

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

CASCADIA WATER LLC,

Respondent.

DOCKET UW-240151

ORDER 06

FINAL ORDER REJECTING  
SETTLEMENT

**SUMMARY**

**Synopsis:** *The Commission rejects the revised proposed settlement submitted by Cascadia Water, LLC (Cascadia Water or Company) and Commission Staff (Staff) on January 22, 2025, that would have resulted in a revenue requirement increase of \$1.51 million if approved by the Commission. The Company has failed to carry its burden to show that certain capital investments included in the proposed results-only settlement were fully prudent. Additionally, because the settlement is a results-only settlement with an agreed revenue requirement increase, the Commission is unable to make specific disallowances related to its prudence determination. Consequently, the Commission rejects the settlement in its entirety because the Company and Staff have not demonstrated that the settlement will result in fair, just, reasonable, and sufficient rates based on the record developed in this proceeding. The Commission further directs Cascadia Water to inform the Commission how it would like to proceed in this matter following the rejection of the settlement.*

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## I. BACKGROUND

- 1 **PROCEDURAL HISTORY.** On February 29, 2024, Cascadia Water, LLC (Cascadia Water or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its Tariff WN U-2 to be cancelled and superseded by Tariff WN U-3 for water service in Washington. The Company serves approximately 4,000 customers and characterized this filing as a general rate case (GRC) that would generate approximately \$1,788,793 (75 percent) in additional revenue and would have taken effect June 1, 2024. Cascadia Water cited cost recovery for capital improvements with a reasonable return as a basis for its requested rate increase. Cascadia Water's last GRC became effective July 1, 2021, in Docket UW-200979 with phased-in rates.<sup>1</sup>
- 2 Since its last GRC, Cascadia Water has reportedly purchased the assets of Discovery Bay Village Water Inc. (Discovery Bay) on the Olympic Peninsula, Pelican Point Water Company (Pelican Point) near Moses Lake in Grant County, Northwest Water Services, LLC (Northwest Water Services) in portions of Skagit, Snohomish, and Island Counties, Aquarius Utilities, LLC (Aquarius) in Clallam, Kitsap, and Mason Counties, and Pedersen Family, LLC (Pedersen) in Clallam County, more specifically, Sequim, Washington.<sup>2</sup> Initially, Cascadia Water requested a consolidation of Discovery Bay, Aquarius, and Pedersen into its Peninsula System rate structure and to consolidate Northwest Water into its Island/Mainland System rate structure, with a distinct rate for Pelican Point because it is geographically located in Eastern Washington.
- 3 On April 16, 2024, attorney Judith Endejan of Endejan Law, LLC appeared on behalf of Water Consumer Advocates of Olympic Peninsula (WCAOP). On April 19, 2024, WCAOP filed its Motion of Water Consumer Advocates of Olympic Peninsula to Suspend Tariff Effective Date and Continuance of Rate Case Filing Open Meeting, requesting that the Commission either continue the Open Meeting hearing 90 days or suspend the matter and set it for a hearing. WCAOP cited concerns, among other things, about rate shock for customers and a lack of documentation to justify the requested rate increase in the Peninsula System.
- 4 On May 13, 2024, Cascadia Water filed a Tariff Effective Date Extension Letter informing the Commission that the effective date of its proposed Tariff revision would be extended to July 1, 2024, to give Commission Staff (Staff) sufficient time to review the filings and for Cascadia Water and Staff to schedule additional virtual customer outreach

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<sup>1</sup> *WUTC v. Cascadia Water, LLC*, Docket UW-200979, Order 01 (June 28, 2021).

<sup>2</sup> Customer Notice (Feb. 29, 2024).

meetings. Cascadia Water and Staff agreed to a reduction in Cascadia Water's proposed revenue requirement to \$1,272,600, which would be divided between the Peninsula System and Island/Mainland System at \$1,062,372 (51 percent) and Pelican Point at \$222,579 (76 percent).<sup>3</sup>

- 5 On June 11, 2024, the Commission received a letter from State Senator Van De Wege and State Representatives Chapman and Tharinger, all of whom have constituents in Cascadia Water's service territory.<sup>4</sup> The letter voices concerns, as raised by constituents, over the size of the rate increase and whether the Company has met its burden of proof.
- 6 On June 20, 2024, Goss Lakeridge Acres Association (GLAA) submitted comments asserting that Cascadia Water had not shown that the tariff revisions were just and reasonable, and that the requested return on equity (ROE) is unsupported. On the same day, the Commission received written comments from several other individual Cascadia Water customers and a petition protesting the tariff revisions from the Monterra community.
- 7 On June 21, 2024, the Commission received additional comments from WCAOP and other individual Cascadia Water customers requesting the Commission reject Cascadia Water's proposed tariff revisions. On the same day, the Commission also received comments from the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel) asking the Commission to reject Cascadia Water's tariff revisions because the requested ROE lacked affirmative support. In total, the Commission received 260 customer comments, all opposed to the tariff revisions.
- 8 On June 24, 2024, Cascadia Water submitted written responses to comments submitted by GLAA and WCAOP. Cascadia Water's responses address, point by point, dozens of concerns raised by both entities and assert that Cascadia Water has met its burden, and that the requested rates are fair, just, and reasonable.
- 9 On June 26, 2024, Cascadia Water filed a revision to Tariff Sheet No. 24 to replace Tariff Sheet No. 24 that was filed February 29, 2024, to reflect the agreement between Staff and the Company for a reduction in recoverable expenses, a revised capital structure, and a revised cost of debt, with a phased-in rate schedule.

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<sup>3</sup> *WUTC v. Cascadia Water LLC*, Docket UW-240151, Order 01 at 1 ¶ 2 (June 28, 2024).

<sup>4</sup> Senator Van De Wege has since resigned from the Senate and Representative Chapman has since been elected as Senator for the 24th Legislative District.

- 10 On June 27, 2024, this matter came before the Commission at its regularly scheduled Open Meeting docket where Staff recommended that the Commission take no action and allow the tariff pages with the rates filed by Cascadia Water to become effective by operation of law.
- 11 On June 28, 2024, the Commission entered Order 01 Complaint and Order Suspending Tariff Revisions (Order 01) in this docket. In Order 01, the Commission found that the tariff should be suspended for adjudication based upon the concerns raised by Cascadia Water customers, WCAOP, and Public Counsel.<sup>5</sup>
- 12 On August 21, 2024, the Commission convened a virtual prehearing conference before Administrative Law Judge (ALJ) M. Hayley Callahan.<sup>6</sup>
- 13 On September 11, 2024, the Commission issued Order 02, memorializing the prehearing conference proceedings and granting intervention to the Water Consumer Advocates of Washington (WCAW).<sup>7</sup> Staff and the Company both objected to the intervention of WCAW, but after hearing argument, the presiding ALJ granted WCAW's petition to intervene. The Company, Staff, and Public Counsel all participated in the prehearing conference and are statutory parties to this proceeding.<sup>8</sup>
- 14 Order 02 also set forth a procedural schedule for this proceeding and the presiding ALJ granted Staff's request for the assignment of a mediator.<sup>9</sup>
- 15 On October 8, 2024, the Commission issued a Notice of Appointment of Settlement Judge appointing ALJ Amy Bonfrisco to act as a mediator.
- 16 Pursuant to the procedural schedule, Cascadia Water filed its proposed rates with supporting testimony, exhibits, and schedules on September 26, 2024. That filing incorporated many of the operating expense adjustments agreed to with Staff cited in paragraph nine above.

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<sup>5</sup> *WUTC v. Cascadia Water, LLC*, Docket UW-240151, Order 01 (June 28, 2024).

<sup>6</sup> On December 5, 2024, the Commission substituted ALJ Harry Fukano as the presiding officer in this proceeding. On February 3, 2025, the Commission assigned ALJ Jessica Kruszewski as co-presiding officer in this proceeding.

<sup>7</sup> Water Consumer Advocates of Olympic Peninsula indicated at the August 21, 2024, Prehearing Conference that it had change its name to Water Consumer Advocates of Washington.

<sup>8</sup> *WUTC v. Cascadia Water, LLC*, Docket UW-240151, Order 02 (Sept. 11, 2024) (Order 02).

<sup>9</sup> Order 02 at 4 ¶ 18 (Sept. 11, 2024).

- 17 ALJ Bonfrisco set November 12, 2024, as the date for mediation, and the parties submitted mediation briefs prior to the mediation. Settlement was not reached, but the parties continued to exchange counter offers after the mediation.
- 18 Staff, Public Counsel, and WCAW filed response testimony on November 20, 2024.
- 19 On December 13, 2024, Staff informed ALJ Bonfrisco and Cascadia Water that the noncompany parties were rejecting Cascadia Water's then-outstanding counteroffer and requested that the Commissioners sit for the hearing that was scheduled for February 4, 2025. ALJ Connor Thompson notified the parties that a new hearing date would need to be set to accommodate Commissioner participation in the hearing and polled the parties about their availability on alternate dates. All parties responded that they were available for a hearing on February 11, 2025.
- 20 Staff and Cascadia Water (Settling Parties) ultimately reached a settlement in principle, and on December 20, 2024, counsel for Cascadia Water informed the presiding officer and all parties that the Settling Parties had reached a settlement in principle and proposed a procedural schedule to address the settlement. On January 7, 2025, the Commission suspended the procedural schedule pending its review of the Settlement Stipulation to be filed on January 10, 2025, and supporting testimony to be filed on January 13, 2025.<sup>10</sup> The Commission preserved the January 13 and 14, 2025, public hearing dates and set a date for: (a) responsive testimony on the Settlement Stipulation of January 22, 2025; (b) rebuttal testimony of January 28, 2025; (c) a date for an evidentiary hearing of February 11, 2025; and (d) dates for post-hearing briefing of February 25, 2025, and March 11, 2025.<sup>11</sup>
- 21 On February 11, 2025, the Commission held an evidentiary hearing in this matter before the Commissioners, with ALJs Harry Fukano and Jessica Kruszewski presiding.
- 22 The parties submitted post-hearing briefs on February 28, 2025, and reply briefs on March 11, 2025.
- 23 **PARTY REPRESENTATIVES.** Pamela J. Anderson and Byron C. Starkey of Perkins Coie LLP represent the Company. Lisa W. Gafken, Assistant Attorney General,

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<sup>10</sup> The Settling Parties subsequently filed a revised settlement agreement on January 22, 2025.

<sup>11</sup> The Commission subsequently modified the initial briefing deadline to February 28, 2025.

represents Commission Staff.<sup>12</sup> Tad Robinson O'Neill, Assistant Attorney General, represents Public Counsel. Kent E. Hanson and Stephen N. Todd represent WCAW.<sup>13</sup>

- 24 **SETTLEMENT AGREEMENT.** On December 20, 2024, the Settling Parties notified the Commission that they had reached a settlement in principle in this matter and on January 10, 2025, filed their settlement agreement for Commission review. The parties subsequently filed a revision to their settlement agreement on January 22, 2025.
- 25 The Settling Parties have proposed a results-only settlement, sometimes referred to as a “black box” settlement, that contains no specified capital structure, cost of debt, cost of equity, or weighted cost of capital, with Staff and the Company agreeing that the overall result of the settlement was fair, just, reasonable, and sufficient and in the public interest.<sup>14</sup> The Settling Parties agreed to a revenue increase of \$1.51 million split between the Island/Mainland water system and the Pelican Point water system in the same proportion as filed by Cascadia Water in September 2024.<sup>15</sup>
- 26 The Settling Parties also agreed to several conditions as part of their proposed settlement. The Settling Parties agreed to a phased-in rate schedule with three phases, where a rate mitigation mechanism would be implemented with half of the revenue requirement starting on the effective date and deferred costs recovered through a surcharge in years two and three.<sup>16</sup> The Settling Parties also proposed eliminating the surcharge on the Aquarius system approved in Docket UW-081416.<sup>17</sup> The Settling Parties further agreed that the Company will publish its projected major capital improvements that exceed \$150,000 and are expected to be in service at the time of Cascadia Water’s next GRC.<sup>18</sup> Cascadia Water will assign priority level based on necessity to each of these future major projects and will summarize the project in a Master Plan, which will be filed after

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<sup>12</sup> 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 judge, 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.

<sup>13</sup> The Commission was saddened to learn of the passing of WCAW Counsel Steven Todd. Our deepest condolences go out to his family, friends, and colleagues.

<sup>14</sup> Revised Full Multiparty Settlement Stipulation at 5 ¶ 13 (noting that the Settling Parties agreed that all of the plant investments proposed by Cascadia Water were prudent and that the revenue requirement increase includes unspecified carrying costs); Sevall, Exh. SS-4Tr at 5:20-22.

<sup>15</sup> Revised Full Multiparty Settlement Stipulation at 4 ¶ 11.

<sup>16</sup> Revised Full Multiparty Settlement Stipulation at 4-5 ¶ 12.

<sup>17</sup> Revised Full Multiparty Settlement Stipulation at 5 ¶ 16.

<sup>18</sup> Revised Full Multiparty Settlement Stipulation at 5-6 ¶ 17

approval from the Department of Health (DOH) within 15 business days.<sup>19</sup> Finally, the Settling Parties agreed to consolidate Cascadia Water’s Western water systems into a single tariff with the exception of Pelican Point.<sup>20</sup>

27 **PRELIMINARY MATTERS.** On March 19, 2025, WCAW filed its Motion for Official Notice (Motion) requesting that the Commission take official notice of the membership of the governing board of Cascadia Water. Specifically, WCAW argues that the Commission should take notice of annual reports listing each member of Cascadia Water’s board of governors filed with the Secretary of State and information from NW Natural’s official website listing the senior executives of NW Natural Holdings and NW Natural, the parent companies of Cascadia Water. WCAW relies on Washington Administrative Code (WAC) 480-07-495(2)(a)(iv),<sup>21</sup> which states the Commission may take official notice of: “Records contained in government websites or publications or in nationally recognized reporting service publications that are in general circulation and readily accessible to all parties.”<sup>22</sup> WCAW further cites ER 201(f), which states that judicial notice can be taken at any time of the proceeding.<sup>23</sup>

28 On March 20, 2025, Cascadia Water filed its Response to Motion for Official Notice requesting that the Commission deny WCAW’s Motion because the evidentiary record is closed, WCAW cannot show that the evidence is essential to the Commission’s decision, and that the information was reasonably discoverable with due diligence at the time of hearing. The Company further cites to a prior Commission order in which the Commission interpreted WAC 480-07-830(1) to mean that “the record closes on the last day of the evidentiary hearing unless the Commission orders otherwise.”<sup>24</sup>

29 On March 25, 2025, Staff filed its Response to Water Consumer Advocates of Washington’s Motion for Official Notice, asking the Commission to deny WCAW’s Motion because the evidentiary record is closed, and there is no substantial basis to supplement the record.<sup>25</sup> Staff further argues that the Commission has previously denied a request for official notice when the record was well developed on an issue, approving

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<sup>19</sup> Revised Full Multiparty Settlement Stipulation at 6 ¶ 18.

<sup>20</sup> Revised Full Multiparty Settlement Stipulation at 6 ¶ 19.

<sup>21</sup> (Cited as WAC 480-07-494).

<sup>22</sup> Water Consumer Advocates of Washington’s (WCAW) Motion for Official Notice (Motion) at 1-2 ¶¶ 3-4.

<sup>23</sup> Motion at 3 ¶ 6 (citing ER 201(f)).

<sup>24</sup> *WUTC v. Puget Sound Energy*, Dockets UE-220066 & UG-220067 (*consolidated*) and Docket UG-210918, Order 23/09 at 4 ¶ 17 fn. 2 (Nov. 22, 2022).

<sup>25</sup> Staff’s Response to Water Consumer Advocates of Washington’s Motion for Official Notice (Response) at 2 ¶ 2.



the Motion would be contrary to due process, the Motion is unnecessary, and WCAW has not presented a compelling reason to allow for the record to be reopened.<sup>26</sup>

### **Commission Determination**

- 30 WAC 480-07-830(1) specifically states “The evidentiary record in an adjudication closes at the conclusion of the last day of hearing unless the commission rules otherwise[.]”<sup>27</sup> The Commission has followed the plain language of WAC 480-07-830(1) in other proceedings and has declined to accept evidence into the record except as allowed by administrative rule.<sup>28</sup> We decline to interpret ER 201(f) to permit the submission of evidence after the evidentiary record has been closed.
- 31 Although WCAW has not filed a motion to reopen the record as required by administrative rule, we agree with the Company that the evidence provided by WCAW in its Motion is not essential to the Commission’s decision in this matter and that WCAW had ample time to discover and submit this information while the evidentiary record was still open. WCAW has not articulated a reason for why it was unable to access the information during its preparation of evidence in this matter. Consequently, even if we were to construe WCAW’s Motion as a motion to reopen the record, WCAW has not provided a compelling argument to persuade the Commission to reopen the record. As such, the Commission denies WCAW’s Motion.

## **II. DISCUSSION AND DECISION**

### **A. Standard of Review**

- 32 In considering settlement agreements, the Commission “may approve the settlement, with or without conditions, or may reject it.”<sup>29</sup> The Commission must determine whether the settlement complies with applicable legal requirements and whether approval of the settlement is consistent with the public interest.<sup>30</sup> The Commission may approve a settlement “if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.”<sup>31</sup> If the

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<sup>26</sup> Staff’s Response at 2-3 ¶ 5.

<sup>27</sup> WAC 480-07-830(1).

<sup>28</sup> *WUTC v. Puget Sound Energy*, Dockets UE-220066, UG-220067 (*consolidated*) & Docket UG-210918, Order 23/09 at 4 ¶ 17 (Nov. 22, 2022).

<sup>29</sup> WAC 480-07-750(2).

<sup>30</sup> WAC 480-07-740.

<sup>31</sup> WAC 480-07-750(2).

Commission rejects a settlement, then the adjudication returns to its status at the time the Commission suspended the procedural schedule to consider the settlement.<sup>32</sup>

- 33 The Legislature has entrusted the Commission with broad discretion to determine rates for regulated industries. Pursuant to RCW 80.28.020, whenever the Commission finds, after a hearing, that the rates charged by a utility are:

unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order.<sup>33</sup>

- 34 The Commission has previously interpreted the fair, just, reasonable, and sufficient standard to mean that “rates that are *fair* to customers and to the Company’s owners; *just* in the sense of being based solely on the record developed in a rate proceeding; *reasonable* in light of the range of possible outcomes supported by the evidence; and *sufficient* to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.”<sup>34</sup>

- 35 As a general matter, the burden of proving that a proposed increase is just and reasonable is upon the public service company.<sup>35</sup> The burden of proving that the presently effective rates are unreasonable rests upon any party challenging those rates.<sup>36</sup>

- 36 During general rate case proceedings, the Commission determines the prudence of utility actions by reviewing whether the utility made reasonable business decisions in light of the facts and circumstances known or that reasonably should have been known to the utility at the time decisions were made.<sup>37</sup> What is reasonable requires assessment of choices made, in light of circumstances and possible alternatives, based on industry

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<sup>32</sup> WAC 480-07-750(2)(c).

<sup>33</sup> See also RCW 80.01.040(3) (providing that the Commission shall “[r]egulate in the public interest”); RCW 80.28.010(1) (“All charges made, demanded or received by any gas company, electrical company, wastewater company, or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient.”).

<sup>34</sup> *WUTC v. Avista Corp.*, Dockets UE-160228 and UG-160229, Order 06 at 47 ¶ 79 (Dec. 15, 2016) (emphasis in original).

<sup>35</sup> RCW 80.04.130(1).

<sup>36</sup> *WUTC v. Pacific Power and Light Company*, Cause No. U-76-18 (Dec. 29, 1976) (internal citations omitted).

<sup>37</sup> *WUTC v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 12 at ¶ 19 (Apr. 7, 2004).

norms and practices.<sup>38</sup> Prudence does not require a single, ideal decision, but requires the utility to make a reasonable decision among a number of alternatives that the Commission might find prudent.<sup>39</sup> The prudence review “requires evaluation of the Company’s decisions not just from the perspective of management for the benefit of shareholders, but also for the benefit of customers.”<sup>40</sup> The fundamental question for decision is whether management acted reasonably in the public interest, not merely in the interest of the company.<sup>41</sup>

- 37 The prudence standard applies to both the question of need and the appropriateness of the expenditure.<sup>42</sup> The Commission considers three broad questions when evaluating prudence: (1) Was the initiation of the project prudent; (2) Was the continued implementation of the project prudent; and (3) Were the expenses prudently incurred?<sup>43</sup> The second and third factors are examined using the same prudence test as the first factor, but applied at a different point in time and necessarily premised on a reevaluation of the project.<sup>44</sup> Consequently, the Commission’s prudency review is not limited to a single point in time and encompasses the implementation and construction phases of a project to ensure that a regulated utility continues to reasonably control and evaluate a project.
- 38 As noted above, when evaluating prudence, the Commission reviews utility decision making at the time decisions were made. Stated differently, the Commission will not use the benefit of hindsight when evaluating prudence.<sup>45</sup> Consequently, regulated utilities are required to maintain contemporaneous records of their decision making process and analysis to satisfy the Commission’s prudency standard.<sup>46</sup> A utility’s “robust discussions”

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<sup>38</sup> *See, id.*

<sup>39</sup> *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705 (*consolidated*), Order 11 at 119 ¶ 337 (Apr. 2, 2010).

<sup>40</sup> *WUTC v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 14 at 34-35 ¶ 65 (May 13, 2004).

<sup>41</sup> *WUTC v. Puget Sound Energy, Inc.*, Docket UE-031725, Order 14 at 34-35 ¶ 65 (May 13, 2004) (quoting Goodman, *The Process of Ratemaking*, at 857).

<sup>42</sup> *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 33 ¶ 94 (Sept. 1, 2016).

<sup>43</sup> *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 34 ¶ 95 (Sept. 1, 2016).

<sup>44</sup> *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 34 ¶ 95 (Sept. 1, 2016).

<sup>45</sup> *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 34 ¶ 94 (Sept. 1, 2016).

<sup>46</sup> *WUTC v. Puget Sound Power & Light Company*, Dockets UE-920433, UE-920499, & 921262, 19th Supp. Order, at 15-16 (Sept. 27, 1994) (“The company’s lack of contemporaneous evaluation and documentation is, at best, poor management practice.”); *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 36 ¶ 102 (Sept. 1, 2016) (“However, this memo was prepared after the final decision to proceed was made, and therefore cannot be shown to have played a part in the Company’s decision-making.”).

about a project, with a “consensus” on decisions, is not sufficient to demonstrate prudence.<sup>47</sup> Rather, “the parties and Commission should be able to follow the company’s decision-making process, knowing what elements the company used, and the manner in which the company valued those elements. Such a process should certainly be documented.”<sup>48</sup> “Documentation and evidence of prudence decision making must be kept contemporaneously with a company’s decision making or the Commission’s ability to evaluate prudence is thwarted.”<sup>49</sup>

### **B. Results-Only Settlement**

- 39 As an initial matter, WCAW argues that the Commission cannot approve a results-only settlement when the settlement does not specify a rate of return because the Settling Parties are required to show that the settlement rate of return is reasonable. WCAW contends that most results-only settlements propose a rate of return but do not specify the cost of individual capital elements, and the proposed settlement in this matter contains neither.<sup>50</sup> WCAW further asserts that Cascadia Water has an incentive to minimize the debt-to-equity ratio and overstate the risk to the Company to maximize value to its shareholders. WCAW provides a rate of return analysis based on testimony filed by the parties prior to the submission of the proposed settlement.
- 40 In response to WCAW’s argument, Staff maintains that the Commission allows results-only settlement agreements, which allow the parties to agree that the overall rate increase is fair, just, reasonable, and sufficient without agreeing to the specific adjustments.<sup>51</sup> Staff disagrees with WCAW’s assertion that the record does not contain sufficient reliable evidence, noting the five rounds of testimony and exhibits in this matter and characterizing the case as well developed and sufficient for the Commission to determine whether the proposed settlement meets legal standards.<sup>52</sup> Staff further argues that a settlement does not require a rate of return to be in the public interest and asserts that the Commission has recognized settlement agreements with varying degrees of detail,

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<sup>47</sup> *WUTC v. Puget Sound Power & Light Company*, Dockets UE-920433, UE-920499, & 921262, 19th Supp. Order at 16 (Sept. 27, 1994).

<sup>48</sup> *WUTC v. Puget Sound Power & Light Company*, Dockets UE-920433, UE-920499, & 921262, 19th Supp. Order at 16 (Sept. 27, 1994).

<sup>49</sup> *In re Investigation Regarding Prudency of Outage and Replacement Power Costs*, Docket UE-190882, Order 5 at 12 ¶ 43 (Mar. 20, 2020).

<sup>50</sup> Post-Hearing Brief of WCAW at 6 ¶ 13.

<sup>51</sup> Reply Brief of Staff at 4 ¶ 10.

<sup>52</sup> Reply Brief of Staff at 4-5 ¶ 11.

including settlements lacking detail regarding cost of capital, as being fair, just, reasonable, and sufficient.<sup>53</sup>

### Commission Decision

41 The Commission is charged by statute to set rates for regulated utilities that are fair, just, reasonable, and sufficient.<sup>54</sup> “In *Fed. Power Comm’n v. Hope Natural Gas*, the Supreme Court emphasized that “[u]nder the statutory standard of ‘just and reasonable,’ *it is the result reached, not the method employed*, which is controlling.”<sup>55</sup> Moreover, “[t]he economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result.”<sup>56</sup> As noted by WCAW, the “Commission has previously held that a ‘results only’ settlement would be troubling only if unsupported by sufficient evidence that the agreed revenue requirement is fair, just, reasonable, and sufficient.”<sup>57</sup>

42 The Commission has previously explained:

[S]ettlements are the product of negotiation and therefore are often opaque as to some of the methods, details and calculations that produce a result on which the parties can agree. A settlement can take many forms. In some cases the Commission has determined that an agreed adjustment to revenue requirement is acceptable even if it does not identify a specific rate of return. In other cases, the Commission has approved settlements that include a rate of return but no detail concerning capital structure or the cost for the equity and debt components of capitalization. In still other examples, approved settlements have been explicit about all of the components of the cost of capital. In all of these examples, it was the end result of the proposed settlement’s terms and revenue requirement that mattered, not the specific detail about how the result was achieved.<sup>58</sup>

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<sup>53</sup> Reply Brief of Staff at 5-6 ¶ 14 (citing *WUTC v. Cascade Natural Gas Corp.*, Docket UG-060256, Order 05 at 20-21 ¶ 62 (Jan. 12, 2007)).

<sup>54</sup> RCW 80.28.010(1); 80.28.020.

<sup>55</sup> *WUTC v. PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06 at 55-56 ¶ 201 (March 19, 2024) (citing *Fed. Power Comm’n v. Hope Nat. Gas*, 320 U.S. 591, 602 (1944) (emphasis added)).

<sup>56</sup> *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314, 109 S. Ct. 609, 102 L. Ed. 2d 646 (1989).

<sup>57</sup> Post-Hearing Brief of WCAW at 6 ¶ 13 (citing *WUTC v. PacifiCorp*, Dockets UE-230172 & UE-210852, Order 08/06 at 55 ¶ 199 (Mar. 19, 2024)).

<sup>58</sup> *WUTC v. Cascade Natural Gas Corp.*, Docket UG-060256, Order 05 at 20-21 ¶ 62 (Jan. 12, 2007) (internal citations omitted).

43 WCAW cites to no legal authority that establishes the Commission is prohibited from considering a results-only settlement that does not include a specified rate of return.<sup>59</sup> Although WCAW refers to two Washington State Court of Appeals cases for the premise that “[a] utility must prove that its rate of return is reasonable,”<sup>60</sup> this mischaracterizes the standard from both cases, which instead states that a utility bears the burden of proof *for increasing its rates*.<sup>61</sup> Properly understood, this standard is entirely consistent with the Commission’s approach to reviewing results-only settlements in light of the entire record in a proceeding to determine whether such a settlement produces fair, just, reasonable, and sufficient rates and is otherwise in the public interest. To the extent that WCAW argues that the record developed in this case is insufficient to evaluate the proposed settlement, this argument goes to the weight of the evidence, not the Commission’s authority to evaluate a results-only settlement. Furthermore, the Commission declines to consider WCAW’s arguments regarding the rate of return, as the proposed settlement expressly contains no rate of return. As such, any analysis of the rate of return in the proposed settlement by WCAW is predicated on speculative assumptions and is unsupported by the record.<sup>62</sup> Consequently, the Commission rejects WCAW’s argument that a results-only settlement must contain a specified rate of return and WCAW’s additional argument with respect to the rate of return.

### C. Prudence

44 The Company maintains that the record demonstrates that its capital investments were prudent. Cascadia Water provides additional argument regarding five of its capital projects that are specifically contested by Public Counsel and WCAW: 1) CAL Waterworks – Reservoir Replacement, Pumphouse Replacement, and Booster Pump Improvements; 2) Estates System – Reservoir Replacement, Booster Pump Replacement,

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<sup>59</sup> Even assuming that WCAW is correct that most results-only settlements specify a rate of return, this does not suggest that the Commission otherwise lacks the authority to review and approve a proposed settlement that does not specify a rate of return.

<sup>60</sup> Reply Brief of WCAW at 7-8 ¶ 19 fn. 24.

<sup>61</sup> *Ofc. of the Atty. Gen., v. WUTC*, 4 Wn. App. 2d 657, 682 (2018) (“The utility has the burden of proof for increasing its rates.”); *PacifiCorp v. WUTC*, 194 Wn. App. 571, 587 (2016) (“The burden of proof for increased rates is on the utility.”). Indeed, WCAW acknowledged as much in its opening brief, citing to the same cases. Post-Hearing Brief of WCAW at 8 ¶ 18 (“Therefore, [the Commission] must insist on clear evidence in support of any request by a utility *to increase its rates*.”) (emphasis added).

<sup>62</sup> See also *WUTC v. Avista Corp.*, Dockets UE-220053 & UG-220054, Order 11/05 at 4 ¶ 10 (Jan. 30, 2023) (“An effective opposition to a Settlement with a results-only revenue requirement must focus, as the Commission must, on the Settlement and on the results-focused revenue requirement in order to be persuasive.”).

and Treatment Filter; 3) W&B Waterworks – Reservoir, Pumphouse, Treatment System, and Watermain Replacement; 4) Standby Generators; and 5) Supervisory Control and Data Acquisition (SCADA) System.<sup>63</sup>

45 Regarding the CAL Waterworks project, the Company testified that the prior reservoir was leaking, had surpassed its anticipated useful life, and was not properly sized to meet DOH recommended service levels based on the number of connections.<sup>64</sup> Cascadia Water states that it considered alternative configurations and the possibility of adding a second supplemental reservoir but determined that the land parcel owned by the Company was inadequate for these options.<sup>65</sup> The Company also asserts that while a 15 ft. reservoir would have provided minimum standby storage, it chose to install a 20 ft. reservoir because it would increase capacity by over 25 percent, thereby providing additional resiliency and redundancy, while increasing costs by 8.1 percent.<sup>66</sup> Cascadia Water further argues that replacing the CAL Waterworks pumphouse was necessary because the prior pumphouse was in poor condition and lacked sufficient space to both properly support the necessary system components and safely perform system operations and repairs.<sup>67</sup> Finally, the Company contends that the booster pumps had been in poor and inadequate condition for several years.<sup>68</sup>

46 Turning to the Estates project, Cascadia Water maintains that the reservoir replacement was necessary due to structural deficiencies and health concerns related to leaking.<sup>69</sup> The Company states that the reservoir had begun developing cracks as early as 2007, and that a 2022 DOH sanitary survey found evidence of leaking from one of the reservoir tanks.<sup>70</sup> Following a video inspection, the Company also observed root intrusion into one of the reservoir tanks.<sup>71</sup> Cascadia Water explains that because it replaced the prior underground

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<sup>63</sup> These five projects are respectively referred to as Projects 3, 7, 8, 12, and 13 in testimony and other materials. See e.g., Lehman, Exh. CJL-1T at 9:9 – 10:2.

<sup>64</sup> Lehman, Exh. CJL-1T at 14:11-13.

<sup>65</sup> Lehman, Exh. CJL-1T at 14:21 – 15:2; Rowell & Lehman, Exh. MJR-CJL-8JT at 15:12 – 16:2.

<sup>66</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 15:17 – 16:2.

<sup>67</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 16:5-9.

<sup>68</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 16:10-11.

<sup>69</sup> Lehman, Exh. CJL-1T at 20:10-13. See also Rowell & Lehman, Exh. MJR-CJL-4 at 12-260 (containing engineering reports regarding the Estates project).

<sup>70</sup> Lehman, Exh. CJL-1T at 21:1-11; Lehman, Exh. CJL-2 at 1-2 (“Tank 2, the larger tank, has several locations on the north side and one on the east side that are leaking. ODW is aware Cascadia Water plans to replace both buried reservoirs with an above ground storage tank. If a new tank is not proposed, hire a qualified structural inspector to evaluate the reservoir.”); Lehman, Exh. CJL-3; Lehman, Exh. CJL-4. See also Rowell & Lehman, Exh. MJR-CJL-12.

<sup>71</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 29:14-16; Exh. MJR-CJL-14.

reservoir with an above-ground reservoir, it needed to replace the old booster pumps, which were not compatible with an above-ground reservoir.<sup>72</sup> The Company also states that it decided to install a new treatment filter system to optimize other improvements to controls, valving, and piping, avoid future additional modifications, and eliminate legacy manganese buildup deposited in existing mainlines.<sup>73</sup> Cascadia Water further testifies that it considered some alternatives to replacing the reservoir, such as an interior coating, but determined that such an approach was too risky and would have required a disruption in water service for an unreasonable amount of time, and states that underground reservoirs no longer meet current design standards.<sup>74</sup>

47 Cascadia Water argues that the W&B Waterworks project was also prudent, stating that the reservoir and treatment components of the project were required by DOH to comply with the current and committed number of connections, the reservoir was beyond its anticipated useful life, and the reservoir was leaking.<sup>75</sup> The Company testifies that the project also resulted in improved operation control, adequate storage capacity, improved water quality, and better water pressure, as well as the ability to provide service for all service requests in the W&B Waterworks service area.<sup>76</sup> The Company explained that it did not consider alternatives to this project because the prior reservoir capacity had been an ongoing, significant concern for the Company and customers had complained in the past about problems with water pressure and water quality.<sup>77</sup>

48 The Company contends that its decision to install standby generators at each of its water systems that relies on electrical power was also prudent. Cascadia Water states that standby generators maintain pressure within the water systems in the event of a power loss, thereby preventing contamination of the distribution system.<sup>78</sup> The Company further maintains that most of the Company's 30 water systems are located in areas that experience frequent power loss, and that it did not consider alternatives to this project because it is an industry standard to have standby generators at each water system to prevent public health risks.<sup>79</sup> Cascadia Water also states that some of its systems have fire flow capabilities that cannot be met by a partially pressurized system, and that

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<sup>72</sup> Lehman, Exh. CJL-1T at 20:2-4.

<sup>73</sup> Lehman, Exh. CJL-1T at 20:15-21.

<sup>74</sup> Lehman, Exh. CJL-1T at 21:1-6; Rowell & Lehman, Exh. MJR-CJL-8JT at 20:3-16.

<sup>75</sup> Lehman, Exh. CJL-1T at 22:19-23; Lehman, Exh. CJL-7.

<sup>76</sup> Lehman, Exh. CJL-1T at 23:2-9; Lehman, Exh. CJL-8; Rowell & Lehman, Exh. MJR-CJL-6 at 86-240.

<sup>77</sup> Lehman, Exh. CJL-1T at 23:11-15.

<sup>78</sup> Lehman, Exh. CJL-1T at 28:9-11.

<sup>79</sup> Lehman, Exh. CJL-1T at 28:19 – 29:2.



standby generators are necessary to ensure adequate fire flow in the event of a loss of system power.<sup>80</sup>

- 49 Finally, Cascadia Water argues that installing the SCADA system was prudent because the system allows the Company to monitor conditions on its water systems without having to rely on onsite resources that require visual inspection.<sup>81</sup> The Company testifies that the SCADA system also alerts the system operator when it detects low pressure and/or low storage level, allowing the operator to be more proactive in addressing potential problems, and that it did not consider alternatives to this project because such systems are industry standard.<sup>82</sup>
- 50 Staff maintains that all of Cascadia Water's capital projects included in this case are prudent. To evaluate prudence, Staff conducted a multiday site visit to inspect several of the Company's water systems, during which Staff asked the Company additional questions about its capital improvements and the need for such improvements.<sup>83</sup> Staff also reviewed Cascadia Water's invoices and books, confirmed in-service dates, and reviewed documentation regarding the necessity of projects and alternatives considered by the Company.<sup>84</sup> Staff additionally communicated with DOH and reviewed DOH documents related to Cascadia Water's systems, and clarified that, to Staff's knowledge, DOH does not comment on Cascadia Water's designs or materials used unless a health risk exists.<sup>85</sup> Staff further noted in briefing that it "also inquired about contemporaneous documentation. While Cascadia Water did not always have such documentation, it was able to explain its decision making and reasons why each project was done. Even though Staff would have preferred more complete contemporaneous documentation, Staff was able to ascertain how and why decisions were made."<sup>86</sup>
- 51 Turning to the five specific capital projects discussed above, Staff maintains that the CAL Waterworks project was prudent, reasoning that the prior reservoir was leaking, could not accommodate peak water demand from customers, and was necessary to correct deficiencies found by the DOH.<sup>87</sup> Staff also argues that the booster pump associated with

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<sup>80</sup> Rowell & Lehman, Exh. MJR-CJL-8T at 8-12.

<sup>81</sup> Lehman, Exh. CJL-1T at 29:17-19.

<sup>82</sup> Lehman, Exh. CJL-1T at 30:1-5.

<sup>83</sup> Stark, Exh. RS-1Tr at 14:2-18 (noting that Staff visited the Diamond Point, Estates, Monterra, Seaview, and a few of the Terry Edward Lehman systems).

<sup>84</sup> Stark, Exh. RS-1Tr at 15:7-11.

<sup>85</sup> Stark, Exh. RS-12T at 17:8-9; Exh. RS-13.

<sup>86</sup> Post-Hearing Brief of Staff at 9 ¶ 21.

<sup>87</sup> Stark, Exh. RS-12T at 6-8.

this project was prudent because the increased capacity allowed the Company to meet peak demand, maintain adequate water pressure, and increase fire flow.<sup>88</sup> Staff further testifies that it does not believe that the Company implemented this project at greater cost than was necessary because it chose to install a concrete reservoir instead of a steel reservoir with a glass insert, which would have been more expensive.<sup>89</sup>

- 52 Regarding the Estates project, Staff contends that this project was prudent, citing to the DOH Estates sanitary survey from 2022 that found leaking issues with the prior reservoir, as well as other evidence of cracks and root intrusion into the prior reservoir.<sup>90</sup> Staff further maintains that replacement of the reservoir was prudent because the prior reservoir was past the useful life of the asset, the new reservoir contained additional capacity to accommodate future system growth, and DOH no longer recommends underground reservoirs.<sup>91</sup> Staff also asserts that the Estates project was required by DOH, relying on the 2022 DOH Estates sanitary survey.<sup>92</sup>
- 53 With respect to the W&B Waterworks project, Staff states that the project was prudent because the treatment system was needed to remove naturally occurring manganese and arsenic and the prior reservoirs had significant leaking.<sup>93</sup> Staff further contends that the project provides benefits to customers by enabling the system better to meet peak demand and improving water pressure and fire flow.<sup>94</sup> Staff maintains that the W&B Waterworks project was required by DOH, citing a 2024 sanitary survey.<sup>95</sup>
- 54 Staff also argues that the generator project was prudent because standby generators are standard in the water industry and increase water system resilience following a loss of power by maintaining pressure and preventing contamination of the water supply.<sup>96</sup> While Staff acknowledges that the Company did not maintain records regarding the outages on its systems, it maintains that the generators provide benefits to customers by

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<sup>88</sup> Stark, Exh. RS-12T at 5:15-18.

<sup>89</sup> Stark, Exh. RS-12T at 5:18 – 6:3.

<sup>90</sup> Lehman, Exh. CJL-2; Stark, Exh. RS-12T at 8:18-19.

<sup>91</sup> Stark, Exh. RS-12T at 9:4-18.

<sup>92</sup> Lehman, Exh. CJL-2; Stark, Exh. RS12T at 6:20 – 10:8.

<sup>93</sup> Stark, Exh. RS-12T at 11:8-12; Lehman, Exh. CJL-7.

<sup>94</sup> Stark, Exh. RS-12T at 13:6-9.

<sup>95</sup> Lehman, Exh. CJL-7; Stark, Exh. RS-12T 10:10 – 13:13.

<sup>96</sup> Stark, Exh. RS-12T at 13:17 – 15:20.

enabling water service and fire flow following a general loss of power to the water systems.<sup>97</sup>

- 55 Finally, Staff contends that the SCADA project was prudent because the Company's water systems are spread across a relatively wide geographic area and the SCADA system allows the Company to monitor real-time data such as pump status, water levels, contamination, and leakage across its different systems.<sup>98</sup> Staff also states that the SCADA system allows information to be centralized and reviewed by the Company's operations manager, who can then dispatch employees to respond to alerts, increases cybersecurity, and avoids the need to rely on individuals, who may not be Company employees, being physically near the water systems to detect alarms.<sup>99</sup>
- 56 Public Counsel recommends that the Commission should determine that Cascadia Water has failed to meet its burden to demonstrate that all 14 major capital projects were prudent for four reasons. First, Public Counsel argues that Cascadia Water has not produced contemporaneous documentation of its decision-making process. Second, Public Counsel maintains that the Company did not demonstrate that its management was informed of and participated in decision making.<sup>100</sup> Third, Public Counsel contends that the 14 capital projects were not needed to maintain safe and reliable drinking water, particularly in light of the overall rate impact of the capital projects and the potential to delay the implementation of the projects.<sup>101</sup> Fourth, Public Counsel asserts that the three reservoir projects for CAL Waterworks, Estates, and W&B Waterworks were oversized.<sup>102</sup>
- 57 Public Counsel argues that Cascadia Water has failed to provide contemporaneous documentation of its decision making and that, other than information contained in the Company's water system plans, the Company's water system planning information only exists in the memories of Mr. Lehman and his engineers.<sup>103</sup> Public Counsel testifies that, "[r]egardless of the reasonableness of Cascadia's individual capital investment, there are clear reasons for concern that they are imprudent on the whole. Cascadia has made significant investments that drive an almost unprecedented revenue requirement increase,

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<sup>97</sup> Stark, Exh. RS-12T at 15:16 – 16:2.

<sup>98</sup> Stark, Exh. RS-12T at 20:12-16.

<sup>99</sup> Stark, Exh. RS-12T at 20:17 – 21:11.

<sup>100</sup> Post-Hearing Brief of Public Counsel at 39 ¶ 70.

<sup>101</sup> Post-Hearing Brief of Public Counsel at 39-43 ¶¶ 71-79.

<sup>102</sup> Post-Hearing Brief of Public Counsel at 23-26 ¶¶ 38-43; 43-44 ¶ 80.

<sup>103</sup> Lehman, Transcript Vol. IV at 236:7-15.

without sufficient documented capital planning.”<sup>104</sup> Public Counsel further critiques Cascadia Water for failing to perform or maintain cost-benefit analyses related to its capital projects and for not revaluating project implementation when costs increased substantially relative to projected costs in prior planning documents.<sup>105</sup>

58 In conjunction with its argument that Cascadia Water has not maintained adequate records of its decision-making process, Public Counsel argues that Cascadia Water has not demonstrated that it reasonably considered possible alternatives to its capital projects, including potentially delaying certain capital projects. Public Counsel identifies three projects, the CAL Waterworks project, Estates project, and the standby generator project that could have been implemented at a later time. Regarding the CAL Waterworks project, witness Duren testifies that “the Unified System plan does establish a need for the reservoir replacement,” but disputes the size of the reservoir ultimately selected, as well as the need for the upsized booster pumps.<sup>106</sup> Witness Duren further argues that Cascadia Water could have delayed the implementation of the CAL Waterworks project by five years by looping its distribution system and lining the existing concrete reservoir to prolong its useful life.<sup>107</sup> Witness Duren also states that Cascadia Water did not demonstrate that it considered alternatives to replacement and could have potentially delayed the implementation of the Estates project by repairing the existing reservoir.<sup>108</sup> Additionally, Witness Duren contends that the Company could have delayed the purchase of at least two of the generators included in the Company’s Generator project.<sup>109</sup>

59 These potentially delayable acquisitions are incorporated by witness De Villiers into Public Counsel’s proposed prudency disallowances related to the proposed settlement.<sup>110</sup> Witness Duren also contends that Cascadia Water did not provide sufficient documentation to justify the final projects costs associated with the W&B Waterworks

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<sup>104</sup> De Villiers, Exh. SDV-1T at 13:19-22. See also De Villiers, Exh. SDV-1T at 14:7-13.

<sup>105</sup> Post-Hearing Brief of Public Counsel at 36-38 ¶¶ 64-66; Lehman, Transcript Vol. IV at 212:18 – 213:4, 261:11-20, 310:2-7. *Compare* Rowell & Lehman, Exh. MJR-CJL-20X at 150 (showing projected capital costs for CAL Waterworks of \$300,000 over a six-year period) *with* Lehman, Exh. CJL-1T at 12:17 – 15:13 (showing combined CAL Waterworks total costs of approximately \$1.1 million). See also Lehman, Transcript Vol. IV at 247:9 – 248:12.

<sup>106</sup> Duren, Exh. SD-1CT at 9:2-4; Duren, Exh. 3CT at 8:18-20.

<sup>107</sup> Duren, Exh. SD-3CT at 10:12 – 11:5.

<sup>108</sup> Duren, Exh. SD-3CT at 12:17 – 13:9.

<sup>109</sup> Duren, Exh. SD-3CT at 14:6

<sup>110</sup> De Villiers, Exh. SDV-11Tr at 7:12 – 8:7 (noting that Mr. Duren “testifies that implementation of the projects was not needed immediately, and the projects could have been phased in over several years instead” and excluding costs because only some costs “were immediately necessary” or certain costs “were not immediately necessary”).

project, but witness De Villier does not appear to propose a disallowance associated with this project.<sup>111</sup> Public Counsel further maintains that the Commission's prudence standard requires utilities to consider the prioritization of investments and the rate impacts on customers.<sup>112</sup>

60 WCAW also challenges the prudence of several of Cascadia Water's capital projects. Regarding Cascadia Water's generator project, WCAW argues that Cascadia Water has failed to demonstrate the prudence of this project because the Company has not maintained contemporaneous records of its decision making, consideration of alternatives, or cost-benefit analysis.<sup>113</sup> WCAW maintains that Cascadia Water was not required to purchase standby generators for its systems under DOH's regulations, as Cascadia Water has not tracked the number of power outages on its water systems.<sup>114</sup> WCAW also asserts that other DOH documentation produced by the Company similarly fails to establish a need for generators, noting that the sanitary surveys for various water systems did not indicate frequent power or water outages.<sup>115</sup> WCAW further contends that Cascadia Water has not established that its generators were necessary pursuant to WAC 246-290-420.<sup>116</sup>

61 WCAW states that Cascadia Water has also failed to demonstrate the prudence of its reservoir and booster pump projects associated with CAL Waterworks, Estates, and W&B Waterworks. WCAW states that the Company has failed to produce sufficient documentation related to its contemporaneous decision making, cost-benefit analyses, consideration of alternatives, or communications with its board of directors regarding the sizing of its reservoirs, booster pumps, and related improvements.<sup>117</sup> WCAW contends that the DOH documentation, such as the sanitary surveys, either do not demonstrate a need for the reservoir or indicate that the Company was already planning or had implemented a replacement, and therefore do not constitute documents reflecting contemporaneous decision making and analysis.<sup>118</sup>

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<sup>111</sup> Duren, Exh. SD-1CT at 9:6 – 10:19.

<sup>112</sup> Reply Brief of Public Counsel at 13-18 ¶¶ 22-29.

<sup>113</sup> Post-Hearing Brief of WCAW at 22 ¶ 53-54.

<sup>114</sup> Lehman, Exh. CJL-15X at 1.

<sup>115</sup> Post-Hearing Brief of WCAW at 20-21 ¶ 51 (citing Stark, Exh. RS-8 at 4).

<sup>116</sup> Post-Hearing Brief of WCAW at 21-22 ¶ 52.

<sup>117</sup> Post-Hearing Brief of WCAW at 25-27 ¶¶ 60-64; Gilles, Exh. BCG-1T at 26:7 – 32:9; Gilles, Exh. BCG-25T at 3:20 – 4:2.

<sup>118</sup> Lehman, Exh. CJL-2 at 1-2; Gilles, Exh. BCG-14 at 1 (reflecting engineer opinion regarding Estates reservoir that "[a]lthough there is no indication that leaking is a current concern based

62 Finally, WCAW asserts that Cascadia Water has not shown that its decision to install a SCADA system and replace associated water meters was prudent. WCAW argues that the Company has not produced contemporaneous documentation of its decision making, cost-benefit analysis, consideration of alternatives, or communication with its board of directors regarding the SCADA project.<sup>119</sup> WCAW further notes that Cascadia Water’s 2021 Unified Water System Plan indicated “[a]n analysis should be performed to assess the benefits and cost involved with the installation of a [SCADA] system with associated data logging, reporting, and alarms to monitor the source, treatment reservoir, booster pumps and distribution system of each water system.”<sup>120</sup> As to the related water meters, WCAW contends that the prior water meters did not pose a risk to public health, yet Cascadia Water did not do a cost-benefit analysis before replacing those water meters.<sup>121</sup>

### Commission Decision

63 The Commission agrees with Public Counsel and WCAW that Cascadia Water has not demonstrated that its capital projects related to CAL Waterworks, Estates, W&B Waterworks, standby generators, and SCADA system were fully prudent based on a lack of sufficient contemporaneous documentation.<sup>122</sup> Although Cascadia Water has addressed some alternatives and cost-benefit analysis in its testimony and at hearing, the Commission requires that such analysis be documented contemporaneously and will not use the benefit of hindsight to evaluate prudence.<sup>123</sup> Staff concedes in briefing that “Cascadia did not always have such [contemporaneous] documentation,” but contends that Cascadia Water was able to explain its decision making in a reasonable manner.<sup>124</sup> However, under the Commission’s traditional prudency standard, robust discussions and consensus are insufficient to demonstrate prudence, as this evidence does not allow the Commission to “recreate” the Company’s decision making process based on what it knew at the time that it made the decision.<sup>125</sup> In the absence of contemporaneous

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upon routine coliform monitoring, the company plans on installing a new above ground reservoir and discontinuing use of the existing below ground reservoirs.”); Lehman, Exh. CJL-6; Rowell & Lehman, Exh. MJR-CJL-27X; Stark, Exh. RS-8 at 87-94.

<sup>119</sup> Post-Hearing Brief of WCAW at 28 ¶¶ 67-68; Gilles, Exh. BCG-1T at 32:11-19.

<sup>120</sup> Lehman, Exh. CJL-8 at 137.

<sup>121</sup> Lehman, Transcript Vol. 4 at 307:19 – 310:13.

<sup>122</sup> Projects 3, 7, 8, 12, and 13. Lehman, Exh. CJL-1T at 9:9 – 10:2.

<sup>123</sup> *WUTC v. PacifiCorp*, Docket UE-152253, Order 12 at 34 ¶ 94 (Sept. 1, 2016).

<sup>124</sup> Post-Hearing Brief of Staff at 9 ¶ 21.

<sup>125</sup> *WUTC v. Puget Sound Power & Light Company*, Dockets UE-920433, UE-920499, & 921262, 19th Supp. Order at 16 (Sept. 27, 1994).

documentation, the Commission cannot determine whether the Company's decisions with respect to these five projects were reasonable and by extension fully prudent.

- 64 The Company argues that it reasonably kept its management informed of its capital planning, stating that the “parent company provides budgetary guidance for access to capital purposes, but the decisions are made by management, Mr. Lehman.”<sup>126</sup> The Commission finds this argument unavailing for several reasons. First, the Company's testimony at hearing indicated that Cascadia Water's parent company provides more than budgetary guidance, it exercises substantial control over the budget, and by extension, what capital projects the Company ultimately pursues.<sup>127</sup> Second, in the case cited by Cascadia Water, the utility provided through its witnesses' testimony “adequate contemporaneous records of its decision-making processes and supporting analyses with respect to the decisions to construct these facilities,” and the evidence showed that “decisions were appropriately made by a senior executive, consistent with Company policy.”<sup>128</sup> In the present case, not only is there a lack of contemporaneous documentation, there has been no indication that Cascadia Water's decision making was otherwise consistent with an internal policy, particularly in light of the substantial control that its parent company wields over the budget.
- 65 Additionally, the Company's reliance on documentation provided to the DOH and by the DOH, while relevant to the Commission's evaluation of prudence, does not demonstrate the prudence of these investments in isolation. As acknowledged by several parties, DOH's review of the Company's operations is primarily concerned with whether the Company's water systems comply with all applicable DOH requirements and does not extend to financial prudence.<sup>129</sup> While DOH documents contain a significant amount of detail regarding project specifications, they do not contain evidence of the Company's contemporaneous decision making, cost-benefit analysis, or consideration of alternatives. For example, while the Company notes in briefing that the record contains Water System Plans for CAL Waterworks from 2009-2020, these Water Systems Plans, in isolation, provide limited insight into the Company's decision making process *at the time it decided*

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<sup>126</sup> Reply Brief of Cascadia Water, LLC (Cascadia Water) at 9-10 ¶ 16 (citing *WUTC v. PacifiCorp*, Docket UE-130043, Order 05 at 101 ¶ 261 (Dec. 4, 2013)).

<sup>127</sup> Lehman, Transcript Vol. IV at 322:18-23 (“I have to justify every dollar going in. There is a lot of capital plans that we do that we submit into the corporate office for the finance department. And there is pushback. We need to justify that to our internal Company why we need that level of capital and that project is necessary.”); 325:23-24 (“Yeah. So every project I have in the budget does not get approved.”).

<sup>128</sup> *WUTC v. PacifiCorp*, Docket UE-130043, Order 05 at 101 ¶ 261 (Dec. 4, 2013).

<sup>129</sup> Lehman, Transcript Vol. IV at 249:5-7 (“I believe the Department – I don't want to speak for Department of Health, but I believe that their prudency factors on water quality and not financial.”); Stark, Exh. RS-12T at 17:8-9.

*to pursue the project.*<sup>130</sup> Again, with respect to CAL Waterworks, the Company asserts in briefing that it has provided sufficient documentation of its decision making, citing to an engineering report provided to the DOH containing planning and design criteria.<sup>131</sup> However, in testimony, the Company recounts considering a smaller sized reservoir, but ultimately deciding to install a larger reservoir due to the greater capacity relative to the increased costs.<sup>132</sup> This consideration is entirely absent from the engineering report submitted to DOH, and while it appears in the Company's testimony, such testimony is insufficient to demonstrate prudence in the absence of contemporaneous documentation.

66 Although the Commission agrees with Public Counsel's prudency argument regarding the five capital projects as to the lack of contemporaneous documentation and analysis, the Commission does not agree with Public Counsel's prudency arguments to the extent it proposes a novel "immediate need" or "prioritization" standard of prudency review. The Commission's prudency standard requires that a utility make a reasonable decision considering all of the information available to the utility at the time it makes its decision, and the evidence may indicate that several decisions are reasonable.<sup>133</sup> A utility is not constrained to only take action that is unquestionably necessary to avoid an immediate public health impact or to comply with a legal requirement, and the Commission has never held utilities to such a standard through its prudence review. Such an interpretation would hamstring a utility's ability to proactively address future problems, engage in measures designed to promote efficiency, or potentially adopt evolving industry best practices that fall short of an immediate requirement.<sup>134</sup> Moreover, a strict application of such a standard with respect to prudence may result in intergenerational equity concerns regarding shifting costs to future ratepayers.

67 The Commission similarly cautions against interpreting the prudence standard as categorically prohibiting investments that have a substantial impact on ratepayers as imprudent. Of course, the Commission is concerned with capital investments that impose an undue burden on ratepayers relative to the investments' benefits under its prudence standard, but impact on ratepayers is generally not, in isolation, sufficient to trigger a finding of imprudence (as distinct from the Commission's additional concerns of whether such investments may warrant mitigation pursuant to the public interest). For example, it

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<sup>130</sup> Rowell & Lehman, Exh. MJR-CJL-16X; Exh. MJR-CJL-17X.

<sup>131</sup> Reply Brief of Cascadia Water at 11-12 ¶ 18 (citing Rowell & Lehman, Exh. MJR-CJL-6).

<sup>132</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 15:12 – 16:2.

<sup>133</sup> *WUTC v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705 (*consolidated*), Order 11 at 119 ¶ 337 (Apr. 2, 2010).

<sup>134</sup> See e.g., Duren, Exh. SD-3CT at 5:11-12 ("Additionally, completing projects sooner can reduce the risk of operating aging infrastructure or falling out of compliance with regulatory requirements.").



is entirely possible that an investment decision can be reasonably deferred, but there may be economic or policy advantages to not deferring the project that nonetheless warrant a finding of prudence. As in all cases, what is reasonable under the circumstances will be driven by the evidence presented in each proceeding. While evidence of prioritization and customer impact certainly can inform the Commission's prudence analysis, it does not subsume the traditional assessment of prudence regarding whether a utility operated in a reasonable manner at the time it made decisions.

68 For the reasons stated above, the Commission finds that the Company has failed to demonstrate that the five specific capital projects are fully prudent because the Company has not kept and produced contemporaneous records related to its decision making for these projects.<sup>135</sup> While the Commission would, in a fully litigated case, proceed to consider what level of disallowance adjustment is appropriate in light of the Company's imprudent action, the results-only nature of the settlement precludes the Commission from determining reasonable, discrete disallowances related to specific projects or other elements of the revenue requirement. For example, the Commission is unable to determine whether the entire amount of each capital investment is included in the results-only settlement, or whether any portion of the carrying costs included in the settlement should be disallowed because of the Commission's prudence determination. Nor can the Commission make any adjustments to the capital inputs because the results-only settlement does not specify them.<sup>136</sup> The Commission cannot "speculate upon which issues the Settling Parties entered into negotiated agreements and, ultimately, determined to resolve their further disputes by agreeing to the results only revenue requirement."<sup>137</sup> As such, the Commission is compelled to reject the settlement in its entirety as inconsistent with the public interest, because the Settling Parties have not demonstrated that the proposed settlement results in rates that are fair, just, reasonable, and sufficient and it is not susceptible to careful, deliberate modification related to the Commission's prudence analysis.

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<sup>135</sup> Although the Commission affirms that the Company bears the burden to demonstrate that its capital investments were prudent, the Commission notes that none of the parties provided testimony regarding the prudence of the remaining 9 of 14 capital improvements included as part of the proposed settlement, which Public Counsel challenges in briefing. As explained further below, because the Commission's determination that the five projects previously discussed are not fully prudent is sufficient to warrant rejecting the proposed settlement, the Commission declines to reach the remaining issues as unnecessary to the disposition of this case, including the determination of prudence for the remaining 9 of 14 capital projects.

<sup>136</sup> Sevall, Exh. SS-4Tr at 5:20-22.

<sup>137</sup> *WUTC v. Avista Corp.*, Dockets UE-220053, UG-220054 (*consolidated*) & UE-210854, Order 10/4 at 64 ¶ 175 (Dec. 12, 2022).

- 69 The Commission does not reject this proposed settlement lightly. As noted by the Company, the Commission does support settlements as a reasonable method to resolve disputed issues. In some circumstances, a results-only settlement is an appropriate tool to facilitate resolution where parties can agree on the reasonableness of the overall outcome, but not the individual components. However, this case presents some extraordinary circumstances both in terms of the overall customer involvement in the proceeding, the relatively substantial rate increase requested by the Company, and by the Settling Parties, and the indication that the Company intends to maintain a high level of capital investment in the near future.<sup>138</sup> These circumstances, in turn, warrant a close and careful review of the matters before the Commission, which is unfortunately not permitted by the results-only nature of the settlement chosen by the Settling Parties.
- 70 Further, the record in this case highlights, and we take general notice, that we are at a critical inflection point for small water system delivery in Washington. Namely, many assets are nearing the end of their useful lives.<sup>139</sup> Small system owners are selling to better capitalized, larger entities, rather than attempting to procure funding for major investments in asset repair or replacement.<sup>140</sup> As new, more well capitalized owners make investments, costs are likely to be passed through to rate payers whose rates have perhaps remained comparatively low due to deferred investment.<sup>141</sup> New owners also wish to consolidate small systems for the benefit of scale and to spread the risk of rate increase across a larger footprint of ratepayers.<sup>142</sup> This case presents another layer of complexity, because, as provided in the record, Cascadia's parent is a natural gas local distribution company, attempting to diversify its historic core business to hedge against the potential for declining gas sales under climate policies in its principal states of operation.<sup>143</sup> We do not want to create a barrier to what appears to be a necessary and natural transition in small water system delivery. However, it is critical that this transition take place in a way that is fair to companies and customers, and, as such, requires companies to adhere to our long-standing prudence principles, including in particular here, contemporaneous documentation and analysis of alternatives.

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<sup>138</sup> Rowell & Lehman, Exh. MJR-CJL-31X (noting that the Company anticipates investing up to \$3-\$4 million dollars annually over the next five years).

<sup>139</sup> Rowell & Lehman, Exh. MJR-CJL-8JT at 10:9-14.

<sup>140</sup> Lehman, Exh. CJL-1T at 7:3-13; Rowell & Lehman, Exh. MJR-CJL-8JT at 10:9-14.

<sup>141</sup> Lehman, Transcript Vol. IV at 336:21-25.

<sup>142</sup> Lehman, Exh. CJL-1T at 7:3-13.

<sup>143</sup> Gilles, Exh. BCG-1T at 14:3-9; 15:14-15; 17:18 – 18:6; 19:19 – 20:1.

71 Under WAC 480-07-750(2)(c):

If the commission rejects a settlement, the adjudication returns to its status at the time the commission suspended the procedural schedule to consider the settlement. The commission may conduct a prehearing conference to establish a procedural schedule for the remainder of the adjudication.

Subject to compliance with any statutory deadline for commission action or an agreed extension of such a deadline, the commission may extend the time for completion of the proceedings by the elapsed time for commission consideration of the settlement.

72 The Commission is aware that the current statutory suspension deadline for Cascadia Water's tariff in this proceeding is May 1, 2025. As such, the Commission envisions two possible paths forward following its rejection of the proposed settlement. If Cascadia Water agrees to voluntarily extend the effective date of its tariff, then the Commission can resume the proceeding at the point in time that the Commission suspended the procedural schedule. If, however, Cascadia Water declines to voluntarily extend the effective date of its tariff, then the Commission will not have sufficient time to adjudicate the fully litigated proceeding and will reject the tariff as filed. Cascadia Water and Staff first contacted the presiding officer in this docket on December 20, 2024, to request suspension of the procedural schedule to consider the proposed settlement, such that just over four months have elapsed to consider the settlement. Therefore, the Commission orders Cascadia Water to indicate to the Commission whether it will voluntarily extend its tariff deadline by at least five months, so as to afford sufficient time to reestablish a procedural schedule and fully resolve this proceeding. Cascadia Water shall do so via a letter to this docket and corresponding replacement tariff pages no later than 5 p.m. April 29, 2025. If Cascadia Water does not reply by this deadline, the Commission will presume that Cascadia Water has declined to voluntarily revise its tariff effective date and will reject the tariff as filed.

### **III. Findings and Conclusions**

- 73 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including water companies.
- 74 (2) Cascadia Water is a water company and public service company subject to the Commission's jurisdiction.

- 75 (3) Cascadia Water filed tariff revisions on February 29, 2024, that would generate approximately \$1.7 million in additional revenue.
- 76 (4) On June 28, 2024, the Commission suspended the tariff revisions pending investigation and hearing.
- 77 (5) On January 11, 2025, Staff and the Company filed a results-only multiparty settlement agreement that, if approved, would resolve all pending issues in the proceeding. On January 22, 2025, the Settling Parties filed a revision to the settlement agreement which, if approved, would result in a reduced revenue requirement increase of \$1.51 million.
- 78 (6) WCAW's Motion for Official Notice was submitted after the close of evidence in this proceeding.
- 79 (7) Even if the Commission construes WCAW's Motion for Official Notice as a motion to reopen the record, WCAW has not identified any compelling reason why it was unable to submit information it seeks to have the Commission take official notice of prior to the close of evidence in this case. Furthermore, the evidence is not essential to the Commission's decision in this matter.
- 80 (8) The Commission should deny WCAW's Motion.
- 81 (9) Cascadia Water has not maintained and produced contemporaneous documentation of its decision making for at least five capital projects included in the proposed settlement. Those five capital projects include 1) CAL Waterworks - Reservoir Replacement, Pumphouse Replacement, and Booster Pump Improvements; 2) Estates System – Reservoir Replacement, Booster Pump Replacement, and Treatment Filter; 3) W&B Waterworks – Reservoir, Pumphouse, Treatment System, and Watermain Replacement; 4) Standby Generators; and 5) Supervisory Control and Data Acquisition (SCADA) System.<sup>144</sup>
- 82 (10) Due to the lack of contemporaneous documentation, Cascadia Water has not demonstrated that the five capital projects included in the proposed settlement discussed above are fully prudent.

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<sup>144</sup> These five projects are respectively referred to as Projects 3, 7, 8, 12, and 13 in Cascadia Water's testimony. Lehman, Exh. CJL-1T at 9:9 – 10:2.

- 83      (11)    The Commission is unable to determine a specific disallowance related to these capital projects because the proposed settlement is a results-only settlement that does not specify the individual inputs and contains unspecified carrying costs.
- 84      (12)    In light of the Commission's determination of imprudence and the fact that the proposed settlement is not susceptible to project specific disallowances, Cascadia Water and Staff have not shown that the revenue increase from the proposed settlement would be fair, just, reasonable, and sufficient.
- 85      (13)    Consequently, the Commission should reject the proposed settlement in its entirety as not consistent with the public interest.
- 86      (14)    Pursuant to WAC 480-07-750(2)(c), if the Commission rejects a proposed settlement, the adjudication returns to its status at the time the Commission suspended the procedural schedule to consider the settlement.
- 87      (15)    Given the current May 1, 2025, effective date of Cascadia Water's tariff, there is insufficient time for the Commission to resume the adjudication unless the Company elects to voluntarily extend the tariff effective date.
- 88      (16)    The Commission should order Cascadia Water to file a letter to this docket by no later than April 29, 2025, indicating whether it will voluntarily extend its tariff effective date by at least five months, so as to allow sufficient time to resume the adjudication at the point that the Commission suspended the procedural schedule to consider the proposed settlement.
- 89      (17)    If Cascadia Water declines to extend the tariff effective date in this proceeding, the Commission should reject the tariff filing.

#### **IV.    ORDER**

##### **THE COMMISSION ORDERS:**

- 90      (1)    WCAW's Motion for Official Notice is denied.
- 91      (2)    The revised proposed settlement agreement filed in this docket on January 22, 2025, is rejected.
- 92      (3)    Cascadia Water is required to file a letter to this docket no later than April 29, 2025, indicating whether it will agree to voluntarily extend its currently suspended proposed tariff by no less than five months to afford the Commission

sufficient time to resume the adjudication at the point the procedural schedule was suspended to consider the settlement. If the Company agrees to extend the tariff effective date, it must also include replacement tariff pages as part of its letter.

- 93 (4) The Commission Secretary is authorized to accept by letter, with copies to all  
Parties to this proceeding, filings that comply with the requirements of this Order.
- 94 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Lacey, Washington, and effective April 22, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



BRIAN J. RYBARIK, Chair



ANN E. RENDAHL, Commissioner



MILTON H. DOUMIT, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.**