

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-250574

ORDER 04

GRANTING PETITION FOR  
INTERLOCUTORY REVIEW;  
STRIKING STAFF TESTIMONY

**BACKGROUND**

- 1 On July 29, 2025, Puget Sound Pilots (PSP) filed Tariff No. 3 with the Washington Utilities and Transportation Commission (Commission), revising its currently effective Tariff No. 2. PSP characterizes its filing as a general rate case (GRC). PSP’s proposed revised tariff sheets provide an effective date of August 29, 2025. Also on July 29, 2025, PSP filed testimony, proposed exhibits, and supporting documentation related to its proposed tariff revisions. PSP proposes to increase the organization’s revenue requirement from approximate \$42.0 million to \$67.2 million (a 60.0 percent increase).
- 2 On October 10, 2025, the Commission issued Order 02 Prehearing Conference Order (Order 02). Among other matters, Order 02 set a February 2, 2026, deadline for filing rebuttal and cross-answering testimony, the topic of this Order.
- 3 On February 2, 2026, PSP, Staff, and PMSA filed rebuttal and cross-answering testimony. In cross-answering testimony, Staff proposes a modification to its original recommendation regarding pilot distributed net income (DNI)<sup>1</sup> based on a new expense ratio analysis of other pilotage grounds, which Staff claims was inspired by PMSA’s exhibit calculating a ratio of PSP pilot DNI to Washington State Ferry (WSF) Masters annual pay ratio.<sup>2</sup> Using historical financial data provided by PSP and other public sources, Staff’s analysis considers the relationship between revenue and expenses to

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<sup>1</sup> “Distributed Net Income” is also referred to as “Distributable Net Income.” *See* Sevall, Exh. SS-8T at 4:12, 6:4-5.

<sup>2</sup> Sevall, Exh. SS-8T at 5:17 – 6:2 (discussing Moore, Exh. MM-16).

calculate an average revenue to expense ratio, which Staff then uses to establish a range of reasonableness for DNI.<sup>3</sup> Based on this analysis, Staff provides a revised recommendation for the DNI that the Commission should establish in this proceeding.<sup>4</sup>

- 4 On February 10, PSP filed a Motion to Strike Portions of Staff’s Cross-Answering Testimony (Motion to Strike). PSP requests that the Commission strike portions of Staff’s cross-answering testimony and exhibits related to Staff’s proposed expense ratio analysis that modifies Staff’s recommendation regarding DNI.<sup>5</sup> PSP argues that by proposing this new methodology in cross-answering testimony rather than response testimony, Staff has unfairly deprived PSP of the opportunity to review and respond to Staff’s analysis.<sup>6</sup> PSP asserts that presenting updated or new information for the first time on rebuttal, including alternative proposals, conflicts with Commission procedure, and that parties are expected to make proposals as part of their direct cases.<sup>7</sup>
- 5 PSP maintains that Staff’s new analysis has not been raised in other parties’ testimony or proceedings prior to Staff’s cross-answering testimony, was presented at a time when no other party can respond to Staff’s proposal and argues that the Commission has previously stricken rebuttal testimony that offered a new proposal in cross-answering or rebuttal in *WUTC v. Avista*.<sup>8</sup>
- 6 On February 18, 2026, Staff filed a Response to PSP’s Motion to Strike (Staff’s Response). Staff argues that the Commission should deny the Motion to Strike because Staff’s testimony is within the scope of cross-answering testimony, and PSP is not prejudiced by Staff’s testimony.<sup>9</sup> Staff argues that DNI is akin to a “return on equity” for the pilots, that DNI is a unique component of the pilots revenue requirement, and that there is no single correct return, but rather a range of reasonable returns from which the Commission may determine a reasonable DNI to use for rate setting purposes.<sup>10</sup> Staff also contends that several factual considerations support its argument that its testimony

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<sup>3</sup> Sevall, Exh. SS-8T at 6:12-19, 8:1-5; Exh. SS-11.

<sup>4</sup> Sevall, Exh. SS-8T at 8:6-11.

<sup>5</sup> Motion to Strike at 1-2 ¶ 2.

<sup>6</sup> Motion to Strike at 6 ¶ 13.

<sup>7</sup> Motion to Strike at 6-7 ¶ 14 (*citing WUTC v. Puget Sound Power & Light Co.*, Dockets U-89-2688-T & U-89-2955-T, Third Supplemental Order at 79 (Jan. 1990)).

<sup>8</sup> *See also*, Motion to Strike at 7-8 ¶¶ 15-16 (*citing WUTC v. Avista Corp.*, Dockets UE-160228 & UG-160229 (Consolidated), Order 04 (Octo. 10 2016)).

<sup>9</sup> Staff’s Response at 6 ¶ 15.

<sup>10</sup> Staff’s Response at 6 ¶ 16.

regarding the expense ratio methodology is within the proper scope of cross-answering testimony.<sup>11</sup> Staff further maintains that its cross-answering testimony on this issue is in direct response to PMSA's response testimony regarding and method for calculating DNI.<sup>12</sup>

7 Also on February 18, 2026, PMSA filed a Response in Opposition to Puget Sound Pilot's Motion to Strike Portions of Staff's Cross-Answering Testimony (PMSA's Response). PMSA argues that the portions of Staff's cross-answering testimony that PSP seeks to strike are within the proper scope of cross-answering testimony because it is responding to PMSA's testimony and refining Staff's analysis presented in its response testimony, rather than entirely replacing Staff's prior methodology.<sup>13</sup>

8 Rather than striking Staff's testimony, PMSA suggests that the Commission should consider Staff's cross-answering testimony regarding the expense ratio methodology and accord it the weight that it is due.<sup>14</sup> PMSA further maintains that PSP had an opportunity to evaluate and respond to Staff's cross-answering testimony through discovery, and will have an opportunity at hearing as part of cross-examination, and in post hearing briefing.<sup>15</sup> PMSA also states that it does not oppose giving PSP the opportunity to file surrebuttal testimony on the issue of Staff's expense ratio methodology.<sup>16</sup> Finally, PMSA contends that PSP's reliance on a prior Commission order striking rebuttal testimony in Avista's 2016 general rate case (GRC) is misplaced because the analysis in that case is specific to a utility's rebuttal testimony, rather than a responding party's cross-answering testimony such as Staff's.<sup>17</sup>

9 On February 27, 2026, the presiding officer in this matter issued Order 03, which denied PSP's Motion to Strike the portion of Staff's Cross-Answering testimony, but granted

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<sup>11</sup> Staff's Response at 6-7 ¶ 17 (identifying eight factual considerations in support of argument that Staff's testimony was within scope of cross-answering testimony).

<sup>12</sup> Staff's Response at 6-8 ¶¶ 17-18.

<sup>13</sup> PMSA's Response at 7-8 ¶¶ 20-25. *See also* PMSA's Response at 8 ¶ 27 (arguing that Staff's expense ratio analysis is responsive to both PMSA's DNI benchmarking analysis provided in Moore, Exh. MM-16 and to PMSA's critique of PSP's salary survey).

<sup>14</sup> PMSA's Response at 11-12 ¶¶ 34-35.

<sup>15</sup> PMSA's Response at 12-13 ¶¶ 36-39. *See also* PMSA's Response, Attachment A (containing discovery questions from PSP to Staff regarding Staff's expense ratio methodology).

<sup>16</sup> PMSA's Response at 13 ¶ 40.

<sup>17</sup> PMSA's Response at 13-15 ¶¶ 41-46 (*citing WUTC v. Avista Corp.*, Dockets UE-160228 & UG-160229 (Consolidated), Order 04 (Octo. 10 2016)).

PSP the opportunity to file surrebuttal by March 6, 2026. Specifically, Order 03 states the following regarding whether Staff's testimony should be stricken:

After carefully considering the record, challenged testimony, and exhibits, the Commission finds that Staff's testimony and exhibits are within the proper scope of cross-answering testimony, albeit narrowly. The Commission agrees with Staff and PMSA that Staff's expense ratio analysis represents a refinement of Staff's initial testimony regarding a reasonable range of DNI based on a comparison to other pilotage districts, rather than an entirely new or contradictory proposal. Although PMSA did not testify to an expense ratio analysis, it did present an analysis with respect to the ratio between the salaries of PSP pilots and WSF Masters. Staff's analysis draws on the principles of PMSA's analysis as part of Staff's response to PMSA's proposed method for determining DNI. In this sense, Staff's cross-answering testimony regarding an expense ratio is a response to PMSA's proposal that the Commission continue to use a historical average of DNI to set an DNI and PMSA's proposal that the Commission consider the ratio between PSP pilot and WSF Master salaries as a basis to evaluate a reasonable DNI.<sup>18</sup>

10 On the topic of whether the Commission's prior order in *WUTC v. Avista* requires granting PSP's Motion to Strike, Order 03 states that the order in the Avista matter spoke specifically to rebuttal, not cross-answering testimony, and further found the following:

While the Commission adheres to its prior direction that all parties should refrain from introducing new proposal or information as part of rebuttal or cross-answering testimony, the Commission finds that excluding them would deprive the Commission of a potentially constructive alternative on an issue that may set precedent for pilot rate setting in future cases.<sup>19</sup>

11 On March 9, 2026, PSP filed a Petition for Interlocutory Review (Petition for Review), asking the Commission to review Order 03 and grant PSP's original request to strike a portion of Staff's Cross-Answering testimony. PSP alleges Order 03 erred in denying to strike Staff's testimony regarding DNI because (1) the cross-answering testimony exceeded the authorized scope, (2) Order 03 misinterpreted the principle in *WUTC v.*

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<sup>18</sup> Order 03 at ¶ 23 (internal citations omitted).

<sup>19</sup> Order 03 at ¶ 26

*Avista*, and (3) striking the testimony could save the Commission substantial effort or expense.<sup>20</sup>

### DISCUSSION AND DECISION

- 12 WAC 480-07-810 provides the Commission discretion to review interlocutory orders if (1) an order terminates a party's participation in a proceeding, (2) immediate review is necessary to prevent substantial prejudice, or (3) immediate review could save the Commission and parties substantial effort or expense. Further, in *WUTC v. Avista*, the Commission held that it is disfavored for a utility to introduce an alternative request for relief or proposal at the rebuttal stage, which limits the other parties' opportunity review and examine the proposal.<sup>21</sup> The Commission goes on to note that the Commission anticipates companies to make their proposals in its direct case.<sup>22</sup> This last sentence in paragraph 12 of Order 04 in *WUTC v. Avista* suggests, in part, that the finding in the *Avista* case is most important for companies, as companies carry the burden to show rates are fair, just, and reasonable. However, we agree with PSP that the principle is still applicable to all parties. Proposing entirely new methodologies, counter proposals, or significant evidence relating to material issues in a case remains disfavored as it limits other parties' ability to thoughtfully respond. Accordingly, we find the principle in *WUTC v. Avista* applies here.
- 13 In so finding, we agree with PSP that we should grant PSP's Motion to Strike. While we do not agree with PSP that Staff's proposal could not have been reasonably anticipated, we agree that it is a new proposal. As Staff notes, "Mr. Sevall went down a rabbit hole in responding to witness Moore's testimony."<sup>23</sup> While we understand Staff's reasoning for presenting its new DNI methodology, it does not change the fact that the proposal is new and relates to a material component of the revenue requirement. Accordingly, it should have been presented before cross-answering testimony. With Staff presenting their proposal for the first time in cross-answering testimony, PSP's ability to examine and review the proposal was significantly limited. While Order 03 provided a limited opportunity for PSP to respond in surrebuttal, we are concerned that providing a week for surrebuttal was insufficient when all other stages of this proceeding provided significantly longer periods for all parties to respond to testimony. While we recognize that there are proceedings in which all parties may be severely time constrained to

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<sup>20</sup> Petition for Review at ¶¶ 13-23.

<sup>21</sup> *WUTC v. Avista Corp.*, Dockets UE-160228 & UG-160228 (*consolidated*), Order 04 at ¶ 12.

<sup>22</sup> *Id.*

<sup>23</sup> Staff's Response at ¶ 12.

respond to filings, in such circumstances the stresses of responding quickly are shared among all parties. That did not occur here, and placing one party in a position to quickly respond to a newly presented position raises due process, fairness, and equity concerns.

14 While we find that the testimony should be stricken from the record given these concerns, we do not limit Staff's ability to revisit this methodology in the future and encourage them to do so. We also find that because we grant PSP's Motion to Strike, we should also strike PSP surrebuttal in its entirety. Finally, we note that PSP moves to strike portions of Sevall, Exhibit SS-8T, SS-9 Schedule 9.1, SS-10, SS-11, and SS-13. In reviewing those exhibits, it does not appear that all the testimony, evidence, and calculations relate solely to the expense ratio that PSP takes issue with. For example, SS-13 Schedule 13.1 contains reference to Staff's original range of reasonableness based on survey data, and Schedule 13.4 contains data adjusted for CPI. These are not related to the expense ratio and therefore should not be stricken under PSP's own analysis. Accordingly, we afford the opportunity for Staff to refile any exhibits identified by PSP to be stricken, removing references, data, or calculations directly related to the expense ratio. Because the hearing begins on Monday, March 16, 2026, we ask that Staff do this as expeditiously as possible, but we understand it may not be possible for such a filing to be done the same day as this order is issued.

### **ORDER**

- 15 (1) The Commission grants Puget Sound Pilot's Petition for Interlocutory Review of Order 03.
- 16 (2) The Commission strikes the following, with the condition that Staff may refile any exhibits identified below removing the expense ratio related testimony, data, and calculations:
- From Sevall, Exhibit SS-8T:
    - i. Page 2 lines 2-5, describing Staff's new recommendations;
    - ii. Page 5, line 21, the sentence beginning "This ratio analysis prompted..." through page 10, line 10, which proposes a new methodology for calculating DNI;
    - iii. Page 16, line 6 through page 17, line 3, which revises Staff's proposed revenue requirement based on its new methodology for DNI;


- iv. Page 17 line 12, the words “Based on Staff’s revised revenue requirement of \$45,506,661”;
- v. Page 18, the entirety of Table 5, which alters Staff’s proposals based on its new DNI and revenue requirement;
- Exh. SS-9 Sch. 9.1, Results of Operations;
- The entirety of the associated Exhibits SS-10, SS-11 and SS-13; and
- The entirety of PSP’s Surrebuttal including Exhibits AML-19T, and RLS-16T through RLS-21.

DATED at Lacey, Washington, and effective March 13, 2026.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



BRIAN J. RYBARIK, Chair



ANN E. RENDAHL, Commissioner



MILTON H. DOUMIT, Commissioner