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BEFORE THE WASHINGTON STATE 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

RESPONDENT MURREY'S DISPOSAL COMPANY, INC. d/b/a OLYMPIC DISPOSAL

OCTOBER 2, 2024

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I. INTRODUCTION

1 Murrey's Disposal Company dba Olympic Disposal (" Murrey's ," 'the Company" or "Olympic") files the following Post-Hearing Brief pursuant to WAC 480-07-395 (c) in this matter in support of its pending general rate filing and its proposed revenue requirement quantitatively outlined in Exhibit JW-7(C).

2 In this brief, the Company in turn will generally address the evidentiary record, the major accounting issues in dispute: Severance, Incentive Pay and Community Activity and Safety Expenses, Insurance Deductible Claims and Legal Fees and conclude with a discussion of Administrative/Regulatory Precedent.

II. CHARACTERIZATION OF THE RECORD

The Overwhelming Evidence Supports the Rates and Revenue Requirement Proposed by Olympic

3 In a general rate case filed under WAC 480-07-520, the burden of proof lies with the public service company or the petitioner seeking to establish or modify tariff rates.

4 In support of this burden, Olympic offered extensive testimony from two Olympic witnesses and three experts: Certified Public Accountant and Waste Connections Pricing Manager Joe Wonderlick, Waste Connections Division Vice President Mark Gingrich, public utility consultant Branko Terzic, insurance broker, Certified Insurance Counselor and Certified Risk Manager Belinda Lopes, and Senior Business Consultant Peter Scontrino, Ph.D.

5 Mr. Wonderlick is a Certified Public Accountant with 33 years' experience in accounting and for more than 30 years has managed internal controls and produced financial statements for solid waste companies. Mr. Gingrich is a Division Vice President with Waste Connections and has more than 20 years' experience in management, including in the areas of initiating and administrating incentive

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programs, company-driven community activities, accounts receivable initiatives and quality-control measures. Branko Terzic is the former Commissioner on the U.S. Federal Energy Regulatory Commission (FERC) and Commissioner on the State of Wisconsin Public Service Commission, a former management consulting engineer and energy company CEO, and has been involved in regulation and consulting for regulated utilities for five decades. Ms. Lopes is a Senior Client Advocate with EPIC Insurance Brokers & Consultants with over 35 years of risk management and insurance brokerage experience, including marketing, program underwriting and design, vendor management and leading client teams for large and complex casualty risks. Dr. Scontrino is the founder and Senior Consultant for Scontrino-Powell, Inc., which provides customer-focused consulting services to businesses in an array of industries, including regulated industries and has more than 40 years' experience in employee selection, performance appraisal systems and productivity incentive plans.

6 In response, Staff offered testimony from a single witness, Regulatory Analyst III with the Washington State Utilities and Transportation Commission Benjamin Sharbono, who has worked for the Commission since 2016, including as an Accounting Research Analyst for approximately one year, a Regulatory Analyst for two years and as a rate reviewer/analyst since 2019.

III. SEVERANCE, INCENTIVE PAY, MEAL, SAFETY AND COMMUNITY ACTIVITY EXPENSES ADJUSTMENTS

Staff Responded to Expense Item Challenges with Subjective Judgments and Abrupt Dismissals Lacking Evidentiary Support for their Positions

7 In general, Mr. Sharbono broadly dismissed the key expenses challenged for recovery in regulated rates by Olympic in this action. For instance, concerning Mr. Gingrich's basis for the company's offering travel meal costs for its employees – which Mr. Gingrich explained were, e.g., offered to

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traveling employees on Olympic's "Blue Team" and during training activities to improve morale – Mr. Sharbono denied such costs on the basis that: "[e]mployees would normally have to procure or bring their own meal, at their own expense, and the relevant meals should be no more difficult to manage than during a normal day at their operations base."[1] Mr. Sharbono similarly rejected Olympics' coaching meal costs which Mr. Gingrich argued fostered "teamwork and camaraderie"[2] on the basis that, "[e]mployees and supervisors would normally need to provide their own meal for the day and can eat together, which would add no additional ratepayer costs."[3] Staff offers no responsive testimony by anyone with managerial or supervisory experience on that point and limits its testimony to that of Mr. Sharbono, who appeared to refuse to consider any of the positive impacts of effectively managing employees and fostering teamwork within Olympic as referenced by the 20-year solid waste services manager, Mr. Gingrich.

8 Staff similarly rejects the testimony of Mr. Terzic with Mr. Sharbono, selectively critiquing Mr. Terzic's testimony that "[t]here is even a question as to whether lower deductible insurance is or will in the future even be available in some industries"[4] by baselessly claiming that since Olympic did not formally complete the underwriting process as a part of its insurance pricing process, "staff does not believe the insurance company would ultimately provide the insurance at the coverage or premium quoted."[5] Mr. Sharbono – who does not cite any background or expertise in selecting or evaluating insurance policies and assessing deductible options – offers no basis for why "staff does not believe" the assertions offered by the 50-year industry expert, Mr. Terzic, on the issue of

[1] Sharbono, Exh. BS-1CT, at 30.
[2] Gingrich, Exh. MG-1T at 15:20-21.
[3] Sharbono, Exh. BS-1CT, at 31.
[4] Sharbono, Exh. BS-1CT at 16 (quoting Terzic, Exh. BT-1T at 12:8-9).
[5] Sharbono, Exh. BS-1CT at 17.

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insurance pricing. Instead, Mr. Sharbono arrives at the unsupported conclusion that insurance policy pricing cannot be trusted if the underwriting process is not fully completed, a process which Ms. Lopes described as lengthy, arduous and will not be undertaken simply to validate a premium quotation.[6]

The Staff's Position on Severance is Illustrative of this Vacuum, while Olympic's Expert, Dr. Scontrino, Provides Substantive Justification for Severance Pay

9 In denial of a total $[redacted] expense, Mr. Sharbono also contests Olympic's assertion that severance payments are an increasingly common business practice used to enhance morale and protect companies from litigation or that severance also benefits customers by avoiding pass-through litigation expenses.[7] The Staff, through Mr. Sharbono, further asserts that severance would "potentially pass along to ratepayers the costs of short-circuiting claims that may have been valid" and takes issue with the "case-by-case" nature of calculating severance payments.[8] Again, Mr. Sharbono cites to no authority in support of these conclusory statements.

10 In his rebuttal testimony, Dr. Scontrino – as noted, a 40-year practitioner in the area of HR and business management consulting – explained that "96% of U.S. businesses report offering severance to their employees"[9] and that the basis for offering severance is not merely to avoid liability for business torts as Mr. Sharbono asserts but also to demonstrate to "remaining employees that the company is fair and reasonable, which can help maintain morale and productivity" and that "remaining employees will judge a company's future interactions with them on how fairly it treats

[6] Lopes, Exh.BL-1T at 8:5-8.
[7] Sharbono, Exh. BS-1CT at 19. While the Staff on redirect examination broadly claimed that such employment litigation could not be recouped in rates, (Sharbono, TR. 376:18-377:4), defense costs recovery for a dismissal or defense verdict for the employer on a claim found to be baseless, was not implicitly ruled out.
[8] Sharbono, Exh. BS-1CT at 19-20.
[9] Scontrino, Exh. MPS-1T at 20.

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those who are let go."[10] To support these contentions, Dr. Scontrino cited the *Society for Human Resource Management, Business Ethics Quarterly* and the *Sloan Management Review*.

11 During his cross-examination, Mr. Terzic explained that severance should be viewed as a part of overall labor costs and can occur for a variety of reasons other just than to deflect litigation:[11]

> Generally, the severance, I consider that part of overall labor cost of the company. And just like any other, it's part of the overall labor cost, direct salaries and severance.
>
> Severance can occur for a variety of reasons, including downsizing, lack of -- employee lack of skills, other things that would not necessarily lead to litigation. And so I think it is part of a total labor compensation.
>
> The regulators look at the total labor compensation from year to year and company to company, and that is their check.

The Staff's Opposition to Incentive Pay and Community Activity Expenses is Once Again, Unsupported

12 Staff has argued for the disallowance of several incentive programs administered by Olympic, including "Tooty" bonuses (which reward high-performing customer service representatives), culture bonuses, sign-on and referral bonuses, tool purchase allowances, and "other payroll items not directly paid through hourly, salary wages, or safety bonuses which are recorded in separate accounts" (collectively, "Incentives").[12] Staff, through Mr. Sharbono, argues the incentives should be disallowed because "documentation provided by the company did not show the programs enhance

[10] Scontrino, Exh. MPS-1T at 19-20 (citing Mishra et al., *Sloan Management Review* (1998).
[11] Terzic, TR. 193:13-24.
[12] Sharbono, Exh. BS-1TC at 22.

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service or customer experience."[13] Mr. Sharbono also cited Mark Gingrich's testimony that the results from incentive programs "may often be hard to quantify."[14]

13 In his testimony, Mr. Gingrich stated that the Sign On/Stay On Incentive Program cost Olympic $[redacted], the Referral Incentive Bonus cost $[redacted], and the cost of the Safety Culture Incentive Program was $[redacted] ([redacted] of these expenses were allocated to the regulated area in the test year).[15] Mr. Gingrich also testified concerning training meals, which he explained ". . . accompany important training presentations, usually in a group setting [which] foster networking and topical discussions around the training material . . . ."[16] Mr. Gingrich specifically supported these expenses with his own extensive managerial experience by explaining that the "Sign-On and Referral Incentive Program payments are and will continue to be recurring and necessary business expenses as the labor market continues to evolve and present challenges for our industry" and that the "goal of the Safety Culture Program is to recognize and reward positive contributions to the culture at Waste Connections" which programs only result in employee payment where the program is "pre-planned, approved, and [involves an] intentional action they complete."[17]

14 During his cross-examination, Mr. Gingrich was asked whether he took "any steps to study whether the incentive programs were causally linked with better performance safety-wise."[18] In response,

[13] Sharbono, Exh. BS-1CT at 23.
[14] Sharbono, Exh. BS-1CT at 23 (quoting Gingrich, Exh. MG-1T at 11:16). Mr. Wonderlick also, in considerable detail, attested to the benefits of severance pay in his experience at (Exh. JW-25C at 24:5-16).
[15] Gingrich, Exh. MG-1T at 4:21-5:19. Mr. Gingrich explained the Referral Incentive Program leads to "like-minded people in the community," presumably in a way that anonymous hirings do not.
[16] Gingrich, Exh. MG-1T at 15:14-19.
[17] Gingrich, Exh. MG-1T at 10:7-22.
[18] Gingrich, TR. 171: 21:23.

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Mr. Gingrich explained that while difficult to measure, safety and culture programs can have positive impacts on individual employee safety performance and overall company safety culture:

> . . . [W]hen we have turned on a program like a safety culture incentive program, that really targets kind of the individual involvement in a variety of ways to help improve the safety culture as well as develop that individual with some of their communication skills, leadership skills, getting peers talking to peers is -- you know, I can stand up in a safety meeting and share some things, but when a driver's peer steps up in a safety meeting and shares their views on risky stops or shares their views on how to back a truck safely, people tend to listen to that more. So similar to some of the other answers I've given on these programs, Olympic Disposal does not have a direct study to demonstrate specifically the actual impact of this . . . .[19]

15 In his rebuttal testimony, Dr. Scontrino acknowledged that incentives, including those at Olympic, can indeed be difficult to measure "because of the small sample size of one company and the possible interactions between various incentives and other factors" but likened the utilization of clinical trials in analyzing an impact of a drug to his consultation of "data based on thousands of organizations to show the potential impact of the types of incentives utilized by Olympic."[20] Dr. Scontrino explained that sign-on and stay-on incentives, as well as employee referral programs, can improve performance which is of particular note since the majority of Olympic's employees directly support customer accounts, either as drivers or in customer support roles.[21] Dr. Scontrino also offered insight into the benefit to customers that can be effected via employee engagement, citing materials supporting the position that employee engagement is related to higher customer satisfaction and loyalty.[22] Dr. Scontrino furthermore explained that accounts receivable plans can

[19] Gingrich. TR. 172:8-23.
[20] Scontrino, Exh. MPS-1T at 6.
[21] Scontrino, Exh. MPS-1T at 6-10 (citing Dickersin Van Wesep, *The Review of Financial Studies* (2010), Nisar, *Performance Improvement* (2006); Batt, R., & Colvin, A. J. S., *Academy of Management* (2011) (high employee turnover associated with decrease in customer satisfaction); Castilla, *American Journal of Sociology* (2005)).
[22] Scontrino, Exh. MPS-1T at 12 (citing 6 Harter et al., *Journal of Applied Psychology* (2002)).

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not only improve debt risk (and lower bad debt recoverable in regulated rates), but also improve customer experience.[23]

16 At the hearing, Staff's cross-examination of Dr. Scontrino on the issue of incentives was extremely limited, with counsel asking the expert only two questions on that subject: (1) whether Dr. Scontrino could confirm that a table included on Dr. Scontrino's rebuttal testimony showed that 39% of employers offered severance, and (2) whether Dr. Scontrino knew the percentage of utility companies that paid severance.[24] Staff otherwise did not cross-examine Dr. Scontrino concerning his testimony on the issue of incentives or other meaningful studies and metrics that he described in his extensive testimony supporting the recoupment of the relatively modest costs of these items in rates.

IV. DEDUCTIBLES AS A SEVERABLE PART OF INSURANCE EXPENSE

The Insurance Issue and the Absence of Objectivity/"Sliding Scale" Standards.

17 In sheer dollar amount terms[25] and in fundamental fairness contexts, no issue looms larger in this proceeding than the disallowance of the insurance claim expense and the bifurcation of policy cost from deductible by the auditor. As the Company's Opening Statement laid out, this case largely turns on the unilateral removal of an approximate $[redacted] casualty loss claim which originated in regulated territory in the test year which the rate case comprises. That adjustment was quantitatively set forth in the staff's lone original workbook in this proceeding in Exhibit JW-5(C).[26]

[23] Scontrino, Exh. MPS-1T at 15 (citing 6 Kivimaki, *Healthcare Financial Management* (2007)).
[24] Scontrino, TR. 234:14-235:18.
[25] As reflected in JW-7C, the total unadjusted amount of insurance claim expense in the test year normalized over a five year period is $[redacted] of which $[redacted] is allocated to regulated service per year.
[26] Wonderlick, Exh. JW-5(C) "Staff Calculations tab," Cells DO42 & DO65 for adjustment and Master IS tab as restating and pro forma adjustments in Cells F182 and G183, respectively.

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18 As noted in opening statement, this case would likely not have materialized as a litigated matter were it not for the unexpected and indeed, rather startling dispute about the insurance loss claim against the applicable deductible insurance policy. That policy is summarized in the Form E on file with the Commission (Exh. BS-18X), reflecting a total $[redacted] liability coverage for Olympic, far exceeding the basic limits required by statute and by WAC 480-70-181. Despite a rather puzzling "red herring" digression[27] about self-insurance and Form G's[28] prior to acknowledging the $[redacted] Form E filing, the staff either misapprehends or casually misconstrues the effect of an insurance deductible which both Branko Terzic and Belinda Lopes testify is an inseparable part of insurance. And this interpretive bifurcation by the staff auditor is also contrary to the experience of any insurance policy holder. That is, insurance policies have two commonly understood operative features: a liability coverage maximum and a deductible for which the insured is responsible. A deductible is the amount of money the insured must pay before their insurance begins payment for the insured event. As Ms. Lopes explained: "[t]here is one premium for a policy or line of coverage including the deductible which the individual policy carries as an operative element/feature of the overall policy."[29] The staff appears to almost deny this operative fact, i.e. that policy holders remain "on the financial hook" to the insurer for the deductible who in turn is liable for the first dollar defense loss under a liability policy.

19 Ignoring all the evidence in the record about the unavailability of low deductible higher premium policies, Mr. Sharbono, on the other hand, ascribes the reality of a high deductible policy to Olympic and its affiliates as a conscious risk-taking choice: "[r]equiring the ratepayers to cover the

[27] Sharbono, Exh. BS-1CTr 12:5-8.
[28] Sharbono, Exh. BS-1CTr 12:5-8.
[29] Sharbono, Exh. BL-1T, 6:11-13.

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deductibles essentially insulates shareholders against all financial risks from management decisions."[30] Assuming without any proof that management had an option in the marketplace to identify and successfully bind a lower deductible, higher premium insurance policy, where is the evidence that this high deductible policy was an imprudent, foolish or otherwise challengeable choice? On the basis of cost/economics alone, the evidence as acknowledged by the staff analyst was directly to the contrary. And what about the balance of risks here that staff interprets as a one-way street? As expert and former FERC and Wisconsin PSC Commissioner Branko Terzic at page 6 of his Rebuttal Testimony opines, this is classic regulatory imbalance: ratepayers receive the benefit of many years of lower premium insurance with no material claims against the deductible, and then when a material claim unfortunately arises against that higher deductible, staff would have the shareholders absorb that entire claim loss. "Heads I win, tails you lose" is clearly appropriate here.[31]

20 There is no more succinct response to the original rationale advanced in Staff's Response Testimony than Mr. Terzic's Rebuttal testimony at page 2, directed to this analyst's conclusion that rejects the adjustment because it is not "normal" or "recurring." There, he indicates his complete lack of agreement:

> First, because the occurrence of insurable events is a normal condition, especially in the case of automotive and liability insurance for a large fleet of vehicles. There is nothing abnormal about this whatsoever. Secondly, insurable events are considered to be 'recurring' because without these 'recurrences' ironically

[30] Sharbono, Exh. BS-1TCr 9:20-21 - 10:1

[31] Public Counsel's questioning of Joe Wonderlick also apparently sought to blur this distinction by suggesting without evidence that a "tort" could be passed along to customers by virtue of allowing a deductible claim which he suggested was in effect a double-recovery for investors. (Wonderlick, TR. 153:15-154:14). In addition to the Staff's indication that fault/citations for an accident claim was not an issue, (Exh. BS-15X; Staff Data Request Response 7 e), that premise once again obfuscates the effect of many years of negligible or no claims against a higher deductible and wholly discounts the financial benefit customers receive during that interval due to the lower premiums illustrated directly in Exhibit JW-16(c). which even staff's sole witness had to eventually admit (Sharbono, TR. 330), would be almost three times more expensive at [redacted]% of revenue v. [redacted]%, than with the current higher deductible policy.

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> there would be no need for insurance. An event does not have to appear at 'regular' intervals to be 'recurring.' The fact that accidents occur at irregular intervals should not be the sole criterion for rejection of the acceptance of the cost and normalization of insurance.[32]

21 Staff has typically reverted to ambiguous or otherwise subjective defenses for many of the contested adjustments in that case, but none more apparent than on the insurance deductible issue. For instance, when probed about Mr. Sharbono's alternative recommendations for treatment of deductible claims should the Commission reject his disallowance of deductibles, (beginning at page 18 of his testimony), he was asked about his criteria there for establishing $[redacted] as the threshold for a "major incident," claim. Specifically, both in a data request[33] and on cross examination, he was questioned about what in his view constitutes an "unusually large event." This metric was a prominent classification in his chart in his testimony and also served as one of the primary bases for him completely disallowing the insurance loss claim in this case.[34] His testimony on the topic at hearing certainly corroborated Mr. Wonderlick's assertion that there is an absence of policy for determining in advance what would constitute a large enough claim in Staff's view that would subject it to disallowance.[35]

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10 Q. So you were asked in a data request to provide
11 criteria -- criteria-abled metrics or other supporting
12 data to define what constitutes an unusually large event
13 as you referenced on Page 18, but you responded saying
14 that that, quote, Staff reviews each event in a
15 historical context to determine if the expense differs

[32] Terzic, Exh. BT-4T, 2:15-22.
[33] Sharbono, Exh. BS-14X.
[34] Sharbono, Exh. BS-1Tr at 7:13.
[35] Sharbono, TR. 293:10 - 295:21.

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from normal transactional records.
Is that still your position?
A. Where is that particularly written? I'd like a second to look at it.
Q. Excuse me? I didn't -- you faded out.
A. Where is that particularly written? I would like to take a look at that before I agree to it.
Q. Page -- I've got the data request. We'll find the reference, but you -- assuming, subject to check, that you did so state, if you say you were -- you view

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each event in a historical context to determine if the expense differs from transactional records, is there any -- it's data request No. 18, please.
A. (Inaudible.)
Q. So, again, assuming that was your answer, can you put any context around that in light of your major incident label?
In other words, how could a company know what you're going to view as a major incident going into a rate case?
A. The staff analyzes -- I would agree with what I wrote.
Q. Okay. So the answer is, yes, that's still your position?
A. Yes.
Q. Okay. In other words, you would have no objective standard for measuring whether something falls outside the normal transactional parameters; correct?
A. I would say that the object would be what is normal within the account.
Q. Well, again, my question is what's the objective standard, not a subjective standard of what you consider to be normal.
What is an objective standard for measuring what's going to be viewed as a major incident?

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A. Historical record.

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Q. Of whom?
A. Of the company.
Q. And how can that be determined ahead of time by the company in terms of your view of what constitutes a major incident?
A. By looking at their transactional record and looking for anomalies of that transactional record.
Q. Again, isn't that your definition of major incident, not the company's?
I'm looking for an objective standard, not just one that you interpret, but one that can be applied across the board.
Do you have any such standard for what constitutes a major incident?
A. We do not have a written standard of what constitutes a major incident. We look at the transactional and historical record.
Q. Okay. So in other words, that threshold could vary from auditor to auditor, could it not?
A. Potentially, but unlikely. [36]

Yet while he describes any variance of treatment of what constitutes a major expense as "unlikely" here, moments later in his cross-examination, he acknowledges precisely that anomaly as having occurred. When asked to reconcile the treatment of the insurance claim expense as addressed in Exh. BS-19X, where the insurance loss claim under the same type of policy held by Olympic was allowed to be normalized for an affiliate, he was unable to explain the inconsistency. And, when asked if that would indeed be a problem in the context of the regulated community knowing how to

[36] One such auditor with whom he disagreed was apparently his immediate supervisor, Mike Young, who had previously informally advised the Company to take the insurance claim on a normalized basis over five years as corroborated in Sharbono, Exh. BS-17X and in testimony at Sharbono, TR. 310: 8-22. Mr. Young's subordinate, Mr. Sharbono, testified he flatly disagreed with that recommendation which rejection effectively launched this adjudication.

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anticipate the Staff's treatment of large expense items, he reluctantly said: "I can see the problem with that, yes."[37]

23 That qualified acknowledgment is an understatement. Inconsistent adjustments matched with inconsistent explanations for same do nothing to inform the regulated community about potential outcomes nor otherwise afford any company technical assistance on regulatory policy.

The Staff Muddles the "Major Incident" Benchmark it Posits

24 This "you'll know it when I see it" rationale is also again hardly instructive to the regulated industry who risks retroactive disallowance of large operating expense items, apparently on the basis of what a random auditor considers diverging from "normal transactional records." And when the staff witness was questioned further on whether he viewed a $[redacted] claim as extraordinary, large or otherwise, as a major transportation accident claim, after repeated pressing of the question, he answered: "Yes. I stand by my testimony as written under the hypothetical."[38] Such an answer, of course, flies in the face of the insurance industry literature reporting on current liability insurance expenses,[39] which admittedly, the witness felt no compunction to review, a trait which unfortunately appeared to characterize even recall of his own Response Testimony which one would assume had been closely reviewed before testifying.[40]

25 He was also similarly dismissive of the insurance broker expert rebuttal testimony of Belinda Lopes, who described in pessimistic detail market trends, diminishing availability of any policy protections

[37] Sharbono, TR. 322:25.
[38] Sharbono, TR. 305:16-17.
[39] Sharbono, Exh. BS-22X at 14,15 and Exh. BS-23X.
[40] Sharbono, TR. 338 :21-339:6. This resulted in multiple interruptions in the flow of testimony for page and line references and numerous answers being "subject to check" in response, due to a reluctance to accept representations as to his written testimony. It even extended to asking that a verbatim quotation of a paragraph of a written Commission Order be "subject to check" in response to a cross-examination question. (Sharbono, TR. 339:6).

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and the skyrocketing risk exposure transportation companies and insurers face today as the six-fold plus increase in average auto wrongful death claims since 2016 to approximately $[redacted] per claim in 2023 reflects.[41]

26 Yet none of this testimonial evidence moved the witness to change his view that a $[redacted] claim was "major" in this environment, despite finally acknowledging motor vehicle accidents were now "a normal business risk for a transportation company."[42] This, of course, directly contravenes his earlier response testimony where he defended his removal of the entire deductible expense as being, "due to the large and non-recurring nature of the underlying event."[43] If transportation accidents are normal business risks, they are risks that **recur**, and yes, some amount to large dollar amount claims.

27 Yet Mr. Sharbono's testimony was frequently contradictory. While his Response Testimony and initial cross-examination testimony defended his insurance expense adjustment largely on the basis that the claim was "abnormal," and non-recurring, as noted above, later in the cross-examination as demonstrated, he switches gears, and labels motor vehicle accidents "a normal business risk" for transportation companies. If his own internal contradictions were not enough, when confronted with contravening testimony and evidence on pertinent points, his response was often simple denial. For example, when asked his reaction to Joe Wonderlick's sworn testimony that in his 13 years participating in all general rate cases for Waste Connections companies he had never seen a single occasion when staff had denied an insurance claim, Mr. Sharbono's response was simply to dispute

[41] Lopes, Exh. BL-1T at 5:6.
[42] Sharbono, TR. 312:9.
[43] Sharbono, Exh. BS-1Tr at 7:14, 15.

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that assertion. When asked to explain why, he said because he knew that staff had made such adjustments before, but when asked for proof he allowed: "[i]t is not right here at this moment …."[44]

28 On redirect, the Staff attempted to cure these types of obvious contradictions and pitfalls in the advocated elimination of the insurance claim expense against the daunting backdrop of industry-wide trends. Once again, the default explanation here was that "you look to what the individual company does," i.e., "the historical norm, the transactional record" described repeatedly by Mr. Sharbono as the basis for his judgment disallowing the insurance deductible expense in this proceeding. While, for instance, no one would dispute that the Lurito-Gallagher methodology sets rates for *individual* companies on the basis of the individual company's results of operation, ratemaking does not exist in a vacuum, nor do expense adjustments in that ratemaking formula operate in a silo. In other words, external factors like the real-world availability of liability insurance policies, the trends in deductible expenses and ballooning claims, and the markets' reaction to staggering loss claims do modulate/affect determinations of what are the lowest reasonable expenses allowed.

29 In the real world, hypothesizing about the availability of a particular monoline insurance policy, one that this analyst acknowledged would both be more expensive for customers in the end[45] **and** would likely not be available[46] is not pragmatic, realistic or a defense for denying recovery of an expense for insuring the known and very real operating risk of severe transportation accidents. Here,

[44] Sharbono, TR. 272:8-25- 273:23. In light of the production of Exh. BS-18X and his acknowledgment that staff had recently made an adjustment in normalizing an insurance claim for a Waste Connections company in a general rate case, this response was particularly dubious. Clearly, if staff had any examples of similar treatment of insurance expense conforming to the disallowance here it surely would have been presented in testimony, exhibits or even in cross or redirect examination. When asked for evidentiary support for a fundamental position, an "ipse dixit" response is not compelling.

[45] Sharbono, TR. 330:9.

[46] Sharbono, TR. 331:12,18.

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accepting the premise of looking only at the particular company's historic expense practices suggests that an individual analyst, in an apparent singular judgment, can discount any realities relating to the present and prospective cost and availability of liability insurance. In doing so, that shuts out "the external factors" of expert and insurance brokerage advice and incontrovertible market trend data. It substitutes instead, Staff's speculative judgment on the prudency of the expense without any checks and balances, or even internal consistency within their own department.[47] The Commission should reject this monolithic approach to ratemaking. Setting rates by individual company results of operations should not entail ignoring the prevailing economic environment and market conditions under which operating expenses are incurred. Instead of allowing substitution of subjective individual judgment by auditors on what is aspirationally possible for risk management in their view, the Commission should set rates based on the known and measurable realities of critical operating cost experience.

Finally, the USOA does not provide any safe harbor for Staff's insurance deductible treatments here.

[47] While Staff may want to ascribe this high deductible/lower premium choice as a simple risk management decision amidst a range of various options, the experience and testimony of Belinda Lopes suggests otherwise. Ms. Lopes describes a prolonged technical review process beginning seven months before the annual renewal period (Lopes, Exh. BL-1T, 2:14), which for the current policy term, involved an approach of 55 different insurance companies, (Ibid., 8:12) with more than half of those companies declining coverage, 20 quoted, and a protracted and complicated analysis, modeling and decision processes to weigh policy limits, pricing and program structure. All of this process occurs against a background of the very difficult current market environment and the aversion to writing commercial auto liability insurance that Ms. Lopes and Mr. Terzic both alluded to. Not only does Ms. Lopes discount any prospect for a monoline policy advocated by Mr. Sharbono being obtainable, she also points out that the ability for Olympic to "bundle" the commercial auto liability insurance policy provides significant premium saving for the Company and its customers: "[i]n addition, the lower premium now enjoyed by Olympic is because Chubb writes multiple lines of coverage for WCI (Workers' Comp, General Liability)... If there was market interest in a monoline policy, moreover, it would undoubtedly be more expensive because it does not have the advantage of 'bundling' with other types of policies and insuring the auto only would be considered an adverse selection of risk." (Ibid., 3:23, 24)…. Selecting and pricing commercial auto liability insurance policies today is hardly an "off the shelf," rapid-fire risk management decision with innumerable options controlled by the insured.

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30 While again ignoring the current realities of the marketplace, staff also attempts to alternately defend its novel separation of the assignments of insurance policies premiums above the line and the deductible portion below the line by offering another rather tortured interpretation, this time, of the Uniform System of Accounts No. 4530, to defend its adjustment here.

31 Mr. Wonderlick, on rebuttal, aptly and generously described this rationale as "illustrative rather than authoritative." [48] And yet this auditor explanation is reminiscent of some of the previously noted convoluted defenses of the expense disallowance described above. Here, Mr. Sharbono fashions the Uniform System of Account No. 4530 definition which states, as quoted verbatim in Mr. Wonderlick's testimony: "This account shall include premiums paid … 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." [49]

32 The second sentence of the above distinction seems rather clear: "This account shall also be charged with the estimated or actual liability for claims not covered for the same class of risk." "Estimated" would seem to implicate either unliquidated or not yet resolved claims against a policy. "Claims not covered by the same class of risk," would seem to similarly implicate and/or directly include deductibles not covered by the subject insurance policy. Mr. Sharbono cites to this provision as somehow supporting his action in bifurcating the insurance deductible expense and moving it "below the line" as he describes in his response testimony at pages 8, 9. The additional convenient attribution of the deductible to USOA Account 7500 and 7600 (which are essentially catch-all

[48] Wonderlick, Exh. JW-25T at 21:4.
[49] Wonderlick, Exh. JW-25T at 21:7-10.

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categories for expenses otherwise not defined elsewhere or "extraordinary" items) comprise his convenient defense of the treatment he employs to account for the separation of the deductible from the overall insurance policy premium in disputing that all insurance expense should be assigned to Account 4530 and recouped "above the line." As noted however, even Sharbono himself finally acknowledged that transportation accidents are not unusual or extraordinary. Mr. Sharbono further compounds this unorthodox accounting treatment by suggesting that insurance premiums are somehow part of day-to-day expenses of regulated companies but that the deductible of that insurance policy is not part of the normal day-to-day operating costs.[50] After this pronouncement he is then asked:

> **Q**: Is there any authority, other than your interpretation of Account 4530, that supports the premise that you can point us to that explicitly allows for the bifurcation of the expenses premium versus deductible?
>
> **A**: Generally, I can't. It's up to the accounting principles of the United States….[51]

33 That is a rather large universe, obviously.

34 In summary, Staff now bifurcates insurance premiums from deductibles asserting that additional adjustment is allowed under its reading of Account 4530, yet never explaining how the broad sweep of the second section in that account definition does not encompass the [integral] insurance deductible amount for uncovered claims "not handled by commercial insurance for the same class of risk." When asked to defend that treatment under any other evidentiary support, Mr. Sharbono cites to some amorphous, unspecified national accounting principles and never ties any of that to specific accounting practices, let alone to any specific GAAP policy which he would have us apply to test his

[50] Sharbono, TR. 319:7, 8.
[51] Sharbono, TR. 319:9-15.

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definitional analysis of Account 4530.[52] Once again, the cumulative, often conflicting justifications offered by the staff here are in sharp contrast to the testimonial and evidentiary support for finding this critical disallowance of expense of insurance claim arbitrary and ultimately completely lacking in foundation.[53]

V. THE STAFF'S BELATED RETRACTION OF ALLOWANCE OF LEGAL FEES IS ARBITRARY, INCONSISTENT AND CONTRARY TO A COMMISSION FINAL ORDER

35 One of the tenets expressed by Staff for advancing this matter to hearing was purportedly to establish some precedent or formal Commission-recognized policy for the treatment of the contested adjustments in this matter.[54] Yet, they take a decidedly different tack when it comes to the issue of defense of certificate legal fees.

36 Recall that in this proceeding, staff had successfully moved after its Response Testimony was filed to amend its testimony and add an entire new adjustment, this one on legal fees as set forth in Exh., BS-1Tr, 34, where they now ask to disallow $[redacted] in legal fees. Of that, $[redacted] relates to defense of certificate legal fees in protracted administrative and judicial actions spanning two and a

[52] Such policies that were not specified could be US GAAP ASC (Accounting Standards Codification) Section 720-20 ("Other Expenses: Insurance Costs") and ASC Section 220-20 ("Income Statement: Reporting Comprehensive Income") which do not distinguish premiums from deductibles and allow vehicle-related casualty losses for transportation companies to be included as normal operating expenses "above the line."

[53] It is undoubtedly significant that Mr. Terzic was not asked a single question on cross-examination by Staff related to the focal insurance deductible claim bifurcation issue, despite dedicating the vast majority of both his Opening and Rebuttal Testimony to the topic. (Terzic, TR. 202:3-6). As suggested, that is a material imbalance in the weight of evidence when contrasted with Mr. Terzic's half-century breadth of experience at FERC, the Wisconsin Public Service Commission and as a former CEO of an energy company is weighed against the sole staff witness's defense of his expense disallowance which is ostensibly based only on his interpretation of USOA Account 4530 and "the accounting principles of the United States." (Sharbono, TR. 319:14-15). Indeed, the only reference whatsoever to Mr. Terzic's testimony by Staff in its Response Testimony was to acknowledge the analyst's own and Mr. Wonderlick's view about the increasing unavailability of lower deductible insurance policies that former Commissioner Terzic had observed as well. (Exh. BS-1TCr, 16:16-21). That imbalance in proffered testimony addressing the analytical breadth of the largest challenged adjustment in this case speaks volumes. Subjective individual judgment without corroborative support necessarily lacks credibility.

[54] Sharbono, TR. 372:21-25.

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half years and involving numerous appeals which the Company and the Commission successfully defended.[55] Until June 4 and the revisions to Staff's Response testimony, there had been no indication that this adjustment would be questioned as the recent prolonged battle by Olympic to vindicate its certificate rights, in which Staff joined following appeal of the Commission's Order to court and the Federal Surface Transportation Board had been widely recognized and hotly litigated.

37 The ultimate result of this protracted process was the successful defense of Olympic's certificate against unauthorized intrusion into its regulated territory by its competitor. However, acknowledging the Staff's interest in establishing administrative precedent in the context of the treatment of contested accounting adjustments appears not to have been a factor here. In developing its response to the unanticipated denial of legal fees, the Company, in Joe Wonderlick's rebuttal testimony, alluded to the staff memo in TG-230187 in which the staff analyst was, in fact, Benjamin Sharbono. Mr. Sharbono, in that proceeding, had recommended legal fees in a defense of certificate complaint case be allowed, normalized and recovered over a period of years, the normalization treatment Mr. Wonderlick had acknowledged on Rebuttal that he would have no objection to for certificate defense legal fees.[56]

38 When confronted on cross-examination with the fact that **he** had been the same auditor recommending allowance and normalization of defense of certificate legal fees just a little more than a year of so prior to the present proceeding, Mr. Sharbono did an about-face, and abruptly announced in response he "was wrong" on that allowance.[57] When cited to a formal Commission Order 01 in Dockets TG-230187 and TG-230189, which had concurred with his recommendation on

[55] For a thorough synopsis of these proceedings, See, Exh. BS-13 at pages 12, 13, Murrey's Response to Staff Data Request No. 31 a, and Exh. JW-25T. at 38-40.
[56] Sharbono, TR. 341: 13-25.
[57] Sharbono TR. 341: 13-25.

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allowance of the fees and was quoted verbatim Paragraph 6 of that Final Order, Mr. Sharbono, faced with this stark inconsistency, repeated his now-familiar response: he denied that the Order signed by the Commissioners concisely explaining the legal and policy rationale for allowing defense of certificate legal expenses in a general rate case constituted precedent here. Additionally, he provided the rather startling follow-up digression that the staff was "discussing with the ALJ's" formally reconsidering and/or reopening the Commission's Basin Disposal Order to seek to overturn his own prior recommendation and the Commission's support therefor. This extraordinary procedure would all apparently be predicated on the basis of accounting adjustment inconsistency,[58] again, not on the basis of disparate treatment of the same expense item by two different auditors, but here, on the basis of an indefensible flip-flop by the same individual analyst:

> **Q**: Okay. Whether a case is litigated or not, isn't it fair to expect an individual analyst to be consistent on allowance of defense of certificate legal fees?
>
> **A**: Yes.[59]

39 If a staff analyst can't even be consistent with his own accounting treatment of the same expense item such as here with defense of certificate legal fees, how is a regulated company to expect any notice or guidance in order to have a reasonable expectation of treatment of expenses by Staff as a whole?

40 And when there **is** guidance contained in a reliable source such as a formal Order from the Commission incorporating that auditor's previous recommendation on the same expense type, why shouldn't the Company be able to rely on and refer to that analogous treatment in subsequent defense of that recognized expense?

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[58] Ironically here, apparently a huge inconsistency that he expressly acknowledges and seeks to reconcile since it would support his present disallowance.

[59] Sharbono, TR. 343: 10-11.

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41 The only explanation proffered by staff in leading testimony on redirect in defense of the obvious inconsistencies elicited on the record was: "different facts, staff might treat issues differently."[60] The best defense is an offense?

42 Yet no successive rate case has the same facts, including affiliate company filings. And what facts are they referring to here? If this is *the* articulated defense for how the same auditor can treat the same expense adjustment differently in the same calendar year, how two auditors in the same section can treat the same type of expense disparately, or finally, how the staff can distinguish or effectively reject a Final Commission Order authorizing and explaining why, i.e., defense of certificate legal fees should be allowed? If that is the case then as Mr. Wonderlick explains, "the Staff has no policy."[61] If so, the staff should in fact transparently acknowledge to the industry that general rate case audits will be resolved on the subjective judgment of the assigned individual auditor who is authorized to even change his/her own prior position if they unilaterally determine the rate case being audited has "different facts" in their considered judgment. Not exactly a reassuring standard for objective audit treatment to reach fair, just, reasonable and *sufficient* rates.

43 Regulated companies should always be afforded administrative due process. Requiring their burden of proof to include highlighting undeniable inconsistencies in Staff positions and real-time disavowal of previous positions, at a minimum, seems inordinately and disproportionately unfair.

44 The disallowance of certificate defense legal fees is clearly reversible error by the staff and one only needs to review the goalpost-moving attempt at explanations in staff's own testimony to arrive at that judgment.[62]

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[60] Sharbono, TR. 373: 7-9.

[61] Wonderlick, Exh. JW-25T: 24 at fn.16.

[62] Another good example of this "goalpost moving" by Staff is on the critical topic of their recommendation of an overall revenue requirement for the Company's general rate case. First, in acting like the original submission of the

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45 Ultimately, the Staff's quest for precedential guidance in this proceeding discussed below should not be predicated on a single auditor's decision to backtrack on his own prior reasoning and advocacy in order to apparently attempt to overturn a Commission Order to validate an unsupported adjustment in denial of defense of certificate legal fees.[63]

46 Finally, on the subject of legal fees and the issue of rate case costs, Mr. Wonderlick in Exhibit JW-25TC: 40,41, discusses the current accumulating rate case costs as of late June and provides an estimate for the balance of the proceeding which is obviously still accruing and recommends they be normalized over three years. Mr. Sharbono testifies: "[m]y recommendation is that the cuts [sic] be allowed, and they be divided over a period [unspecified] of years."[64] "…[I]n practice and in every case that I have thus far encountered, the rate case costs have been allowed."[65] As noted, Olympic has never had an adjudicated rate case before and thus, as expressed in questions posed to the auditor, it is seeking guidance as to how to submit and document the final total request for legal and expert rate case costs and assumes that would be resolved likely at the latest as part of a compliance filing.

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general rate case (Exh. JW-3C) in September, not the Company's Opening Testimony March 19 calculations, were its proposed calculated revenue requirement, second, in not supplying any narrative nor calculations on their bottom line position in their Response Testimony of May 29, third, in finally submitting a workbook six weeks after their Response Testimony was due quantifying their revenue requirement and including heretofore unspecified additional adjustments downward (Exh. BS-11C; Sharbono, TR,. 358:12-24) without a chance for rebuttal testimony and then, finally, after the September 10 hearing, proposing yet another revised bottom line number in their Bench Request Response #2. Again, not exactly "due process" for the party with the burden of proof to be able to anticipate, much less cogently respond to and critique.

[63] Wonderlick, Exh. JW-25TC at 39: 8, 9: "Certificate legal fee costs [also] do not operate on test year bases just like rate case legal costs do not."

[64] Sharbono, TR. 347: 19, 20.

[65] Sharbono, TR. 349: 18-20.

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VI. PRECEDENT AND ACCOUNTING TREATMENT CONSISTENCY

The Quixotic Quest for Administrative Precedent

47 At the hearing – and throughout the litigation of this case – Staff has taken the persistent position that any concept of regulatory precedent is limited only to orders issued by the Commission following a formal adjudication process.[66] The effect of this position, of course, gives automatic license to Staff to ignore any references and guidance included in previous staff memo recommendations which run contrary to the positions it wants to stake out in this case. Specifically, such an argument enables Staff to deflect and ignore the staff memos such as in TG-240180 (Exh. BS-19X) whereby Staff authorized insurance deductible claim costs normalization in an overall general rate case for an Olympic affiliate approved at an Open Meeting in 2024.

48 As noted in issues raised by a noteworthy dissenting opinion in a previous Commission Order, former Chairwoman Marilyn Showalter succinctly captured the concerns when administrative precedent is limited to fully adjudicated cases that are highly relevant here:[67]

> The majority suggests that there may be a different standard for "temporary" rates approved at an open meeting where the company and staff are in agreement, compared to contested "interim" rates in an adjudication…… . . . How can the Commissioners use one standard at an open meeting and a different standard in a later, contested proceeding? . . . . . The proceedings may be different, but the posture of the company and its ratepayers is the same; **the result should be the same, or at least be based on a common set of principles and standards.**

49 While Chairwoman Showalter's dissent was relevant to a decision on a petition for interim rates there, her prophetic challenge is completely appropriate to the case at bar in supporting the

[66] Sharbono, TR. 372: 10-20.

[67] *WUTC v. Verizon Northwest Inc.*, Order No. 11, Dkt. No. UT-040788, (Oct. 2004) (dissent) at 64-65. [Emphasis added].

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proposition that Commissioners should strive to apply the same standards in open meetings (including in staff memos which are adopted by their Orders) as in contested proceedings. Even acknowledging the Commission isn't bound by Staff's miscellaneous accounting adjustments in staff Open Meeting memos should not relieve the staff from attempting to internally reconcile and harmonize policies for treating material expense items in a solid waste general rate case bound for Open Meeting adoption. Otherwise, regulated companies have no guidance on which to rely, and the informal ratemaking process which involves the vast majority of these solid waste rate cases becomes a complete "crapshoot process" devoid of any reliable standards. This renders rate applicants reliant on unspoken opinions of the assigned auditor in subjective assessment of the "historical record of the company."[68]

Retroactive Ratemaking is Not Permitted in a Regulated Environment and Neither Should Disparate Treatment of Equivalent Expenses be Knowingly Authorized

50 As the Commission is well aware, retroactive ratemaking is not permitted in a regulated environment.[69]

51 However, the auditing philosophy espoused by the sole staff witness in this proceeding at hearing effectively amounts to "retroactive disallowance" of expense treatments which should be similarly disapproved by the Commission. As will be described below, his refusal to allow key expenses and their normalization is broadly contradictory. While the purported defense for this inconsistency is that such adjustments are a part of so-called "results only" (i.e., "black box" non-precedential) settlements at the Open Meeting, without formal Commission adjudication of those issues, what prior notice and due process hearing rights are afforded a rate proponent like Murrey's/Olympic?

[68] Sharbono, TR. 295: 7,8.

[69] *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975); *cf. State ex rel. Pac. Inland Tariff Bur. v. Clifford*, 46 Wash.2d 807, 818, 285 P.2d 569 (1955).

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Indeed, especially where the focal insurance policy and deductible at issue is exactly the same group insurance coverage as in the case at bar? Rate review audits, even ones that do not entail formal Commission findings on the precise audit topic, still require administrative due process be afforded rate case proponents, particularly since they retain the burden of proof. To adopt two almost simultaneous countervailing positions on the same expense, even considering variation in the amount of the claim against a deductible constitutes either that regulatory "sliding scale" policy which former Wisconsin PSC and FERC Commissioner directly admonished against in this case,[70] or the subjective opinions of a single auditor,[71] which is the antithesis of any semblance of regulatory consistency, let alone precedent.[72]

Staff's Recent Bench Request Response Compounds the Moving Target Nature of their Fluctuating Assessment of the Revenue Requirement Proposal

52 As just noted, Staff's response to Bench Request Nos. 1 and 2 served September 25 is yet another example of revisionist thinking, at least in two regards. First, the Company's Exhibit JW-7C from March actually included the accurate allocation Staff now belatedly adopts in its workbook calculation: (LG- Regulated Staff tab cell C7), between regulated and nonregulated operations and the total investment basis under Lurito-Gallagher methodology of $[redacted]. Staff once again did

[70] Terzic, Exh. BT-4T; 4:15.
[71] Sharbono, TR. 310: 14-22.
[72] While the Staff, at Sharbono, TR. 372:21-25 states that one of its goals with this litigation was to obtain precedent from the Commission on many of the contested items, that quest comes at considerable cost for all concerned. As the record reflects, the vast majority of all solid waste rate cases are resolved through the Open Meeting process. Were it not for the undeniably inconsistent, and yes, "unprecedented" treatment by an isolated auditor who adopted a contrary stance for a recurring operating expense, not only in his own judgment, but contrary to that of a colleague, and even his own supervisor as demonstrated by the Company, this matter likely would not have had to be litigated. An expectation of audit section consistency on major expense treatment does not seem to be an extreme request. Moreover the Staff, to resolve, i.e., the insurance deductible issue, could certainly initiate a policy docket, rulemaking or other broad stakeholder event to establish policy to apply to the regulated industry without singling out one rate case proponent. In short, there are alternative ways to establish "precedent," and this proceeding need not serve as that only vehicle in light of more broad participatory and less expensive procedural options.

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not apparently review, refer to or otherwise analyze that calculation from the Company's March Opening Testimony. Secondly, in its Bench Request Nos. 1 and 2 Response, Staff makes yet another change in its pro forma and workbook. This time, the new second thought involves "Employee Community Activity" expense. In Staff's Response Testimony and workbook, Mr. Sharbono advocated for the removal of $[redacted] of total company expense of $[redacted]. Now, in his latest workbook, he removes the remaining balance of the expense of $[redacted] originally allowed.[73] While the Bench Request asked for narrative explaining any further changes to Staff's revenue requirement, this change comes four months after his original and his amended Response Testimony, almost three months after Exhibit BS-11C, and most importantly, subsequent to his live cross-examination testimony. At the hearing he was pointedly asked about any changes to that July workbook that he had made that reduced expenses which he had not discussed or debated with the Company:

> **Q**. Yeah. And what were those expenses for, particularly ones that reduced allowed expenses. Do you recall?
>
> **A**. Without looking at my documents I cannot recall, **but I addressed all the ones in my testimony**, which were the ones that were in this agreement.[74]

No, he didn't apparently address them all, and now, on the eve of the briefing deadline, we have yet another adjustment which the Company was unable to probe on cross-examination and which lacks any real narrative explaining why this was now being proposed. While Staff may supply yet more calculation revisions here, we are provided no rationale to support them, particularly in light of the assurance that any previous revisions to Exh. 11-TC "should have been removed."[75] Responding to

[73] He actually had previously testified in Response at Exh. BS-ITCr: 27:21, 22: "Staff left expenses related to employee tool procurement coded to this account." Now, he removes them without any explanation in Bench Request Nos. 1 and 2, response.
[74] Sharbono TR. 358: 2-8. [Emphasis added.]
[75] Sharbono, TR. 358: 9-17.

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Bench Requests by Staff is not typically a time to propose additional adjustments that should have been identified in testimony earlier in the proceeding to allow the company to question the evolving revenue requirement calculation by Staff. The fact that Staff failed to initially provide a bottom line revenue requirement proposal in response to Exh. JW-7C as submitted on March 19 until more than a month after their amended Response Testimony of June 4 is not license for further erosion of the company's case. [76]

VII. CONCLUSION

53 As the Commission acknowledged in its December 2020 Policy Statement (TG-131255),[77] regulatory policy should be recalibrated occasionally with long-standing regulatory principles in mind. Those acknowledgments and reassessments should of course be evaluated and led by the Commission. Meanwhile, Staff should hopefully endeavor to be vigilant to be logical and consistent

[76] Bench Request No. 3 also requested Staff respond to the Company's proposal on fuel cost adjustments advanced by the Company in (Wonderlick, Exh. 25-TC at 36-36). In its Response, the Staff argued that below market rates of a lapsed contract should be used to reset fuel prices for a number of reasons, including the possibility a company might return to a fuel contract in the near future. That has not happened in the last nine months and it is notable that fuel contracts generally lock in at or near current prices when they are implemented, preserving pricing at contemporaneous levels to the implementation of the contract and not rates from months or a few years ago. The Staff also argues that fuel surcharges are an alternative mechanism for recovery in this circumstance but fails to address the threshold 1% floor for that recovery before fuel price increases can be addressed outside of a general rate case. The Company is obviously in the midst of such a proceeding now, so a reset to current market rates in the required fuel adjustment update is preferable. The Staff also implies that fuel contracts are subject to manipulation by companies who might be inclined to hold off negotiating an agreement until after a general rate case resolved to take advantage of lower prices in a subsequent fuel lock agreement. Even if that approach were to be followed, those savings would typically offset other cost attrition and reduce the need for a successive general rate case filing. Taken to its extreme, this argument would appear to suggest that any cost-saving move taken after a general rate case would potentially be harmful to customers which is obviously not the case. Finally, Staff has not discouraged entering into fuel lock contracts where it would appear to mitigate the volatile cost of fuel going forward enhancing rate stability for customers at potentially lower rates during the term of the contract. The same logic would seem to support exiting of contracts during an era of declining fuel prices. Ironically here, so much time has elapsed since this case was pending coincident to the lapse of the Company's fuel lock contract effective January 1, that the fuel cost adjustment in the end would now only involve about two months of non-market prices. Nevertheless, the Company again asks that the Commission consider using only market prices in this type of unusual circumstance in calculating fuel price adjustments under WAC 480-70-346.

[77] *In re Policy Statement Affirming and Updating the Lurito-Gallagher Model for Rate Setting for the Solid Waste Companies*, Dkt. No. TG-131255 (Dec. 2020).

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in its review of rate filings and to strive for transparency, communication, and objectivity in furtherance of due process for rate proponents who bear the burden to support their filings consistent with RCW 81.28.010. If the Staff, and consequently the Commission, seek to disallow previously-allowed operating expenses such as the insurance matters at the heart of this case, such actions should happen not in hindsight, but in foresight, in open communication with the industry in stakeholder sessions and related forums in dialogue with all interested parties. The Staff, in the meantime, should be more attuned to ensure that regulatory policy and rule interpretation reflected in its audit practices and recommendations in Staff memos for Open Meetings are consistently applied across all audited filings except with demonstrable good cause. Unfortunately, the record in this case shows inconsistency in how Staff has approached insurance, legal fees and normalization concepts. A consistent focus and approach will avoid arbitrary treatment of the overall results of operations of regulated solid waste collection companies and provide assurance against unfair retroactive adjustments.

54 In addition to insurance and legal fee expenses, it is hoped this case might encourage the Commission to potentially recalibrate some of its views on incentive programs and management tools used by most employers and management today to motivate staff, improve morale, and increase efficiencies in the workplace. The record reflects testimony from management and management experts about the benefits they have experienced through the use of these tools for well over a decade. Dr. Scontrino corroborated management's more subjective testimony with authoritative and peer-reviewed materials that support the programs. For many years, Staff has denied expenses related to these incentive programs and management tools under the repeated premise that they lack any ratepayer benefit. Staff's bar to demonstrate the benefit of the programs

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has been too high; at a single company, issues with baseline data, sample size, and too many control variables make it impossible to ever meet their threshold. Common sense and the multitude of favorable comparisons highlighted in academic and industry studies should prevail if contemporaneous documentation is lacking or does not otherwise meet the unspoken standards of an individual auditor. And yes, the tools sometimes include motivators such as shared meals and community-based activities often attuned to promoting public health and safety.

55 We do not doubt Staff's intention and commitment to be good stewards of the ratepayers' dollars, but it seems that in attempting to apply financial discipline, their recommendations here will result in higher average insurances expenses, poorer customer service, and ultimately higher costs to ratepayers. In addition to a push for consistency, it is important for the Commission to encourage Staff to use objectivity and reasonableness as they explore the important ultimate distinction between seasoned management discretion and auditor authority.

56 Finally, based on the significant record evidence adduced in this matter to date, including close consideration of the testimony presented by all the parties, the Company respectfully asks that the presiding administrative law judge and the Commission adopt the revenue requirement adjustment proposal, corresponding results of operations, and the resulting tariff rates set forth that the Company proposes in achieving the fair, just, reasonable and sufficient levels it here advocates.

RESPECTFULLY SUBMITTED, this 2nd day of October, 2024.

s/David W. Wiley
s/Christopher Luhrs
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