two previous Commission orders. But no party in those matters sought disallowance of those costs as out of period.[163] They thus provide no authority for Olympic's position here.[164]

I. The Commission Should Follow the Standard Method for Fuel Calculations and Deny the Company's Request for a Deviation From That Standard

70 In January 2024, Murrey's contract for a locked fuel price expired, meaning the Company currently is subject to market pricing for its fuel expenses.[165] Under WAC 480-70-346, a company is to use the last 12 months of actual fuel expenses to calculate its fuel costs in rates. However, the company requests an exemption from that rule due to the expiration of the fuel lock contract. Staff opposes this request and asserts that the Commission should continue to use the standard fuel cost calculation. Staff opposes the company's request for two reasons. First, the historical use of exemptions from this WAC have been under external circumstances which the company could not affect or avoid. Second, an exemption in this

[160] Sharbono, TR. at 343:12-19.
[161] Wonderlick, Exh. JW-25T at 39:20-40:5.
[162] *PacifiCorp*, Docket UE-020417, Third Supplemental Order, at 7 ¶ 24.
[163] Staff, in fact, admits that it erred by failing to do so in at least one of the cases. Olympic's attempt to bind the Commission to this precedent is effectively a demand that it require Staff to be "consistently wrong." Sharbono, TR. at 377:10-17.
[164] *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 824, 881 P.2d 986 (1994) ("[i]n cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised."); *id.* (parenthetically quoting *Webster v. Fall*, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925), for the proposition that "questions which merely lurk in the record, but are neither brought to a court's attention, nor ruled upon, are not considered to have been decided so as to constitute precedent.").
[165] Wonderlick, JW-25CT at 36:17-18.

case would expose ratepayers to a disproportionate risk of overpayment of fuel expenses for the company, leading to a public harm and a windfall for the company.

71 Historically, companies have been granted exemptions from the plain language of WAC 480-70-346 due to circumstances beyond the control of the company. Most significantly, a number of companies sought and were granted exemptions from the WAC method due to the Climate Commitment Act (CCA).[166] In the instance of Yakima Valley Waste Systems, the company had a fuel price-lock contract that was updated by the vendor due to specific quantified costs attributable to the CCA, something that was neither under the control of nor able to be ameliorated by the company.[167] Even so, the company was required to obtain competitive bids for other fuel price contracts and submit an updated 12-month fuel price after one year as conditions of approval for the exemption.

72 *Yakima Valley* stands in contrast to the current case. Murrey's "allowed a fixed-price fuel arrangement" to expire,[168] rather than have a new legal scheme imposed upon it. Murrey's also asks the Commission to deliberately interfere with the WAC calculation based upon market prices, not a stable, price-locked contract with a guaranteed cost. Not only that, there is no guarantee that Murrey's will not enter into a new contract. In essence, the calculation Murrey's asks the Commission to make is a fiction, which has neither historic support nor evidence of future applicability.

73 This lack of future applicability goes to Staff's second concern. Murrey's has a history of using price-lock contracts in its business, and its own statements imply an intent

[166] *E.g. In the Matter of Yakima Valley Waste Systems, Inc.*, Docket TG-230661, Order 01, at 1 ¶ 3 (Sept. 28, 2023).
[167] *Id.*
[168] Wonderlick, JW-1CT at 33:7-8.

to return to that arrangement.[169] Should it do so, the fuel calculation in rates would almost certainly be higher than the cost the company would actually pay for fuel. This would create an inequity in the rates charged to ratepayers while giving unearned revenue to the company. Staff would have no way to ameliorate this inequity save a complaint against rates, and the company would have no incentive to correct the problem through its own filings. Given all of these reasons, Staff would strongly oppose Murrey's proposal to grant an exemption to the standard calculation method for fuel costs.

IV. CONCLUSION

74 Staff respectfully requests that the Commission determine that Olympic's as-filed tariffs do not contain fair, just, reasonable, and sufficient rates and order the company to file updated tariff pages that reflect Staff's adjustments.

DATED this 2nd day of October 2024.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General

/s/ *Jeff Roberson*, WSBA No. 45550
Senior Assistant Attorney General
(360) 810-0509
jeff.roberson@atg.wa.gov

/s/ *Colin O'Brien*, WSBA No.
Assistant Attorney General
(360) 586-6413
colin.obrien@atg.wa.gov

Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128
Olympia, WA 98504-0128

[169] *Id.* at 33:6-7 ("As a result of the delays in implementing rates under this docket. . . Olympic Disposal has allowed a fixed price fuel arrangement. . . to expire.").