Service Date: November 1, 2024

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. MURREY'S DISPOSAL COMPANY D/B/A OLYMPIC DISPOSAL, Respondent.	DOCKET TG-230778 ORDER 08 INITIAL ORDER REJECTING TARIFF SHEETS; AUTHORIZING AND REQUIRING COMPLIANCE FILING

***Synopsis**: The Commission rejects the tariff sheets filed by Murrey's Disposal Company d/b/a Olympic Disposal (Olympic or the Company) on September 15, 2023. The Commission approves an additional annual revenue requirement of $1,385,522, which represents a revenue increase of approximately 10.8 percent. The Commission requires Olympic to file revised tariff sheets to reflect these decisions.*

The Commission finds it appropriate to grant recovery of Olympic's insurance deductible related to a large casualty loss claim and adopts Olympic's proposed adjustment to amortize its claim over five years. The Commission finds Olympic's employee incentive programs reasonable and grants recovery of a five-year average of incentive program payments. The Commission finds the Company's severance payments as amortized over three years to be appropriately included in rates.

We find that the Company's defense of certificate legal fees do not constitute retroactive ratemaking and modify the Company's proposal to allow recovery of its defense of certificate legal fees over five years, consistent with its insurance expense amortization. We side with Staff regarding the Company's failed transfer station project and remove associated costs, including associated legal fees. We adopt Staff's adjustment to the Company's Employee and Community Activity account but modify Staff's most recent proposal to allow employee tool procurement expenses in rates. We find that the Company's employee meals and safety events are reasonable and reject Staff's adjustments to these accounts.

We side with Staff on its fuel expense adjustment and require Olympic to revise its fuel expenses in its compliance filing to reflect the most recent twelve-month period available, consistent with WAC 480-07-346. We allow the Company's most recent estimate of its rate case costs in rates, but modify its proposed recovery period, to be recovered over five years, consistent with its insurance and legal and legal fee amortization. We require the Company in its compliance filing to update the estimated rate case costs included in our determination to reflect the actual costs incurred.

Aside from the adjustments mentioned above and described in more detail below, we otherwise adopt the Company's revenue requirement model, including all uncontested restating and pro forma adjustments.

We require that Olympic file a general rate case with a proposed effective date of no later than November 1, 2029, to remove the amortized insurance deductible, certificate defense legal fees, and rate case costs from rates.

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BACKGROUND

A. PROCEDURAL HISTORY

1 On September 15, 2023, Murrey's Disposal Company, Inc. d/b/a Olympic Disposal (Olympic or the Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff No. 25 that if approved would generate approximately $1,885,000 (15.9 percent) in additional annual revenue.[1]

2 On December 21, 2023, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.

3 On January 24, 2024, Administrative Law Judge Bijan Hughes (Hughes) held a prehearing conference, on behalf of the Commission, and granted Olympics' request for a Protective Order.

[1] *Washington Utilities and Transportation Commission v. Murrey's Disposal Company, Inc. d/b/a Olympic Disposal*, Docket TG-230778, Exh. JW-3C "Original Rate Case Submittal – Olympic GRC Pro forma 7.31.2023," "LG Public – Regulated" worksheet.

4 On February 5, 2024, Order 02 was entered, setting the procedural schedule for this proceeding,[2] and on that same day Order 03 was entered, memorializing the terms of the Protective Order.[3]

5 In Order 05, Hughes instructed the Company to resubmit its filing to comply with Washington Administrative Code (WAC) 480-07-140(5) and WAC 480-07-125.[4]

6 On April l9, 2024, pursuant to Order 05, Olympic resubmitted revisions to Tariff No. 25, which effectively reduced the total requested revenue requirement from approximately $1,885,000 (15.9 percent) to approximately $1,646,000 (12.9 percent).[5]

7 On May 8, 2024, Olympic filed a Petition for Interim Rate Relief and a Request for Expedited Consideration (Petition) together with revised interim tariff and rate sheets represented as Exhibits A and B that reflected a revised effective date of July 1, 2024.[6]

8 On May 29, 2024, Staff filed a Response in Opposition to the Company's Petition together with an exhibit list, proposed exhibits, testimony of Benjamin Sharbono, and a Declaration of Colin O'Brien. That same day, Public Counsel indicated by letter that it would not be submitting any testimony.[7]

9 On July 18, 2024, Administrative Law Judge Amy Bonfrisco convened a Brief Adjudicatory Proceeding (BAP) on Olympic's Petition for Interim Rate Relief and an Expedited Review, and based on the party's stipulation at the hearing admitted all the pre-filed testimony and exhibits related to the BAP into the record.

10 On July 29, 2024, Staff filed its post-hearing brief, and on August 6, 2024, Olympic filed its response to Staff's post-hearing brief.

11 On August 22, 2024, Order 07 was entered denying Olympics' Petition for Interim Rate

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[2] Docket TG-230778, Order 2, Appendix B (February 5, 2024).

[3] Order 3 (February 5, 2024).

[4] Order 5 ¶ 4-15 (April 18, 2024).

[5] Docket TG-230778, Exh. JW-7C "230778-GRC-Murrey's Olympic-Staff Wkbk-10-16-23," which the Company resubmitted on July 19, 024, in its native excel format, as requested by the presiding Administrative Law Judge Hughes in accordance with WAC 480-07-140(6)(a)(ii).

[6] Docket TG-230778, Petition of Murrey's Disposal Company, Inc. d/b/a Olympic Disposal for Interim Rate Relief and Request for Expedited Consideration, Exhibits A and B.

[7] Docket TG-230778, "Commission Staff's Response in Opposition to Petition of Murrey's Disposal Company d/b/a Olympic Disposal for Interim Rate Relief" (Staff's Response).

Relief and an Expedited Review.[8]

12 On September 9, and September 10, 2024, a virtual evidentiary hearing was held in this matter.

13 Staff and Olympic submitted post hearing briefs on October 2, 2024.

14 David Wiley, Christopher Luhrs, and Sean Leake of Williams Kastner, Seattle, Washington, represent Olympic. Jeff Roberson and Colin O'Brien, Assistant Attorneys General, Lacey, Washington, represent Commission Staff.[9] Tad O'Neil and Robert Sykes, represent Public Counsel.

DISCUSSION AND DECISION

B. APPLICABLE LAW

15 The Commission is an agency of the state of Washinton vested by statute with the authority to regulate rates, services, facilities, and practices affiliated interests of public service companies,[10] and pursuant to RCW 81.77.030, shall regulate every solid waste collection company in this state by fixing and altering its rates, charges, classification, rules and regulations.

16 Olympic provides regulated solid waste collection service to approximately 15,500 residential garbage; 1,900 commercial garbage; 117 roll-off; and 6,040 residential recycling customers in Clallam and Jefferson Counties.[11] Olympic is a wholly owned subsidiary of Waste Connections, Inc.[12]

17 This general rate case filing was made pursuant to a compliance filing requirement ordered under Docket TG-210912, a limited scope rate filing which dealt solely with Olympic's Item 260 (Intermodal Box and Chassis) rates that apply to two industrial

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[8] Docket TG-230778, Order 7 (August 22, 2024).

[9] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judges, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[10] RCW 80.01.040.

[11] *Washington Utilities and Transportation Commission v. Murrey's Disposal Company, Inc. d/b/a Olympic Disposal* (Docket TG-230778), Order 01 at ¶ 1.

[12] Wonderlick, Exh. JW-1T at 1:14-17.

generators.[13] The Commission required that the Company file a general rate case with an effective date of no later than November 15, 2023, after granting extension to the original deadline of May 15, 2023.[14]

18 The Company filed its general rate case on September 15, 2023,[15] and after disagreement with Staff on certain significant issues, extended its proposed effective date to December 1, 2023, and again to January 1, 2024.[16] However, because Olympic's last general rate increase became effective approximately 13 years ago on June 1, 2011,[17] there are several contested issues among the parties, and we will discuss each in turn herein.

C. **REVENUE REQUIREMENT – CONTESTED ISSUES**

1. Insurance

19 During the test year, a traffic incident occurred involving an Olympic Disposal driver operating in the Company's regulated service area, which resulted in a large casualty loss.[18] A settlement agreement was finalized in December of 2023,[19] and the Company proposes to normalize the cost of settlement over five years.[20] The Company proposes to allocate the expense between its regulated and non-regulated operations using a driver hour allocator, which would result in approximately 60% being allocated to regulated operations.[21]

20 Waste Connections witness Joe Wonderlick states that the Company uses a "low premium-high deductible insurance model" through which the Company essentially "self-insures itself for the first [several million] in exposure."[22] Wonderlick argues that this insurance model benefits customers in the long run due to the lower recurring premiums.[23] Wonderlick explains this was because the claim at issue fell below its policy

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[13] Wonderlick, Exh. JW-1T at 5:7-10.

[14] *Id* at 5:13-15. *See also* Docket TG-210912, Order 01 and Order 02.

[15] *Id* at 11:8-9.

[16] *Id* at 13:10-12 and 13:24.

[17] Docket TG-230778, Order 01 at ¶ 1

[18] Wonderlick, Exh. JW-1T at 22: 7-8 and at 11: 3-4.

[19] Wonderlick, Exh. JW-1T at 22: 13-15.

[20] Wonderlick, Exh. JW-1T at 18: 17-19.

[21] Wonderlick, Exh. JW-1T at 22: 20-24.

[22] Wonderlick, Exh. JW-1T at 21: 2-4.

[23] Wonderlick, Exh. JW-1T at 24: 21-24 and at 25: 18-23.

deductible and the entirety of the claim was recorded on the entity's general ledger.[24] Wonderlick states that Olympic Disposal's parent company, Waste Connections, pays general liability premiums and distributes the premiums to its entities based on the size of the truck fleet and payroll expense.[25]

21 Company witness Branko Terzic (Terzic)[26] argues that amortization of the deductible is the appropriate ratemaking treatment, as the charge reflects a reasonable operating expense which is "infrequently recurring but non-periodic or non-predictable".[27] To further support his contention that normalization of such costs are accepted by the Commission, Terzic cites to an Open Meeting memo in Docket TG-230182[28] and to *W.U.T.C v. Puget Sound Energy*, Order 11.[29] Terzic also cites to a series of Covid-19 related cost recovery orders issued in August and September 2021, in Exh. BT-3, where the Commission authorized seven companies to amortize costs incurred by companies unique to the Covid-19 pandemic to argue that the rationale applied in those cases should also apply here.[30] Like in those cases, Terzic argues that this expense is extraordinary, would not routinely be incurred, and is the "type of expense a business cannot avoid incurring or otherwise deflect in fulfilling its regulated service obligations to the public."[31] In sum, he concludes that if the deductible were disallowed, such adverse regulatory action would ultimately eliminate any possibility of Olympic being afforded the opportunity to earn a fair return.[32]

22 Staff witness Benjamin Sharbono (Sharbono) contests inclusion of all costs related to the above-referenced incident, and more broadly, contests inclusion of all insurance deductible payments in rates. Staff argues that removal of the costs associated with the

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[24] Wonderlick, Exh. JW-1T at 21: 7-12.

[25] Wonderlick, Exh. JW-1T at 21: 4-7.

[26] Branko Terzic is an independent consultant on public utility regulation that Olympic retained as an expert due to his five decades of regulation and consulting experience. See Exh. BT-2.

[27] Terzic, Exh. BT-1T at 9: 12-18.

[28] *In re Empire Disposal Inc,* Docket TG-230182 (April 27, 2023). The Company cites this case as an example of the Commission approving any annual repair expense by normalizing the expense to the average of the last five years to reflect a normal operating year. Terzic, BT-1T at 9: 18-24 and 10: 1-2.

[29] *Washington Utilities and Transportation Commission v. Puget Sound Energy*, Dockets UE-090704 and 090705 (*consolidated*), Order 11, 2010 WL 138928 (Wash U.T.C) 281 P.U.R. 4th 329.

[30] Terzic, Exh. BT-1T at 10: 10-21.

[31] Terzic, Exh. BT-1T at 10:22 and 11: 5-7.

[32] Terzic, Exh. BT-1T at 11: 10-15.

incident are appropriate "due to the unusually large and non-recurring nature of the underlying event and its impact on customer rates."[33] Sharbono states that based on review of historical data, he found "none of like nature or financial impact"[34] and therefore concludes that "accidents resulting in significant claims are not regularly occurring."[35] Sharbono further contends that, per Commission rules, extraordinary items should be eliminated or normalized.[36]

23 Sharbono also argues that, based on his research on the subject, insurance deductible expenses should not be included in operating expenses and should instead be considered as a below-the-line expense and not included in revenue requirement.[37] As evidence, Sharbono references the Commission's Uniform System of Accounts (OSOA), and argues that insurance deductible payments are not properly includable in Account 4530 (Public Liability and Property Damage), which provides for "the booking of amounts for insurance premiums and accounting for self-insurance," but which does not provide for the booking of insurance deductible payments.[38] Sharbono argues that insurance deductibles should instead be included in either Account 7600 (Extraordinary Items) or Account 7600 (Other Deductions), which are both "below-the-line items."[39]

24 Regarding the Company's insurance portfolio, which utilizes a low premium and high deductible, Sharbono argues that by requiring ratepayers to pay both premiums and deductibles, "Olympic Disposal shift[s] all costs, and therefore all risks to customers by including the costs in operating expenses."[40] Sharbono contends that the Company is already compensated for business risk factors through the returns generated in the Lurito-Gallagher (LG) model, and that if the Commission were to accept the Company's adjustment "the hypotheses of the LG model would need review to revise the financial risk return."[41]

25 Staff also argues that the Company "is engaged in self-insuring operations" without

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[33] Sharbono, Exh. BS-1CTr at 7: 13-15.

[34] Sharbono, Exh. BS-1CTr at 7: 16-17.

[35] Sharbono, Exh. BS-1CTr at 7: 17-18.

[36] Sharbono, Exh. BS-1CTr at 7: 20.

[37] Sharbono, Exh. BS-1CTr at 8: 1 – 9: 2.

[38] Sharbono, Exh. BS-1CTr at 8: 6-10.

[39] Sharbono, Exh. BS-1CTr at 8: 10-14.

[40] Sharbono, Exh. BS-1CTr at 9: 13-17.

[41] Sharbono, Exh. BS-1CTr at 10: 15 – 11: 13.

Commission authorization, which Sharbono argues "is in violation of the revised code and the Commission's rules."[42] Because of the size of the deductible, Sharbono argues that almost all insurable events will be within the deductible, and that "the impact of [a] single event would have to be catastrophic before the insurance policy protects the company."[43] Staff received information from the Company regarding the cost differential between the Company's current insurance plan and a lower-deductible, higher-premium plan and found that "using a lower-deductible, higher premium insurance would provide more protection to ratepayers if ratepayers are required to cover deductible costs."[44] Sharbono acknowledges that the costs of insurance are higher on a continuous basis under a low-deductible, higher-premium insurance and argues that if allowed to recover deductible payments from customers, "ratepayers will pay higher rates for services for a period of time,"[45] adding that "[f]or the scenario to work in the ratepayer favor, deductible incidents must be substantially spaced."[46]

26 Staff also argues that the Company's lower-deductible insurance quote may not be acceptable to underwriters and argues that because the process was not completed, Sharbono "does not believe the insurance company would ultimately provide the insurance at the coverage or premium quoted."[47]

27 While Staff asserts that it considered several options for allowing the deductible into rates, the Commission is not persuaded by its arguments regarding disallowance of all deductible payments, including the large claim at issue, Staff recommends the expense be normalized over a longer period.[48] The scenarios provided use ten years of historical data and offer various alternatives for the treatment of "minor" and "major" claims, which Sharbono defined using a threshold amount.[49]

28 Olympic Disposal witness Wonderlick disputes Staff's argument that using a lower-deductible, higher-premium insurance package would provide more protection to ratepayers, and states that if the aggregate cost of such a plan exceeds the anticipated cost of a higher-deductible plan. Wonderlick believes "it is in the ratepayer's best interest to

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[42] Sharbono, Exh. BS-1CTr at 11: 15 – 12: 14.

[43] Sharbono, Exh. BS-1CTr at 12: 16 – 13: 5.

[44] Sharbono, Exh. BS-1CTr at 13: 7-16.

[45] Sharbono, Exh. BS-1CTr at 14: 8-17.

[46] Sharbono, Exh. BS-1CTr at 15: 17-18.

[47] Sharbono, Exh. BS-1CTr at 16: 16 – 17: 14.

[48] Sharbono, Exh. BS-1CTr at 17: 16-19.

[49] Sharbono, Exh. BS-1CTr at 18: 1-4 and at 18: 8-15. *See also* Sharbono, Exh. BS-4C.

accept a higher deductible policy."[50] He further argues that Staff's analysis "chooses the best-case scenario when describing [Staff's preferred] low deductible proposal and a worst-case scenario when describing the Company's high deductible plan."[51]

29 Wonderlick further argues that such a plan would have detrimental effects on other Waste Connections companies and reasons that if required by the Commission, "it is very likely that these affiliates and other large regulated service providers in the state will experience upward rate pressure in the millions of dollars over the next few years as managers seek out ratepayer coverage for nearly 100% of their risk through high insurance premiums."[52] Wonderlick further notes the irony of such an approach, and explains that as the Company shifts more of its risk to insurance premiums, the ratepayers will be forced to foot the bill, which he claims is "counterintuitive to the Commission's, Staff's, and the Company's goal to provide service at the lowest *reasonable* cost."[53]

30 Wonderlick believes the most fair approach would be to normalize the Company's total insurance deductible charges over a five-year rolling average and notes that this methodology would capture outliers and be easily maintained and implemented.[54]

31 Wonderlick also disputes Staff's reading of the USOA account descriptions, arguing that the Account 4530-Public Liability and Property Damage description "actually supports the company position to keep the expense in this account 'above the line.'"[55] Wonderlick also believes the USOA account descriptions are illustrative rather than authoritative.[56]

32 Regarding Staff's proposed removal of all deductible charges, Wonderlick claims that "to suddenly disallow every penny is arbitrary and unreasonable."[57] Wonderlick notes that in virtually all general rate filings by Waste Connections companies since 1998, Staff has allowed deductible charges in rates.[58]

33 Company witness Lopes argues that Olympic Disposal receives reduced insurance costs

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[50] Wonderlick, Exh. JW-25T at 15: 19 – 16: 3.

[51] Wonderlick, Exh. JW-25T at 16: 14-21.

[52] Wonderlick, Exh. JW-25T at 17: 19 – 18: 5.

[53] Wonderlick, Exh. JW-25T at 18: 5-9.

[54] Wonderlick, Exh. JW-25T at 20: 18-21.

[55] Wonderlick, Exh. JW-25T at 21: 10-15.

[56] Wonderlick, Exh. JW-25T at 21: 1-4.

[57] Wonderlick, Exh. JW-25T at 23: 1-2.

[58] Wonderlick, Exh. JW-25T at 22: 21 – 23: 1.

through economies of scale to both the customer's and Company's benefit, and from the quotes it has received from its insurance company, Chubb, the Company would experience significant per-vehicle premiums if moved to a low deductible plan.[59] Lopes believes that the quote received from Chubb provides a "highly reliable indication of an actual premium for a standalone auto liability program,"[60] and also discusses the difficulty and infeasibility of taking the quote through the underwriting process, noting that "the insurance carriers will not do so simply to validate a premium."[61] Lopes also disputes Staff's assertion that Olympic Disposal is engaging in self-insurance without prior Commission authorization, arguing that the Company holds a several million dollar insurance policy on file with the Commission,[62] which far exceeds the basic limits required by statute and WAC 480-70-181.[63]

34 Company witness Terzic disagrees with Staff's position that the insurance deductibles should not be included in operating expenses and argues that the annual premium and deductibles are two related components of the total cost of the automative and liability insurance, which are properly recoverable from ratepayers.[64] Terzic argues that examination of the premium without regard to the deductible "is not a fair, reasonable or accurate perspective of insurance expense."[65] Terzic also argues that Staff's proposed removal of the claim due to its "large" amount, results in a "sliding scale" which Terzic argues is "not a good regulatory policy."[66] Terzic states that "the occurrence of insurable events is a normal condition, especially in the case of automotive and liability insurance for a large fleet of vehicles,"[67] and that events do not need to occur at regular intervals to be considered recurring, contrary to the definition posited by Staff.[68] Terzic further argues that "insurable events are considered to be 'recurring' because without these

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[59] Lopes. Exh. BL-1T at 3: 11-18.

[60] Lopes. Exh. BL-1T at 8: 20-24.

[61] Lopes. Exh. BL-1T at 7: 11 – 8: 8.

[62] Lopes. Exh. BL-1T at 6: 24 – 7: 10 and Exh. BS-18X.

[63] Docket TG-230778, Respondent Murrey's Disposal d/b/a/ Olympic Disposal Post-Hearing Brief (Olympic or Company's Post Hearing Brief) p. 9 ¶ 18 (October 2, 2024).

[64] Terzic, Exh. BT-4T at 4: 20 – 5: 10.

[65] Terzic, Exh. BT-4T at 5: 12-15.

[66] Terzic, Exh. BT-4T at 4: 11-18.

[67] Terzic, Exh. BT-4T at 2: 15-17.

[68] Terzic, Exh. BT-4T at 2: 17 – 3: 3.

'recurrences,' ironically, there would be no need for insurance."[69]

35 In response to Staff's claims regarding the compensation for "business risk factors" through the Lurito-Gallagher methodology, Terzic argues that "[t]he risk of automobile accidents is an insurable risk which is why the WUTC requires that Olympic Disposal have an insurance policy."[70] Terzic argues that Staff's assertion that recovery of deductible expenses in revenue requirement "insulates shareholders against all financial risks from management decisions"[71] is "incomprehensible," and states "[h]ow could that one payment insure against 'all' financial risks?"[72] Terzic states that "[t]here are many other business risks which this company faces that are real, incurred and uninsurable and for those risks we have a rate of return mechanism which accommodates business risk."[73]

36 Olympic further highlights that when it probed Sharbono in its data request[74] and on cross examination about the criteria staff used for establishing a threshold for a major incident claim, his "testimony corroborated" 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 do disallowance."[75] Namely, because "when asked to reconcile the treatment of the insurance claim expense addressed in BS-19X, where the insurance loss claim under the same type of policy help by Olympic was allowed to be normalized for an affiliate, he was unable to explain the inconsistency."[76]

Decision

37 We adopt the Company's proposed adjustment to amortize and recover its insurance deductible related to the large casualty loss in rates over a period of five years. We disagree with Staff's position that because of the large size of the claim at issue or the infrequent recurrence of such claims that this should preclude any and all recovery of the casualty loss at issue. Regarding the recovery of insurance deductibles in general, we

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[69] Terzic, Exh. BT-4T at 2: 17-20.

[70] Terzic, Exh. BT-4T at 6: 14-15.

[71] Sharbono, Exh. BS-1CTr at 9: 20 – 10: 1.

[72] Terzic, Exh. BT-4T at 6: 1-2.

[73] Terzic, Exh. BT-4T at 7: 10-12.

[74] Sharbono, Exh. BS-14X

[75] Olympic's Post Hearing Brief, p. 11 ¶ 21 and Sharbono, TR. 293:10 – 295:21.

[76] Olympic's Post Hearing Brief, p. 13 ¶ 22. Olympic also cite to Sharbono, TR. 322:25, to demonstrate Sharbono's acknowledgement of this inconsistency being a problem in the context of the regulated community knowing how to anticipate Staff's treatment of a large expense.

agree with the Company that insurance deductibles and premiums are two interrelated components of a Company's total insurance expenses, which are costs required[77] in the provision of service and which are properly recoverable through operating expenses.

38 Given the evidence provided by the Company,[78] the casualty loss does not appear to have been the result of any wrongdoing or negligence on behalf of the driver or the Company, which may warrant such disallowance. To disallow insurance costs in instances where there are no circumstances present for such a disallowance goes against the public interest and Commission rules requiring that regulated companies carry insurance.

39 Further, despite the rebuttal testimony Lopes provided regarding "the diminishing availability of policy protections and the skyrocketing risk exposure transportation companies and insurers face," which is now at a "six-fold plus increase," [79] we agree with Olympic that the testimonial evidence it provided did not move Staff to change its view that a claim in the amount of the proposed threshold was major in this environment and a normal business risk for transportation companies.[80]

40 This is concerning, given that there are other compounding external factors that must be carefully weighed when making determinations of what are the lowest reasonable expenses to be allowed. We also agree with the Company that "hypothesizing about the availability of a particular monoline insurance policy," that "could be more expensive for the customers in the end, and would not likely be available is not pragmatic, realistic"[81] or an efficient use the parties time and resources. Namely, because prevailing economic and market conditions cannot be ignored when determining whether such expense allowance is fair, just, and reasonable.

41 While the occurrence in this instance led to what Staff views as high costs in the test period, we find that the costs as amortized are reasonable, fair, just, and sufficient. The costs, while ideally not recurring, are reasonably expected in some circumstances from business operations and we would have concerns over the public policy impacts of drawing "lines" as to what is recoverable and what is not regarding insurance expenses on an incident-by-incident basis based solely on the size of the claim.

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[77] *See* RCW 81.77.060 and WAC 480-70-181.

[78] Wonderlick, Exh. JW-1T at 21: 20 - 22: 5. *See also* Exh. JW-10C, JW-11C, and JW-12C.

[79] Lopes, Exh. BL-1T at 5:6.

[80] Olympic's Post Hearing Brief, at p. 15 ¶ 26.

[81] Olympic's Post Hearing Brief, at p. 16 ¶ 29.

2. Incentives Pay Programs

42 During these proceedings, Olympic maintains that Staff proposed to remove several bonus or incentive pay programs, some of which it developed amidst the post-pandemic national labor shortage. Olympic explains that these programs are critical to onboard and retain its front-line workers, promote safety culture incentive programs, and enhance customer service and employee performance. The incentive-pay programs in dispute include the following: (1) the "secret shopper/Tooty" Incentive compensation program,[82] (2) Accounts Receivable Collection program, which is aimed at reducing bad debt,[83] (3) Sign-on/Stay-on and Referral Incentive programs; and (4) Safety Culture Incentive program.

43 First, regarding the Tooty incentive program, Olympic witness Mark Gingrich (Gingrich) highlights that the skills developed through this program improve front-line employee's customer service skills, hone their knowledge of and ability to educate customers on "multiple tariff areas and rate structures," and translates into ensuring bill accuracy and compliance with Commission approved tariffs.[84] Gingrich, further asserts that the "benefits of the program outweigh its nominal cost."[85] To further support this contention, on cross examination at the evidentiary hearing, Gingrich explained that if a representative earned $2,000 in Tooty bonuses annually, that would equate to "about a dollar per hour, whereas if someone only earned about $600 of annual Tooty bonuses," that would equate to "about $.30 per hour."[86] While Gingrich acknowledged that Olympic did not have a direct study to cite to,[87] he explained that his intent in translating the math into an hourly rate was to show the meaningfulness of this program for motivating Olympics' customer service representatives to "provide the best service," and to show the overarching benefits to ratepayers when they are educated and provided with

[82] This is a program Olympic developed where customer service representatives are silent shopped by a third-party vendor – The Tooty Company. JW-21 C, Wonderlick Exh. JT-1Tr footnote 1. Tooty places "5 calls each month" to Olympics' customer service representatives who are evaluated and scored on compliance with the Company's procedures and customer service. Exh. MG-1T at 6: 3-11. If the employee receives a score ranging above 90 up to 100%, that employee is eligible a bonus ranging from $125 to $275. *Id.* See also Exh. JW-21 C.

[83] Olympics' Account Receivable Collection Program, Exh. JW-17C.

[84] Gingrich, Exh. MG-1T at 6: 3-11 and Exh. JW-21 C.

[85] Gingrich, Exh. MG-1T at 7: 2-3.

[86] Docket TG-230778 – Vol. III, Gingrich, TR. at p. 167, lines 12-17 (September 9, 2024).

[87] Gingrich, TR. at 170, line 2.

efficient service.[88]

44 Second, Olympic maintains that the Accounts Receivable Collections program rewards employees for remaining "customer service focused," "meeting/or exceeding Company payment collections goals," and continually improving collection metrics to collect outstanding balances within 60-90 days.[89] Gingrich maintains that since bad debt is one of the components in the Lurito-Gallagher model, that decreasing such debt "results in a reduced impact on customer rates," and is a cost that is "targeted, reasonable, and necessary" to be "included in the rates."[90]

45 Third, regarding Olympics' employee attraction and retention related incentives, including its Sign-on/Stay-on and Referral programs,[91] Gingrich argues that since it has been historically difficult in the solid waste industry to attract and retain employees due to strict driving record standards for drivers, non-standard work shifts, and the inherent risks in operating a heavy vehicle, that Olympic has mitigated these challenges by providing bonuses.[92] Gingrich explains that paying these bonuses is more cost effective, "less expensive than paying overtime," and reduces low employee morale and "the potential for service interruptions caused by understaffing."[93] Namely because "unfilled positions increase the risk of additional turnover due to reduced employee morale and burn-out, safety risks, increased and the potential for service interruptions caused by understaffing."[94] Gingrich maintains these same concerns apply to its Referral Incentive Pay program, which results in "a lower cost per hire compared to engaging external marketing/recruiting agencies, higher quality candidates…[and] increased employee retention."[95] In short, he concludes that since Olympic's Sign-on/Stay-on onboarding, retention and referral incentive pay programs "will continue to be recurring and necessary

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[88] Gingrich, TR. at 168, lines 1-7.

[89] Gingrich, Exh. MG-1T at 7: 9-12.

[90] Gingrich, Exh. MG-1T 7: 22-24 and 8: 1-2.

[91] Bonuses under the Referral Sign-on and Retention Stay-On bonuses range from $1000 to $5000 per individual employee, depending on the position, market, and amount of time a position has been open. Gingrich, Exh. MG-1T 8: 8-14. *See also* Exh. JW-19 and JW-20C.

[92] Gingrich, Exh. MG-1T 8:10-24. *See also* Exh. JW-19 C and JW-20 C.

[93] Gingrich, Exh. MG-1T 9:4-6.

[94] Gingrich, Exh. MG-1T 9:7-9.

[95] Gingrich, Exh. MG-1T 9: 10-14. Gingrich also cites to an article from HR morning that reports that candidates hired through employee referral programs have higher retention rates and last on average 70% longer than non-referral hires.

business expenses, these costs should be included in rates."[96]

46 Fourth, Olympic argues that its Safety Culture incentive program recognizes and rewards employees for "each pre-planned, approved and intentional action they complete" to foster a safe environment and provides an earning protentional ranging from $50 to $300, semi-annually, and up to a maximum of $600 per year.[97] Examples the Company cites to include employees leading safety tailgate meetings, "having zero coachable Drive Cam events for a semi-annual period, formally mentoring…new hires[s] or struggling employee[s]," and obtaining other safety related certifications, such as CPR.[98]

47 In its response, Staff witness Sharbono explains he removed Olympics above referenced incentive pay programs "because the Commission has indicated that allowable bonus and incentive programs require demonstrable evidence that customers benefit from the expenses."[99] Sharbono further argues that the documentation Olympic provided "did not show that the programs enhance service or customer experience" and maintains that the Company did not track the effectiveness of these programs.[100] To support this contention, Sharbono relies upon Olympic witness Mark Gingrich's acknowledgment that the results of these programs are often "hard to quantify," and discounts the tangible workplace improvements Gingrich describes on the basis that the Company did not present any specific "criteria to measure whether the programs accomplished their stated goals."[101] Additionally, since Olympic was unable to provide any documentation demonstrating "the bonuses lowered costs" or "improved service,"[102] this raised concerns for Staff "about the continuity" of these programs.

48 Specifically, Sharbono explains that the documents Olympic provided on all its bonus programs "included statements that the amount of the bonus" was subject to the "discretion of management," and conditioned on managerial approval.[103] Such response was concerning to Staff, because if the Company's management decided "to adjust the bonus amounts, eligibility criteria, or to cancel a program," the "bonus program would not be recurring and normal, or meet the known and measurable criteria for including in

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[96] Gingrich, Exh. MG-1T, 10: 2-6.

[97] Gingrich, Exh. MG-1T 10:12-13, and 19-20. *See also* Exh. JW-18 C.

[98] Gingrich, Exh. MG-1T 10:15-19.

[99] Sharbono, Exh. BS-1CTr 23: 1-5.

[100] Sharbono, Exh BS-1CTr at 23: 4-10.

[101] Sharbono, BS-1CTr at 23:11.

[102] Sharbono, BS-1CTr at 24: 18-19.

[103] Sharbono, BS-1CTr at 25: 10-11.

rates."[104] As such, Sharbono concludes that any modifications, revisions, or cancellation of Olympics' bonus programs in turn "casts doubts on the benefits of the program to customers," and affects the Company's net earnings.[105] Namely, because in any instance where employees are not earning the bonuses, the shareholders would receive the benefit.[106]

49 While Olympic witness Wonderlick testified in his rebuttal that the "preponderance of the Commission's focus" on disallowing incentive pay or bonuses "has been on executive and managerial bonuses"[107] involving "relatively large sums paid to individuals…for personal gain," he confirms that there are no executive incentive pay plans at issue in this case.[108] Wonderlick further explains that since Company managers are not eligible to receive incentive pay and all of its bonus programs are intended to benefit front-line employees who are paid hourly, that management has "no personal incentive to distort the plans or manipulate them for their own personal gain."[109]

50 Wonderlick also highlights that Olympic offered evidentiary examples in Exhibit JW-22C "of 'before' and 'after' measures of bad debt, 12-month incident rates, and employee turnover, and Days Sales Outstanding (DS)" for the two smaller facilities it acquired from Peninsula Sanitation in Long Beach and Longview, Washington.[110] Wonderlick explains that the performance metrics captured in Exhibit JW-22C are instructive here, because they demonstrate the Company's "ability to control costs" and show that Olympic is "now in a markedly better position than at the time" it acquired these facilities.[111]

51 With respect to Staff's arguments that Olympics' bonus programs do not benefit its customers and ratepayer base, the Company contends that what "Sharbono is asking for the unattainable."[112] Wonderlick explains that the robust demonstration of the documentation Staff requests involve three barriers, including: (1) a "before and after

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[104] Sharbono, BS-1CTr at 25: 13-16.

[105] Sharbono, BS1-CTr at 25: 15-16 and 25:21.

[106] Sharbono, BS1-CTr at 27, 3-5.

[107] Wonderlick, JW-25CT at 27: 3-9.

[108] Wonderlick, JW-25CT at 27: 3-9.

[109] Wonderlick, Exh. JW-25CT at 27: 11-15.

[110] Wonderlick, Exh. JW-25CT at 27: 23-24 and 28: 3-6.

[111] Wonderlick, Exh. JW-25CT at 28: 6-9.

[112] Wonderlick, Exh. JW-25CT at 28: 20-23.

analysis" where "incentive programs under prior ownership" could be contrasted to how the Company performed after initiating its programs; (2) a "controlled test environment," to mitigate intervening variables; and (3) "a large enough sample size to provide statistically valid results."[113] However, because Olympic has employed different versions of these incentive programs for many years, Wonderlick maintains that Olympic "cannot reasonably show a before condition," as it has "no clear point in time to input the data," and is unable to "filter out a clear picture of the district as it existed at that time."[114]

52 Although Staff requested that Wonderlick elaborate on these three barriers on cross examination at the evidentiary hearing, Wonderlick confirmed he had not conducted a detailed analysis as to when one program started and the other stopped and testified that "because it's been fairly fluid" and the Company "had multiple management teams overtime," that it has been difficult "finding measurement points."[115] Wonderlick then proceeds to reiterate his rebuttal testimony that it has been "virtually impossible to run an efficient collection operation and simultaneously document the impact of incentive programs on productivity,"[116] due to all the variables introduced, including: (1) new and changing contracts; (2) territorial expansions; (3) cyclic weather changes; (4) equipment replacement; and (5) frequent turnover of leaders and employees.[117]

53 Finally, Wonderlick concludes that because Olympic felt that Staff was "overlooking a significant body of evidence" that supported its programs,[118] he testified during cross examination that the Company felt it needed "to provide irrefutable evidence" of a benefit to ratepayers. As such, Olympic consulted Dr. Peter Scontrino (Scontrino), an organizational and industrial psychologist as an expert in the field, to review the value of the Company's incentive pay programs and the impacts of these programs on affected employees and ratepayers.[119]

54 In the Company's rebuttal testimony, Scontrino responds to several of the assertions

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[113] Wonderlick, Exh. JW-25CT at 29: 1-8. Wonderlick explains that since Olympic employs "a total of approximately 28 full time equivalent drivers" with limited support staff that "it does not have enough employees to draw a statistically valid sample for any robust demonstration. JW-25 CT at 30: 1-3.

[114] Wonderlick, Exh. JW-25CT at 29: 9-14.

[115] Docket TG-230778 – Vol. III, Wonderlick, TR. at p. 140, lines 3-7 (September 9, 2024).

[116] Wonderlick. Exh.JW-C25T at 29: 23-24

[117] Wonderlick, Exh. JW-CT at 29: 13-18 and 30: 1-3. Wonderlick goes on to exp

[118] Wonderlick, Exh. JW-CT at 28: 21-22.

[119] Wonderlick, Exh. JW-25CT at 30: 8-10. *See also* Exh. MPS-2.

Sharbono made in his pre-filed direct testimony. First with regards to Sharbono's characterization that a normal expense means an expense occurs through a company's regular operations, Scontrino relies on statistical data that indicates the vast majority of organizations in the United States have incentive pay plans.[120] Additionally, Scontrino provides a summary table based on "SHRM" and "Salary.com survey data," that briefly describes the incentive, percentage, and type of industry to support the proposition that Olympics' bonuses and incentive programs should be treated as a normal operating expense.[121]

55 Next, Scontrino goes on to disagree with Sharbono's assertion that Olympic did not provide documentation of demonstrable evidence that customers benefit from these expenses. Instead, Scontrino infers such data is unnecessary, and he explains that "industry information is clear that these types of programs can have a significant impact on business performance resulting in enhanced customer service."[122] Scontrino supports this contention by citing to empirical evidence that breaks down the percentage of usage for "each of the incentives used by Olympic," that are also "used by many organizations throughout the United States."[123]

56 While Scontrino acknowledges that "it is difficult to show a direct link between Olympics' incentives and customers benefitting from those incentives" because of the Company's small sample size," he maintains these programs "significantly impact various aspects [of] employee integration, performance, and retention."[124] To support this contention, Scontrino cites to numerous published and peer-reviewed studies that find that for each of Olympics' incentive programs, its "performance-related pay" results in: (1) higher employee satisfaction, commitment and trust; (2) improved performance; (3) enhanced employee engagement, motivation; (4) reduced turnover and hiring costs; (5) higher quality candidates and an improved retention rate; (6) increased customer satisfaction and loyalty; and (7) the improvement of financial and employee metrics that lead to other cost savings in the long run.[125]

57 Next, with respect to Sharbono's testimony concerning management's discretion regarding Olympics' incentive pay plans and the continuity of such programs, Scontrino

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[120] Scontrino, Exh. MPS-1T at 2: 1-12.

[121] Scontrino. Exh. MPS-1 at 3-5.

[122] Scontrino, Exh. MPS-1 at 10 -12.

[123] Scontrino, Exh. MPS-1 at 6: 1-8.

[124] Scontrino, Exh. MPS-1 at 7: 1-2.

[125] Scontrino, Exh. MPS-1 at 7: 4-23, 8: 5-23, 9: 4-15, 10: 9-22, and 15: 16-17.

disagrees with Staff's contentions.[126] He explains that "depending on company size, 30% to 60% of companies with bonuses include management discretion for directing those plans," unless the "bonus plans are part of the contract."[127] He maintains that the reason for this is that "managerial discretion allows for the customization of bonuses and incentives based on individual and team performance," which can "lead to enhanced motivation and better alignment with organizational goals."[128]

58 Scontrino also asserts that "managerial discretion provides the flexibility to adapt incentive programs to changing business conditions and individual employee circumstances," which is crucial in dynamic environments where rigid incentive structures may be ineffective."[129] While Scontrino acknowledges that managerial discretion has the potential for bias and favoritism, he reasons that this concern can be mitigated by ensuring the consistency and transparency in the application of these programs.[130] In sum, Scontrino concludes that provided "managers fairly and effectively exercise discretion," it will lead to "improved employee performance, higher job satisfaction, and better retention rates, and allow the organization to benefit by tailoring the discretionary incentive program to align with strategic goals."[131]

59 At the evidentiary hearing during cross-examination, Staff inquired whether the Company provided Sharbono any specific evidence of the program's benefits specific to Olympic.[132] While Gingrich acknowledged that the Company did not provide anything specific to Olympic,[133] when asked about any evidence provided of a causal connection between pay structure and improvement in Olympics' metrics, Gingrich testified that the sign-on bonus decreased the turnover rate by half of what it was during the test period.[134] Additionally, Gingrich testified that the sign on bonus allowed the company to hire a larger quantity and better quality of candidates, and improved their turnover.[135]

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[126] Scontrino, Exh. MPS-1 at 17: 9-10.

[127] Scontrino, Exh. MPS-1 at 17: 13-16.

[128] Scontrino, Exh. MPS-1 at 17: 17-19.

[129] Scontrino, Exh. MPS-1 at 18: 11-13.

[130] Scontrino, Exh. MPS-1 at 18: 19-22.

[131] Scontrino, Exh. MPS-1 at 19: 5-10.

[132] Docket TG-230778 – Vol. III, Gingrich, TR. at p. 162, lines 1-3 and 12-13.

[133] Gingrich, TR. at p. 162, lines 14-15.

[134] Gingrich, TR. at p. 164, lines 7-11.

[135] Gingrich, TR. a p. 164, lines 19-24.

60 However, when Staff inquired on cross examination about Gingrich's acknowledgment of the difficulties in quantifying the benefits of the Safety Culture Incentive Program, Gingrich testified that the reason he made this assertion was that there were "nearly 20 or so different ways" to target the Company's "culture and safety."[136] Gingrich then proceeded to testify that in his 22 years of experience[137] "across a wide variety of roles," "geographies, and working at union sites, nonunion sites, regulated sites, and nonregulated sites," that the Safety Culture Incentive program enhanced frontline employees involvement "in the form of fewer," or less risks.[138]

Decision

61 We authorize Olympics' incentive pay programs consistent with the Commission's prior decisions on this issue, where it recognized recovery of incentives based on "service quality, safety, and reliability,"[139] and established a "standard for evaluating the reasonableness of employee compensation pay plans" based on an inquiry as to "whether the compensation exceeds the market average, is unreasonable, and offers benefits to ratepayers."[140] While the Commission generally will "not delve too deeply into the Company's management of its human resources and the manner in which it determines overall compensation policy,"[141] the primary issue here is whether Olympics' incentive pay programs are reasonable and benefit ratepayers.

62 While Staff does not dispute whether the compensation exceeds the market average, it recommends we disallow the Company's incentive pay programs and Sign-on/Stay-on and Referral Incentive pay programs on the basis that these expenses are not prudent and

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[136] Gingrich, TR. at p. 171, lines 16-20.

[137] Note, on redirect Gingrich testified that during his 22 years of experience, he worked as a Customer Service Manager, an Operations Supervisor, Administrative Office Manager, Operations Manager and then was promoted to Assistant District Manager to support several large districts across five western states and now services as Vice President of the Company. *See* Gingrich, TR. at p. 181, lines 18-25 and p. 182, lines 1-12.

[138] Gingrich, TR. at p. 173, lines 4-12.

[139] *Wash. Utils. & Transp. Comm's v. Puget Sound Energy*, Dockets UE-190529, UG-190530 (*consolidated*) Order 08, Dockets UE-190274, UG-190275 (*consolidated*) Order 05, Dockets UE-171225, UG-171226 (consolidated) Order 03, and Dockets UE-190991 & UG-190992 (*consolidated*) Order 08 at 93-94 ¶ 313 and ¶ 314 (July 8, 2020).

[140] *Id* at 94 ¶ 314.

[141] *Id.*

do not "offer any quantifiable benefits to its ratepayers.[142] To support this contention, Staff reiterates prior arguments it raised of Olympic: (1) not tracking data on the effectiveness of its programs; (2) not having established criteria to measure whether the programs accomplished their stated goals;[143] (3) offering "only opinion testimony of two corporate officers," and reliance on "two limited data points," and statements asserting that Olympics' ratepayers received benefits.[144]

63 However, Olympic emphasizes that throughout this proceeding Company witnesses, Wonderlick, Gingrich, and its expert Scontrino provided extensive testimony that showed the benefits of its performance-related incentive pay outweighed the program's nominal costs. Additionally, Olympic maintains it demonstrated that: (1) the Accounts Receivable bad debt data it provided in Exhibit JW-22C reduces the impact on customer rates;[145] (2) the Tooty Incentive Customer Service translates into operational efficiencies, improved response times, customer service, and reliable solid waste services; and (3) the Safety Culture Incentive Program results in a culture that promotes safety, and "reduces injuries to its employees, customers and community members;[146] and (4) the Sign-on/Stay-on and Referral incentive programs are critical to onboarding and retaining high quality candidates, as evidenced by industry and empirical data Scontrino cited in his rebuttal testimony, "underscoring the importance of well-designed incentive strategies."[147]

64 We agree with Olympic that its proposed incentive pay programs are reasonable and that it offered extensive testimony and evidence to demonstrate the direct intrinsic and overarching benefits to its customers. Additionally, given that these incentive plans are variable, meaning they are only received if operational incentives are achieved, we find that the benefits to these nominal costs outweigh the costs to Olympic and its ratepayers. To place these charges in perspective, we observe that the total incentive payments made

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[142] Docket TG-230778, Post-hearing Brief of Commission Staff following the September 9, 2024, Evidentiary Hearing (Staff's Post Hearing Brief) at 18 ¶ 40.

[143] Staff's Post Hearing Brief at ¶ 31 citing to Sharbono, Exh. BS-1CTr at 23:9-11.

[144] The two data points Staff cross reference include the "I-rate related to the safety program and three quarters of aggregated scores for the Tooty Program. Staff's Post Hearing Brief at ¶ 42.

[145] Wonderlick, Exh. JW-25CT at 28: 3-8, Gingrich, Exh. MG-1T 7: 22-24 and 8: 1-2, and JW-22C.

[146] Wonderlick, Exh. JW-25CT at 33: 1.

[147] Scontrino, Exh. MPS-1T 7: 3-4: See also peer review studies cross referenced in footnotes 7-10, which found that organizations that offered pay-for-performance incentives increased employee retention, was positively associated with higher employee satisfaction, commitment and trust, improved performance and employee motivation.

in the test year comprise just a small fraction of the Company's total payroll expense.[148]

65 Accordingly, to address the variable nature of the incentive pay programs, we find it appropriate to authorize recovery of these incentives based on a five-year rolling average, as provided in the Company's response to Bench Request No. 4.[149] Additionally since this methodology appropriately normalizes the variability of incentive payments over time and is also utilized in the Energy industry for these types of expenses, we agree with this approach.

3. Severance Pay

66 Next, with respect to the disputed severance pay expense, Olympic argues that while severance pay can be "an unfortunate outcome of employment separation," it is "a common business expense incurred to mitigate potential future liabilities," limit exposure, and should be allowed in rates.[150] Accordingly, Olympic proposes that the small amount of severance expenses it incurred in the test year,[151] be amortized over three years.[152]

67 The Company argues that "Washington State law is favorable to the recovery of damages by plaintiffs in wrongful termination and employment claims litigations," and that the law allows for recovery of all legal fees from the defendant employer when even a single dollar in damages is awarded to the plaintiff.[153] Because of this, the Company argues that severance pay is "much less expensive than the cost, delays and uncertainties of litigation that can be put forth by a disgruntled terminated employee even when there is no culpability on the part of the Company."[154]

68 To illustrate that the severance payments Olympic made during the test year were modest, infrequent, and that "its employee statistics improved dramatically" following a change in leadership that came forth from the severance payment at issue in this case, the

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[148] As reflected in Wonderlick, Exh. JW-7Cr, "Master IS" worksheet. Sum of all incentive pay programs compared to total adjusted payroll expenses.

[149] *See* Company's response to Commission Bench Request No. 4, "Bench Request No 4 Summary" workbook (September 24, 2024).

[150] Wonderlick, JW-1T at 20:7-9.

[151] Murrey's Responses to Staff DRs 1-6, BS-2C p. 14 (d), indicates that while no severance expenses were incurred from 2019 to 2021, there were two occurrences in 2022 and one in 2023.

[152] Wonderlick, JW-1T at 20:15.

[153] Wonderlick, JW-1T at 30:14-18.

[154] *Id* at 30:10-14.

Company cites to employee turnover data it compiled.[155] Specifically, this data shows that during a rolling 12-month period, its voluntary employee turnover rate fell from 38.06% in November 2022 to 15.31% in May 2024,[156] and that anecdotal evidence it collected suggested its "investment was modest," as its return on investment was demonstrated "as voluntary turnover was at a 12-month rolling rate of 9.68% at the conclusion of the test year."[157]

69 To further support its argument that the severance expenses should be allowed, Olympic also relies on the testimony of its expert witness Terzic, who testified in his direct testimony and during cross examination that severance should be treated as a "part of the overall labor cost," since it "is an element of the annual revenue requirement," and "part of that overall expense.[158] Terzic explains that paying severance and obtaining releases from an employee, often "allows a Company to 'cordon off;' and permanently cap its potential liability for any going forward expense" related to the separation.[159] He further reasons that because this is the type of decision that is typically "left to the reasonable discretion of management … regulators do not typically intrude,"[160] but rather examine "the total labor compensation from year to year."[161]

70 Terzic and Wonderlick also highlight in their testimony that severance can occur for a variety of other reasons[162] that may not necessarily lead to litigation.[163] Terzic explains that when a regulator assesses whether to normalize or amortize a severance expense, it is important to examine "a variety of factors including the size of the severance, the frequency of occurrence," whether "it could be included completely in the test year," and the period of time for amortizing the expense.[164] Terzic then cites to several regulatory

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[155] Wonderlic, JW-25CT at 24: 19-24.

[156] Wonderlick, JW-25CT at 24: 19-24, and Exh. JW-28.

[157] Wonderlick JW-25CT 25: 4-8, and Exh. JW-28.

[158] Terzic, BT-1T at 12: 15-16. Docket TG-230778 – Vol. III, Terzic, TR. 193: 13-24 (September 9, 2024).

[159] Terzic, BT-1T at 13: 7-11.

[160] Terzic, BT-1T at 13: 11-13 and 17-20.

[161] Terzic, TR. 193: 23.

[162] According to Company witnesses, other reasons severance may occur include "downsizing," "lack of employee skills," or to be used as a tool by the Company to "expedite an appropriate change in leadership," by managing an ineffective leader out of an organization. See Terzic, TR. 193:18, and Wonderlick JW-25CT 24: 5-7.

[163] Terzic, TR. 193: 17-24.

[164] Terzic, TR. 198: 8-10 and 13-14 and 199: 5-6.

texts[165] to support his contention that since severance payments may 'reasonably be expected to occur in the future,' denial of their recovery" is unreasonable.[166]

71 However, Staff argues that the Commission should disallow Olympics' severance expense, to prohibit the Company from claiming that any severance payments it made be treated as an operating expense.[167] Staff reasons that if the severance expense is not disallowed, such decision will result in "pass through litigation expenses,"[168] to ratepayers, cut off the liability of the Company's torts,[169] and "create ratemaking problems" as a matter of public policy.[170] Staff explains that since "Washington, by statute [and] common law, limits an employer's discretion to take adverse employment action," and allows tort claims against an employer for wrongful termination, allowing severance costs to be passed onto rate payers "undercuts the public policy vindicated through these statutory or common law causes of action."[171] Namely, because if a company "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 [would be] eliminated."[172]

72 Staff further argues that despite the imprudence of these expenses, even if the Commission were to conclude that the severance payment were recoverable, Olympic has not shown "the necessity of this expense," or provided any documentation in the record that allowing such expense would avert subsequent litigation claims.[173] To support its arguments, Staff emphasizes that Olympic: (1) did not provide contemporaneous documents explaining whether "the payment of severance and the amount at issue were appropriate;" (2) produce "a cost/benefit analysis for this payment;" (3) provide "written

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[165] Kahn, Alfred E, The Economics of Regulation: Principles and Institutions, MIT Press, Cambridge V. 1 1990 and Welch, Francis X., Preparing for the Utility Rate Case, Public Utility Reports Inc., Pg. 229, (Washington DC 1954).

[166] Terzic, Exh. BT-1T, 14: 1-7.

[167] Staff's Post-Hearing Brief at p. 13 ¶ 28.

[168] Sharbono, Exh. BS-1CTr at 19: 14. Sharbono disputes Olympics' claims that the secure release of claims under the Washington Law Against Discrimination "would never be adjudicated" and maintains that due to this uncertainty "the Commission can never know which of those claims were valid." BS-1CTr at 20: 1-5.

[169] Sharbono, Exh. BS-1CTR at 20: 8

[170] Staff's Post-Hearing Brief at p. 13 ¶ 28.

[171] Staff's Post Hearing Brief at p. 13 ¶ 29 and ¶30.

[172] *Id* at ¶30.

[173] Staff's Post Hearing Brief at p. 15-16 ¶ 35

policies governing the process for severance payments"; or (4) provide any minutes documenting how management approached this issues.[174] For these reasons, Staff concludes "this evidentiary void leaves the Commission unable to determine if Olympic met its burden of showing the prudence of its decision to pay severance."[175]

Decision

73 While Staff cites a 1994 Energy Case,[176] where the Company was directed by the Commission to demonstrate the prudence of its contracts and whether it carried its burden to prove that its resource acquisitions, capital expenditures, and decisions were appropriate; we do not find that case instructive. Namely, because the two cases are factually distinguishable and the prudency review and dicta of the Commission involves a determination regarding significant capital investments, which is distinct from the general operating expenses at issue here. With that said, we recognize the value of keeping minutes and contemporaneous records of key management decisions and maintaining written policies and procedures to ensure companies only recover those expenses that are necessary and prudently incurred.

74 However, we do not agree with Staff that allowing a severance expense in effect requires that each management decision be investigated or that an in-depth cost/benefit analysis is required, especially in this particular instance, given that the two severance payments at issue are infrequent occurrences and modest in nature, given the Company's proposal to amortize the expense over three years.[177] Further, because data was presented demonstrating that the Company's employee turnover rates decreased significantly from 38.06% in November 2022 to 15.31% in May 2024, following a change in leadership, we will not delve any further into the underpinnings of the company's managerial decisions as that is beyond our scope of review. That said, going forward companies will need to continue to be prepared to justify such expenses on a case by case basis.

75 The Company has sufficiently justified the costs in the context of its testimony in this matter, specially through the testimony of Terzic and Wonderlick as described herein. We

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[174] Staff's Pot Hearing Brief at p. 16 ¶ 36.

[175] Id at p. 16-17 ¶ 36 citing Pac. Power, Docket UE-152253, Order 12 at 33 ¶ 94 and *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).

[176] *Id*.

[177] According to Olympic's Response to Staff Data Requests 1-5, only two severance payments occurred over the test period that it is proposing be amortized over a three year period. See Exh. BS-2C p. 14 (d).

find that the expenses are reasonable and contribute toward the provision of fair, just, reasonable, and sufficient rates.

4. Stranded Asset – Transfer Station Feasibility Study and Related Expenses

76 The Company includes in its direct case proposed adjustments to normalize the cost of a transfer station feasibility study, including associated legal costs and a "lease option expense" related to the potential construction of a new transfer station, to be recovered over three years.[178]

77 Staff contests recovery of these expenses and explains that the expenses relate to an engineering report prepared for the Company while it was investigating the creation of a new transfer station at a Company facility, a project which was later discontinued.[179] Staff states that "[t]he expense represents a stranded asset that is not used or useful, and customers will not benefit from unless the company is able to use the report in a future project," which Staff notes would then "become part of that asset's costs and would be handled through depreciation of that asset."[180]

78 On rebuttal, Wonderlick notes that Staff had originally allowed the amortization of these costs in its October 16, 2023, workbook which the Company used as the basis for its direct testimony.[181] Wonderlick confirms Staff's understanding of the project, adding that the transfer station "would have ultimately provided service to regulated customers at what we believe would have been lower tipping fees than those charged through the current arrangement that utilized the transfer station operated by the City of Port Angeles."[182] Wonderlick states that the project was ultimately cancelled due to community, environmental, and cost concerns.[183] Wonderlick argues that generally accepted accounting principles required the Company to recognize the project as a loss on its books.[184] Wonderlick argues that "because ratepayers were a stakeholder with a potential benefit of the upside of the project, the Company believes they should share in the downside risk of cancellation."[185] Wonderlick adds that the Company hopes that it

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[178] Wonderlick, Exh. JW-1T at 7: 13-16, at 8: 9-10 and at 8: 14-17.

[179] Sharbono, Exh. BS-1CTr at 33: 19-22.

[180] Sharbono, Exh. BS-1CTr at 34: 4-8.

[181] Wonderlick, Exh. JW-25T at 35: 20-24.

[182] Wonderlick, Exh. JW-25T at 36: 3-7.

[183] Wonderlick, Exh. JW-25T at 36: 6-8.

[184] Wonderlick, Exh. JW-25T at 36: 8-9.

[185] Wonderlick, Exh. JW-25T at 36: 10-11.

might be able to resuscitate the project in the future.[186]

79 Under cross-examination during the evidentiary hearing, Wonderlick cited general community opposition to the project but was unable to cite specific environmental or cost concerns that contributed to the cancellation of the project.[187] Wonderlick affirmed the Company's belief that the project may eventually be restarted but stated that "something would have to change before we would resuscitate the project."[188]

80 In its Brief, Staff argues that this project's failure constitutes a business risk, for which the Company is compensated through the return component of its rates.[189] Staff adds that "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."[190]

Decision

81 We adopt Staff's recommendation to remove all costs associated with the stranded asset. We agree with Staff's position that the transfer station project is not used and useful in providing service to customers, nor does there appear to be a reasonable expectation that the project will be resumed, as indicated by Company witness Wonderlick,[191] and the Company's recognition of the project as a loss on its books.[192] Therefore, the associated costs, a portion of which are contained in the Company's legal expense account are properly removed from the Company's revenue requirement.

5. Legal Expenses

82 Staff contests inclusion of amortized legal costs related to the Company's legal defense in a certificate dispute over the Company's authority to serve two industrial paper mills.[193] The Company proposes to amortize its legal expenses related to its certificate defense

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[186] Wonderlick, Exh. JW-25T at 36: 11-15.

[187] TR Vol. III at 143: 17 – 144: 12.

[188] TR Vol. III at 144: 13 – 145: 10.

[189] Staff's Post Hearing Brief at 26: ¶ 59.

[190] Staff's Post Hearing Brief at 26: ¶ 59.

[191] TR Vol. III at 144: 13 – 145: 10. Wonderlick states that "something would have to change before we would resuscitate the project."

[192] Wonderlick, Exh. JW-25T at 36: 8-9.

[193] Sharbono, Exh. BS-1CTr at 34: 18-21.

over three years.[194] Staff argues that a portion of these expenses, specifically those that were incurred prior to the test period, should be disallowed because the Company did not receive prior Commission authorization to defer these costs for later consideration in a rate case.[195]

83 On rebuttal, Wonderlick states that "[w]e strongly oppose this reduction."[196] Wonderlick explains that the legal dispute at issue involved a complaint brought by Olympic at the Commission, on which it prevailed, and later appeals by the respondent at the Thurston County Superior Court, the Washington State Court of Appeals, and the Surface Transportation Board.[197] Wonderlick states that the Company prevailed in all four forums, and that the defense costs were incurred over a period of almost three years.[198] Wonderlick argues that "[c]ertificate legal defense costs do not operate on test year bases"[199] and that Staff's proposed "after-the-fact claw back of legal fees that did not fall within a neat test year is arbitrary and without precedent in our experience."[200] Wonderlick further argues that prior Commission precedent exists, wherein legal expenses were allowed by the Commission.[201]

84 While Olympic was surprised to learn of Staff's position on this matter, Wonderlick explains that it was not "aware of any rule, existing provision or mechanism that would seek recovery of legal fees in a prospective rate [case]."[202] Wonderlick states that the Company would comply with a Commission directive for advanced approval in the future, but states that "this is the first time that has ever been suggested to us despite our discussions with staff about the certificate defense case – for instance, around the time this general rate case was filed."[203]

85 When asked during cross examination why the Commission allowed recovery of defense of certificate legal fees in another docket which also included pre-test period costs,

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[194] Wonderlick, Exh. JW-1T at 7: 13-16.

[195] Sharbono, Exh. BS-1CTr at 35: 19 – 36: 4.

[196] Wonderlick, Exh. JW-25CT at 38: 21.

[197] Wonderlick, Exh. JW-25CT at 38: 21 – 39: 3.

[198] Wonderlick, Exh. JW-25CT at 38: 21 – 39: 5.

[199] Wonderlick, Exh. JW-25CT at 39: 7-8.

[200] Wonderlick, Exh. JW-25CT at 39: 7-10.

[201] Wonderlick, Exh. JW-25CT at 39: 12-16. Wonderlick cites Commission Orders in Docket TG-230187 (Basin Disposal, Inc.), and Docket TG-230189 (Ed's Disposal, Inc.).

[202] Wonderlick, Exh. JW-25CT at 39: 20 – 40: 1.

[203] Wonderlick, Exh. JW-25CT at 40: 1-5.

Sharbono stated that "doing something wrong in one case does not support staff doing something wrong in future cases."[204] Sharbono also stated that Staff was beginning discussions to potentially have these prior Orders reconsidered.[205]

86 In its Brief, Staff states that the expenses at issue are prior period amounts which are not appropriate for inclusion in the Company's revenue requirement.[206] Staff states that "Olympic thus asks the Commission to engage in textbook, impermissible retroactive ratemaking."[207] Staff also argues that the Company controls its rate case filing frequency and could have filed earlier while it was still incurring these legal defense fees, or could have petitioned for an accounting order to defer the costs.[208]

87 In the Company's Brief, the Company notes the fact that Sharbono was the lead Staff witness on the Basin Disposal and Ed's Disposal cases and this case, in which Staff now proposes disparate treatment of a similar adjustment.[209]

Decision

88 We agree with the Company and adopt Olympic's adjustment to allow recovery of certificate legal expenses, but modify the proposed recovery period, and instead grant recovery over five years. We are sensitive to Staff's concerns that granting recovery of these prior period expenses would result in "textbook, impermissible retroactive ratemaking," and do not make this decision lightly.[210] As Staff succinctly states in its

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[204] TR Vol. IV at 342: 3-12.

[205] TR Vol. IV at 343: 1 – 344: 24.

[206] Staff's Post Hearing Brief at ¶ 62-63. Staff references WAC 480-07-520(4)(a)(i), which provides for removal of, among other things, "prior period amounts."

[207] Staff's Post Hearing Brief at ¶ 65.

[208] Staff's Post Hearing Brief at ¶ 68.

[209] Olympic Disposal's Post Hearing Brief at ¶ 38.

[210] Staff's Post Hearing Brief at ¶ 65. Staff cites: *In re Petition of PacifiCorp*, Docket UE-020417, Third Supplemental Order, 7 ¶ 23-24 (Sept. 27, 2002), which states in part: "The retroactive ratemaking concept is a set of principles that are corollaries [sic] to the filed rate doctrine. Put simply, when a regulatory authority approves rates for prospective application that provide for the recovery of costs incurred but not recovered through rates that were effective during the period of cost incurrence, such rates may be susceptible to a challenge that they violate prohibitions against retroactive ratemaking… Although these are well-established principles in the context of economic regulation, they are not so rigid as sometimes viewed. There are equally well-established exceptions. The use of deferred accounting to track costs incurred by a regulated utility during one period, with the possibility for inclusion in rates in a future period, while not ratemaking per se, sets up the possibility of such an exception. When the regulatory authority

Brief, while "the Commission does not set rates to recover past costs. It uses past costs as representative sample of expected rate year expenses, and then sets rates to recover those expected expenses," certain circumstances fall outside the general rule.[211]

89 This Commission has recognized that retroactive ratemaking is impermissible to recover lost earnings caused by costs greater than forecasted, revenues below those projected, or to guarantee shareholders an anticipated rate of return. However, there are documented exceptions where such recovery does not raise those concerns. When a company incurs extraordinary and unforeseeable expenses or windfalls, for example from changes to tax law, which fall outside a company's failure to precisely predict costs or from mismanagement, such occurrences do not raise concerns over retroactive ratemaking.[212] Here, the circumstance of this litigation would not have and could not have been forecasted when its last general rate case became effective in 2011.

90 Further, we have concerns over treating Olympic in a different manner than we have previously treated similar companies in similar circumstances without providing sufficient notice to the regulated community. On that point, we share the Company's concerns over shifting from precedent during an adjudication without a corresponding change in law or circumstances that warrant such a change.

91 In our decision, we also wish to comment on the testimony by Staff in the evidentiary hearing regarding re-examination of prior Commission orders where this principle may have been applied inconsistently.[213] While we acknowledge inconsistent application of this standard in the past by both Staff and regulated companies,[214] we do not wish to encourage Staff to seek to overturn prior Commission decisions on this basis, nor do we think that the change should be applied in this manner.[215] We instead wish to signal on a prospective basis that companies should utilize accounting petitions going forward, as

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allows some, or all of the prior deferred expenses in rates, this is not considered a violation of the prohibition against retroactive ratemaking, but instead is recognized as a shift in the timing of the collection of the expense."

[211] Staff's Post Hearing Brief at ¶ 67.

[212] *WUTC v. Cascade Natural Gas Corporation*, Docket UG-170929, Order 06 ¶¶ 40-45 (July 20, 2018).

[213] TR Vol. IV at 344: 8 – 345: 11.

[214] TR Vol. 1V at 343: 1 – 344: 1. Staff references Order 01 in Dockets TG-230187 and TG-230189, Basin Disposal Inc., and Ed's Disposal Inc in which the companies were purportedly granted recovery of some portion of prior-period certificate defense legal fees, as acknowledged by Staff.

[215] TR Vol. 1V at 344: 8-24.

prescribed in WAC 480-07-370(3), to seek deferral of expected extraordinary costs and preserve the recoverability of such expenses in a later rate case.

6. Other Contested Adjustments

a. Employee and Community Activities

92 Staff contests the majority of the costs contained in the Company's "Employee and Community Activities" account,[216] which includes costs of "employee and community events" hosted by the Company.[217] Wonderlick states that these events are an important part of the Company's culture and contribute to employee productivity and service quality.[218] Also, Wonderlick argues that, along with its other programs, these events help to recruit and retain frontline employees in a market where demand for these positions are very high.[219] Wonderlick states that due to these factors, "there is enough value in this set of expenditures that at least 50% of them should be allowed in the Olympic revenue requirement in addressing workforce stabilization concerns."[220]

93 Sharbono contests "the necessity and prudence" of these costs and argues that most of the expenses contained in this account, which includes entertainment, meals, and other employee appreciation should be borne by shareholders.[221] Sharbono argues that Olympic "can readily provide the services without incurring these costs" and states that these costs are inappropriate for inclusion under RCW 81.04.250(2).[222] Staff proposes removal of all costs contained in this account aside from employee tool procurement expenses.[223]

94 On rebuttal, Wonderlick argues that these expenses, along with occasional employee meals, are "conducive to employee morale and retention," and that in today's competitive

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[216] Sharbono, Exh. BS-1CTr at 27: 20-22.

[217] Wonderlick, JW-1T at 31:13-15.

[218] Wonderlick, JW-1T at 31:15-17.

[219] Wonderlick, JW-1T at 31:17:23.

[220] Wonderlick, JW-1T at 31:22-24.

[221] Sharbono, Exh. BS-1CTr at 28: 1-6.

[222] Sharbono, Exh. BS-1CTr at 28: 6-11. RCW 81.04.250 states in part: "In the exercise of this power, the commission may consider, in addition to other factors, the following: (2) The public need for adequate transportation facilities, equipment, and *service at the lowest level of charges* consistent with the provision, maintenance, and renewal of the facilities, equipment, and service" (emphasis added).

[223] Sharbono, Exh. BS-1CTr at 27: 20-22.

employment market employees "expect more from their employers."[224] Wonderlick argues that a 50 percent split is a fair way to balance the cost of these activities between shareholders and ratepayers who are both benefitted by workforce stability."[225]

95 In its Brief, Staff argues that the Company's proposal to split these costs equally between ratepayers and shareholders is irrelevant, because "Olympic need not incur these costs, and the Commission should not attribute any portion of them to ratepayers."[226] Staff also argues that Olympic failed to document any ratepayer benefit from these programs and instead relied on management's belief that these expenses benefit ratepayers.[227]

96 In the Company's Brief, the Company notes that in Staff's revised revenue requirement provided in its response to the Commission's Bench Request, Staff removes the entirety of the account total, including the employee tool purchases which it had previously allowed, and that Staff offers no explanation for why this was done.[228]

Decision

97 We agree with Staff's proposal to disallow these expenses, while granting the portion attributable to employee tool procurement expenses. In contrast to our findings on the incentive pay programs, meal expenses, and safety event expenses also in dispute, we find it more difficult to identify a customer benefit associated with these costs. We note that the majority of the costs contained in this account are entertainment-related and that the Company offers little support for the inclusion of such charges aside from the notion that these "improve employee morale and retention."[229] We also note that when compared to the incentive pay plans, employee meals, and safety event expenses, the amount at issue is more significant and warrants additional scrutiny and justification, particularly given the nature of the expenses. We do not believe the justification for inclusion of these expenses was sufficient and therefore believe the expenses should be disallowed in this instance.

98 Regarding the portion attributable to employee tool procurement, while there is also little in the record addressing these charges, we agree with Staff and find that these are

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[224] Wonderlick, Exh. JW-25T at 35: 11-14.

[225] Wonderlick, Exh. JW-25T at 35: 15-18.

[226] Staff's Post Hearing Brief at ¶ 51.

[227] Staff's Post Hearing Brief at ¶ 52.

[228] Company's Post Hearing Brief at ¶ 52.

[229] Wonderlick, Exh. JW-25T at 35: 11-14.

reasonably included in rates because of the direct application these tools have to the employees' duties. As referenced in the Company's Brief, which indicated a potential error made by Staff in its most recent revenue requirement model,[230] we modify the adjustment accordingly to include tool procurement expenses in our determination.

b. Meals

99 In the Company's direct testimony, Wonderlick states that Staff had proposed removal of all travel-related expenses incurred by Olympic Disposal, including airfare, vehicle mileage reimbursements, lodging, meals, and offsite meeting expenses.[231] While this is not directly addressed in Staff's response testimony, Staff appears to have rescinded these adjustments between the informal period and the litigated case, and now contests only certain meal expenses.[232]

100 Company witness Gingrich explains the various categories of meal expenses that Staff contests, which includes "travel meals", "training meals," "coaching meals," and "celebration meals." Gingrich states that travel meals are provided in instances where employees travel away from their base of operations, for either a long day or overnight travel.[233] Training meals are meals provided in group training sessions, which Gingrich argues helps to "foster teamwork and camaraderie."[234] Coaching meals occur in instances where supervisors perform in-cab route observations with a driver, which often include a meal break to go over issues identified during the observation.[235] Celebration meals, Gingrich explains, are provided to "encourage recognition and acknowledgement of accomplishments that benefit the company, employees, and our customers as a whole," and includes the Company's all-employee barbeque.[236]

101 Sharbono contests "the necessity and prudence of the company providing meals to employees for work travel at ratepayer expense where the person would have normally been expected to provide their own meals."[237] Staff argues that meals that involve overnight or multiday travel are appropriate for recovery, but that the Company's

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[230] Company's Post Hearing Brief at ¶ 52.

[231] Wonderlick, Exh. JW-1T at 19:5-8.

[232] Sharbono, Exh. BS-1CTr at 28: 13 – 31: 10.

[233] Gingrich, Exh. MG-1T at 15: 10-13.

[234] Gingrich, Exh. MG-1T at 15: 14-18.

[235] Gingrich, Exh. MG-1T at 15: 20-24.

[236] Gingrich, Exh. MG-1T at 16: 1-4.

[237] Sharbono, Exh. BS-1CTr at 29: 9-11.

proposal includes several instances where meals were provided for same-day travel and for meetings and other activities.[238] Sharbono specifically disagrees with recovery of meals that are provided at management's discretion, and reasons that because "[m]anagement can choose to increase, decrease or eliminate the meals," it should not be a ratepayer expense.[239] Sharbono offers similar arguments for Staff's proposed disallowance for training meals, coaching meals, and celebration meals.[240]

102 Wonderlick argues that providing meals during day-long meetings enhances efficiencies by not having to take breaks for meals.[241] Wonderlick also states that modern front-line employees are motivated in ways beyond just compensation, and that providing meals enhances the workplace environment.[242] Wonderlick argues that providing occasional meals has become "a routine part of employee benefits in 2024", and is "considerably less expensive than embedding increased compensation in base wages."[243]

103 In its Brief, Staff argues that when asked, "Olympic could not quantify the benefits of the meal programs," nor did it provide any documentation weighing these benefits against the relevant costs.[244] The Company argues in its Brief that Staff "offers no responsive testimony by anyone with managerial or supervisory experience" and that Sharbono "appeared to refuse to consider any of the positive impacts of effectively managing employees and fostering teamwork within Olympic."[245]

Decision

104 We agree with Olympic and reject Staff's adjustment removing these expenses. This is another instance where Staff asks the Commission to weigh in on what is within the scope of management's discretion. We are not persuaded by Staff's arguments that Olympic must perform a cost/benefit analysis on the value of supplying occasional meals to employees during training events, all-day travel, or for one-on-one coaching sessions. We do not believe such an analysis is necessary in every instance, particularly when quantitative analysis may not be feasible, or where the cost of such an analysis may even

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[238] Sharbono, Exh. BS-1CTr at 29: 12-17.

[239] Sharbono, Exh. BS-1CTr at 29: 19 – 30: 3.

[240] Sharbono, Exh. BS-1CTr at 31: 1 – 32: 10.

[241] Wonderlick, Exh. JW-25T at 34: 21-24.

[242] Wonderlick, Exh. JW-25T at 34: 24 – 35: 3.

[243] Wonderlick, Exh. JW-25T at 35: 3-8.

[244] Staff's Post Hearing Brief at ¶ 55.

[245] Olympic Disposal's Post Hearing Brief at ¶ 7.

exceed the costs at issue. While we do not discount the value of such analysis, we urge Staff to use its reasoned judgement when examining the appropriateness of expenses such as this, and not to automatically disregard any justification that may rely on more qualitative support. Additionally, we agree with the Company that employees are motivated in a variety of ways aside from mere compensation, and that it is important to provide reasonable benefits to attract and retain employees and improve and enhance the workplace environment.

105 Finally, regarding the materiality of the amounts in dispute, which amounts to only a few thousand dollars before allocation to regulated operations,[246] when compared to Olympics' total operating expenses,[247] we find that by any reasonable measure these expenses are immaterial to the larger request. Namely, due to the de minimis nature of these costs being outweighed by benefits that arise from having an engaged, motivated, committed and productive workforce. For these reasons, we find it appropriate to grant recovery of these meal expenses in this instance.

c. Safety Events

106 Staff also proposes removal of safety event expenses, which includes the cost of the Company's "Safety Rodeo."[248] Wonderlick argues that safety is its number one value, and that these events support the company's effort to prioritize safety for its employees, customers, and the community at large, which provides benefit to ratepayers.[249] Specifically, this is an annual "operator showcase event" in which drivers with exceptional safety and operational records compete with other drivers throughout Waste Connections.[250] Wonderlick states that "[w]ith these inherent, imbedded safety standards in mind, drivers are more likely to be alert and safety focused as they do their work along the roads of Clallam and Jefferson Counties benefitting all its citizens."[251]

107 Sharbono again references RCW 81.04.250(2), which provides for "service at the lowest level of charges consistent with the provision, maintenance, and renewal of… service." Sharbono argues that "[i]t may provide benefits to employees motivated by competition

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[246] Sharbono, Exh. BS-1CTr at 29: 5-6.

[247] Wonderlick, Exh. JW-7C, "Master IS" worksheet, cell H363, showing total company adjusted operating expenses.

[248] Sharbono, Exh. BS-1CTr at 32: 14 – 33: 2.

[249] Wonderlick, Exh. JW-1T at 20: 17-22.

[250] Wonderlick, Exh. JW-1T at 31: 5-9.

[251] Wonderlick, Exh. JW-1T at 31: 9-11.

to perform better," but that the Company is required to provide safe and adequate service with or without this event, and it should therefore be a shareholder burden.[252]

108 On rebuttal, Wonderlick argues that the "safety rodeos" are "tools in the Company's arsenal that help us to keep safety front and center and a source of constant positive discourse."[253] Wonderlick argues that the amounts are minimal, particularly after allocation to regulated service.[254] Wonderlick states that if even one or two incidents can be avoided because of these events, the investment is worthwhile, particularly when compared to cost of a potential insurance liability, which Staff also proposes to disallow.[255] Wonderlick also notes that Staff has proposed disallowance of travel and food expenses associated with the event in separate adjustments.[256]

Decision

109 We agree with Olympic and find it appropriate to allow these costs in this instance. This event is distinctly safety-focused, and given the arguments put forth by the Company, we find it reasonable to infer a customer benefit through improved driver safety outcomes. While Staff argues that the costs are not necessary in the provision of service, Staff also seems to acknowledge some benefit, stating that "[i]t may provide benefits to employees motivated by competition to perform better."[257] In our determination, we refer to our findings on the Company's meal expenses and apply the same logic in our decision here. We also note that the amounts in dispute in both instances are similar and are minimal when compared to the overall expenses at issue in this general rate case.

d. Fuel Expenses

110 Wonderlick states that the Company previously had a fixed price fuel agreement, or "fuel lock" which expired on December 31, 2023.[258] Wonderlick states that because of this, the Company's fuel costs are now incurred at market prices.[259] Wonderlick proposes an adjustment based on the difference between its incurred "fuel lock" prices and the open

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[252] Sharbono, Exh. BS-1CTr at 33: 4-11.

[253] Wonderlick, Exh. JW-25T at 34: 1-3.

[254] Wonderlick, Exh. JW-25T at 34: 3-6.

[255] Wonderlick, Exh. JW-25T at 34: 8-12.

[256] Wonderlick, Exh. JW-25T at 34: 3-6.

[257] Sharbono, Exh. BS-1CTr at 33: 4-11.

[258] Wonderlick, Exh. JW-1T at 33: 3-9.

[259] Wonderlick, Exh. JW-1T at 33: 9-11.

market prices from the index utilized in the industry-wide Fuel Surcharge workbook, as provided by Staff.[260] Wonderlick states that this is a provisional adjustment, and that the Company intends to update its proposal to reflect market rates over the immediately preceding twelve months.[261]

111 Citing WAC 480-70-346, Staff proposes an adjustment utilizing the most recent available twelve months of actual costs, also noting that this will need revision as the formal process progresses.[262]

112 On rebuttal, Wonderlick argues that the WAC 480-70-346 provision requiring updated fuel pricing was promulgated prior to fuel locks and contract pricing becoming prevalent, which it has in recent years to combat volatile fuel prices.[263] Wonderlick further reasons that provision was created as written to avoid confusion and to set a standard approach, and that the process should not "interfere with logic and accuracy when both parties know there is more current or relevant information available."[264] Accordingly, Wonderlick argues that when computing the final fuel price adjustment, any remaining months which utilized a fuel-locked price should be replaced with corresponding market prices.[265]

113 In response to Bench Request No.3, Staff explains that it does not support the Company's proposed adjustment methodology, and argues that the WAC 480-70-346 should not be modified, but applied as written, using the most recent twelve months of actual fuel expenses.[266] Staff also notes that the Company may utilize Fuel Surcharges if the amount market prices during the rate year exceed the amount embedded in rates in this proceeding.[267]

114 In its Brief, Staff argues that the Company's requested deviation from the WAC 480-70-346 is not appropriate, and that the Commission should continue to use the standard fuel cost calculation.[268] Staff notes other instances where the Commission has granted an

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[260] Wonderlick, Exh. JW-1T at 33: 17-24.

[261] Wonderlick, Exh. JW-1T at 33: 24 – 34: 4.

[262] Sharbono, Exh. BS-1CTr at 36: 12-19.

[263] Wonderlick, Exh. JW-25T at 37: 15-17.

[264] Wonderlick, Exh. JW-25T at 37: 17-22.

[265] Wonderlick, Exh. JW-25T at 38: 2-7.

[266] Staff's Response to Bench Request No. 3(b-c).

[267] Staff's Response to Bench Request No. 3(b)(2).

[268] Staff's Post Hearing Brief at ¶ 70.

exemption from this rule, which "have been under external circumstances which the company could not affect or avoid."[269] Staff cites a Yakima Valley Waste Systems filing, in which the fuel price-lock contract was updated by the vendor to add specific costs attributable to the CCA, which the Commission granted on the condition that the Company seek competitive bids for its fuel price contracts and submit a compliance filing one year after the rate case's approval.[270] Staff argues that this example stands in contrast to Olympic's situation, in which the Company allowed its fixed-price fuel agreement to expire.[271]

115 In its Brief, the Company continues to request that the Commission utilize imputed market rate fuel costs for months in which the Company's fuel contract were in place, but notes that the calculation would now only involve two months of non-market prices.[272] Responding to Staff's position on the use of the Fuel Surcharge mechanism, the Company notes that Staff fails to mention the one percent floor threshold used in the calculation which prevents recovery of the first one percent increase above embedded fuel costs set in a rate case.[273]

Decision

116 We agree with Staff and find that the Company's fuel expenses should be adjusted based on the "actual fuel costs for the most recent twelve-month period," as prescribed in WAC 480-70-346. We are not persuaded by the Company's arguments to stray from the methodology prescribed in rule. As Staff correctly notes, the Fuel Surcharge mechanism is available for use for all regulated solid waste providers which mitigates the risk of under-collection of fuel expenses.[274] Also, as the Company notes, the fuel adjustment would now include only two months of on-contract fuel prices,[275] minimizing the impact in the shift to market rates. Accordingly, we require that the Company update in its compliance filing the fuel expense adjustment provided in Appendix A to this Order to reflect its actual fuel expenses for the most recent twelve months.

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[269] Staff's Post Hearing Brief at ¶ 71.

[270] Staff's Post Hearing Brief at ¶ 71.

[271] Staff's Post Hearing Brief at ¶ 72.

[272] Company's Post Hearing Brief, Page 29, Footnote 76.

[273] Company's Post Hearing Brief, Page 29, Footnote 76.

[274] Staff's Response to Bench Request No. 3(b)(2).

[275] Company's Post Hearing Brief, Page 29, Footnote 76.

e. Rate Case Costs

117 In its rebuttal testimony, Wonderlick states that the Company included estimated rate case costs in its direct case, but that its estimate has since increased and now anticipates an increase of approximately 25 percent to what was originally estimated.[276] Wonderlick proposes to normalize these costs over three years.

118 At the evidentiary hearing, Sharbono stated support for inclusion of the Company's rate case costs and amortization of the costs over a period of "no longer than… five to ten years, based off of the Company's filing record,"[277] and that the Commission requires a compliance filing to remove the costs from rates.[278]

Decision

119 We find it appropriate to grant recovery of the Company's rate case costs, however we modify the three-year amortization period proposed by the Company and find that the costs should be amortized over a period of five years. We believe this amortization period is most appropriate for a few reasons. Our first consideration is the magnitude of the cost, which will be somewhat mitigated by the longer recovery period, while still allowing for full recovery. Second, the Company's last general rate case became effective over 13 years ago,[279] indicating a relatively infrequent filing interval. Finally, a five-year amortization period would align with the amortization period granted for the Company's insurance deductible adjustment and recovery of its certificate defense legal costs, which would preclude the need to file two general rate cases two years apart for removal of the amortized amounts from rates. As reflected in Appendix A below, we include recovery of the full rate case expense, amortized over five years. We note that this adjustment is based on the estimates provided by the Company as of its rebuttal testimony, and request that the Company modify the adjustment in its compliance filing to reflect the actual costs incurred. We also require the Company to file a general rate case with an effective date of no later than November 1, 2029, to remove these amortized costs from rates.

INSTRUCTION TO THE PARTIES

120 We note a few items which were not addressed by either party in testimony that must be

[276] Wonderlick, Exh. JW-25T at 40: 18 – 41: 5.

[277] TR Vol. IV at 348: 1-3.

[278] TR Vol. IV at 347: 11 – 349: 25.

[279] The Company's last general rate case became effective June 1, 2011.

clarified for the purpose of the compliance filing made in response to this Order.

121 First, we note a discrepancy between the Company and Staff's revenue requirement models relating to a disposal fee adjustment which took effect in January 2024.[280] These variances affect both revenue and expense accounts that are identified as uncontested between the parties. In our findings, we have used the Company's figures as the basis for our adjustments, meaning we have not yet adjusted for this disposal fee increase, which are reflected in the Company's currently effective tariff rates as adopted in Docket TG-231007. We ask that the parties confer and agree on the appropriate method for reconciling this for proper reflection of this disposal fee increase in the rates established in this case.

122 Next, we address the application of the authorized revenue increase to tariff rates. The Company has not provided testimony regarding the allocation of its revenue increase between its garbage and recycling operations in both Clallam and Jefferson Counties. We observe upon review of the initially filed tariff pages and the Companies "price out" worksheets that the Company intends to spread the revenue increase attributable to each County equally between its garbage and recycling customers.[281] Staff on the other hand, in its response to Bench Request No. 3, appears to argue for separate increases for each line of service based on each service's corresponding Lurito-Gallagher model.[282]

123 We note that based on our own results, under Staff's proposed approach, recycling customers would incur a significant increase in rates, by approximately 66 percent in Clallam County, and approximately 120 percent in Jefferson County. We do not believe this is appropriate, particularly given the gaps in the record on this issue. Therefore, we adopt the Company's proposed rate design approach, which would mitigate these significant rate impacts to recycling customers, and result in more modest increases to all customers, between approximately 9 and 14 percent.

124 Olympic proposes several restating and pro forma adjustments to its revenue requirement that are not contested by any party, aside from the discrepancy regarding the disposal fee increase referenced above. These uncontested adjustments have been incorporated into the Commission's revenue requirement determination as represented in Appendix A to

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[280] *See* Wonderlick, Exh. JW-7C and Sharbono, Exh. BS-11Cr. The discrepancy appears to derive from the adjustments proposed by Staff in its "Staff Adjustments 6-26-24" worksheet, which causes variances between revenues and expenses for the relevant accounts which are otherwise indicated as uncontested.

[281] Wonderlick, Exh. JW-7C, "Clallam Reg Price Out" and "Jefferson Reg Price Out" worksheets.

[282] Staff's Response to Bench Request No. 3(a-b).

this Order. Due to the significant number of uncontested adjustments, we have chosen to highlight only the contested adjustments in Appendix A, along with the total expenses for accounts deemed uncontested by the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

125 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

126 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

127 (2) Olympic is a solid waste and public service company subject to Commission jurisdiction.

128 (3) As required by RCW 81.04.130, and WAC 480-07-540, Olympic bears the burden of persuasion to show that the proposed increases are just, reasonable and sufficient.

129 (4) On September 15, 2023, Olympic filed with the Commission revisions to its currently effective Tariff No. 25, reflecting a general rate increase that, if approved, would have generated approximately $1,884,000 (15.9 percent) in additional revenue. The Company subsequently extended its proposed effective date to November 1, 2023, and again to December 1, 2023.

130 (5) On December 21, 2023, the Commission issued Order 01 Suspending Tariff revisions pending a determination into whether the filed rates were fair, just, reasonable and sufficient.

131 (6) As required by RCW 81.04.130, and WAC 480-07-540, Olympic bears the burden of persuasion to show that the proposed increases are just, reasonable and sufficient.

132 (7) On September 9th, and 10th, 2024, the Presiding Administrative Law Judge held an evidentiary hearing to address the contested issues.

133 (8) Based on the evidence presented the record supports granting recovery of the

Company's proposed adjustments for the following contested items: (1) the insurance deductible payment; (2) its incentive pay programs; (3) severance pay; (4) certificate legal expenses; (5) and other contested items including meals, and the safety events. Some of these adjustments were modified by the Commission, as discussed above. The Commission's numerical determinations are reflected in Appendix A.

134 (9) The record also supports inclusion of the Olympic's latest estimate for rate costs associated with this proceeding, however we modify the proposed three-year amortization period for rate case expenses related to this case and the certificate defense legal expense to a five-year amortization period. We require the Company to modify this adjustment in its compliance filing to reflect its actual rate case costs incurred, amortized over five years.

135 (10) Olympic should be authorized and required to make a compliance tariff filing in this docket to recover its revenue requirement in prospective rates consistent with the findings in this Order.

136 (11) This Order fully and fairly resolves the issues in this docket and is in the public interest.

137 (12) The Commission Secretary should be authorized to accept by letter, with copies to all parties in this proceeding, a filing that complies with the requirements of this Order.

138 (13) The Commission should retain jurisdiction to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

139 (1) The proposed tariff revisions filed by Olympic, in this docket on September 15, 2023, as extended to December 1, 2023, and suspended by prior Commission order, are rejected.

140 (2) Olympic is authorized and required to make a compliance filing including such new and revised tariff sheets as are necessary to implement the requirements of this Order.

141 (3) The Commission authorizes and requires Olympic to make a compliance filing in this docket including all tariff sheets as necessary and sufficient to effectuate the terms of this Final Order. The stated effective date in the compliance filing tariff sheets must allow five business days after the date of filing for Staff's review.

142 (4) The Commission requires Olympic to file a general rate case with an effective date of no later than November 1, 2029, to remove amortized insurance deductibles, legal expenses, and rate case costs from rates

143 (5) The Commission Secretary is authorized to accept by letter, with copies to all parties, a filing that complies with the requirements of this Initial Order.

144 (6) The Commission retains jurisdiction over the subject matter and parties to this proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective November 1, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ *Amy Bonfrisco*
AMY BONFRISCO
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and five (5) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Jeff Killip, Executive Director and Secretary

Washington Utilities and Transportation Commission

P.O. Box 47250

Olympia, Washington 98504-7250

APPENDIX A