NO. 1025734

SUPREME COURT OF THE STATE OF WASHINGTON

RCCH TRIOS HEALTH, LLC, a Delaware Limited Liability Company,

Petitioner,

v.

DEPARTMENT OF HEALTH OF THE STATE OF WASHINGTON and KADLEC REGIONAL MEDICAL CENTER,

Respondents.

DEPARTMENT'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Washington's Certificate of Need (CN) laws improve quality of service and patient outcomes. They do this by limiting how many facilities may provide certain specialized health care services, which ensures that physicians have enough patient volume to keep their skills sharp. One service subject to CN laws is elective percutaneous coronary interventions (PCIs). Hospitals without cardiac surgery services must obtain a CN from the Department of Health (Department) pursuant to criteria established in rule before performing elective PCIs.

To prevent unnecessary duplication of services, the Department cannot approve a new PCI program if the Department's methodology shows that net need for PCIs is less than 200 per year. The need methodology is in rule and specifies three data sources that the Department must utilize to determine PCI volume. By rule, the Department only counts PCI cases "defined by *diagnosis related groups* (*DRGs)*" as developed by

the Centers for Medicare and Medicaid Services to determine PCI volume and need. WAC 246-310-745(4) (emphasis added).

RCCH Trios LLC (Trios) applied to establish a new elective PCI program in Kennewick even though the state methodology projected need of less than 200 for that area. Trios attempted to justify its application by imploring the Department to disregard its rules and add unverified PCIs to the state's volume forecast. The Department concluded as a matter of law that it could not consider the data offered by Trios and denied Trios's application.

The Department's decision involved a straightforward application of the law and is wholly consistent with the state's health planning policy established in RCW 70.38. This case does not involve an issue of substantial public interest that should be determined by this Court, nor is it in conflict with a decision of this Court, as Trios asserts. Trios fails to meet the requirements for acceptance of review under RAP 13.4. This Court should deny review.

II. IDENTITY OF RESPONDENT

Respondent is the Washington State Department of Health.

III. COURT OF APPEALS DECSION

Trios petitions for review of the published opinion terminating review entered on October 17, 2023, by Division II of the Court of Appeals (Opinion).

IV. ISSUE PRESENTED FOR REVIEW

Whether the Department's Final Order denying Trios's application should be affirmed because the Department correctly interpreted and applied WAC 246-310-745.

V. COUNTERSTATEMENT OF THE CASE

A. Certificate of Need Governs Establishment of Health Care Facilities and Services in Washington

As a component of strategic health planning, Washington regulates establishment and operation of certain new health care facilities and services through CN laws. RCW 70.38.015; WAC 246-310-001. Health planning involves consideration of public health, health care financing, access to care, quality of

care, and cost control of health services. RCW 70.38.015(5). The Legislature authorized the Department to implement CN laws. RCW 70.38.105(1).

In order to obtain a CN, an applicant must establish that its proposed project is consistent with all applicable CN review criteria, including "need." WAC 246-310-200(1), -500(1)(c). The Department cannot issue a CN unless the project is consistent with all review criteria. RCW 70.38.115(1); WAC 246-310-500(1)(c).

B. A CN Is Required in Order To Establish an Elective PCI Program

CN law requires health care providers to obtain a CN from the Department before providing "tertiary" health services. RCW 70.38.105(4)(f); WAC 246-310-020(1)(d). A tertiary health service is "a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care." RCW 70.38.025(14); WAC 246-310-010(58). Elective PCIs are scheduled,

non-surgical procedures used to open coronary arteries narrowed by disease. WAC 246-310-705(4). Unlike "emergent" PCIs, which can be performed without first obtaining a CN, "elective" PCIs are for patients with stable cardiac function. WAC 246-310-700, -705(2), (3), (4). Elective PCIs performed at a hospital without on-site cardiac surgery services are tertiary services and require a CN. WAC 246-310-700.

As required by law, the Department adopted rules establishing the criteria for issuance of CNs to elective PCI programs, codified at WAC 246-310-700 to -755. RCW 70.38.128. As recognized in RCW 70.38.025(14), sufficient patient volume is critical to ensuring safe, effective care, so the rules prohibit the Department from approving new PCI programs unless "[t]he state need forecasting methodology projects unmet volumes sufficient to establish one or more programs within a planning area." WAC 246-310-720(2)(a). Likewise, providers with CNs must perform a minimum of 200 PCIs per year. WAC 246-310-720(1). An approved provider's

failure to meet the ongoing, minimum volume standard is grounds for revocation of its CN. WAC 246-310-755. Although approved providers must satisfy the minimum volume threshold, the rules do not prescribe an upper limit on elective PCIs they perform.

The need forecasting methodology is established in WAC 246-310-745. Step 4 of the five-step numeric methodology is WAC 246-310-745(10), which states that "[i]f the net need for [PCI cases] is less than two hundred, the department will not approve a new program." Net need is calculated by starting with the planning area's forecasted demand and subtracting the calculated capacity. WAC 246-310-745(10), Step 4.

WAC 246-310-745(4) limits PCI cases to be used in the methodology calculation to cases defined by diagnosis related groups, known as "DRGs." DRGs are developed under the "Centers for Medicare and Medicaid Services (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest." WAC 246-310-745(4).

The rule requires the Department to administratively update the list of DRGs to reflect revisions made by CMS. WAC 246-310-745(4). The rule also identifies data sources the Department must rely upon for its methodology, which are data from the comprehensive hospital abstract reporting system (CHARS), certificate of need survey data, and Clinical outcomes assessment program (COAP) data from the foundation for health care quality. WAC 246-310-745(7)(a), (b), (c), -745(9).

CN applications for new elective PCI programs are reviewed concurrently according to the application review cycle established in WAC 246-310-710, with applications due in February each year.

C. The State Methodology Forecast Need of 182 PCIs When Trios Applied

The state is divided into fourteen PCI planning areas. WAC 246-310-705(5). Trios is located in elective PCI Planning Area 2, which consists of Benton, Columbia, Franklin, Garfield, and Walla Walla counties. Administrative Record (AR) 603. At the time of its application, Planning Area 2 was served by

CN-approved elective PCI provider, Respondent Kadlec Regional Medical Center (Kadlec), located in Richland. AR 603. The 2018-2019 state methodology published by the Department in February 2018 showed need for 182 PCIs in Planning Area 2.

In February 2019, Trios applied to establish a new, elective PCI program at Trios Southridge Hospital in Kennewick. AR 603. At the time it applied, Trios acknowledged that the state forecasting methodology was "short of the 200-case requirement" but asserted that it could find data to increase the need. AR 610. The application stated that Trios's "sister hospital, St. Joseph" in Lewiston, Idaho had identified eight PCI patients from Planning Area 2 and that as many as 20 uncounted patients may have received PCIs at the recently closed Walla Walla General Hospital. AR 610. Trios offered to work with the CN Program to secure or provide data. AR 610.

D. In Screening, Trios Argued the Department Must Add Data From Sources Not Specified in Rule

Before starting review of an application, the CN Program "screens" the application to determine if it is complete.

RCW 70.38.115(6); WAC 246-310-090(2)(a). In screening, the CN Program notified Trios that the Department would comply with WAC 246-310-745 by using only the data sources identified in that rule to evaluate Trios's application. AR 659.

In its screening response, Trios asserted that the following data was relevant to calculating need in Planning Area 2:

- Raw data from the Oregon hospital association showing that five patients residing in Planning Area 2 had obtained PCIs in Oregon. AR 669, 694–5.
- A letter from LifePoint Health[1] relying on the work of a national data analytics firm, Trilliant Health, to identify nine Planning Area 2 PCI patients in Oregon—three more than identified from the Oregon hospital association's raw data—and six more at Walla Walla General Hospital, which had not reported PCI data for the year and a half before it closed.

[1] The ultimate owner of Trios. AR 709.

AR 669, 696–704. Trilliant Health's sources include a database of payer claims based on procedure codes, which includes PCIs "not coded as one of the DRGs that the Certificate of Need Program defines as a PCI." AR 697.

- An altered copy of the Department's PCI survey form that Trios sent to St. Joseph Hospital in Lewiston, Idaho to complete. The form showed six Planning Area 2 patients had obtained PCIs in Idaho. AR 669, 705–07.

E. The CN Program Updated the State Forecasting Methodology in Violation of the Department's Rules

At Trios's urging, the CN Program updated the methodology in October 2019 to include data on Washington state residents who had obtained inpatient PCIs in Oregon. AR 858. For Planning Area 2, this resulted in a maximum need of 188 PCIs. AR 941 (Table 4), 983–86 (the methodology spreadsheet). A Department Health Law Judge and the

Department's Review Officer ultimately rejected the CN Program's updated methodology because it included data from data sources not specified in the rule. AR 432–33, 582–89. In the meantime, Trios acknowledged the update but continued to urge the Department to supplement the numeric need forecast under the state methodology with the PCI estimates Trios had presented. AR 735–36.

F. In Public Comment, Trios Expands Its Demands To the Department

Review of the complete application commenced October 29, 2019, initiating the public comment period. WAC 246-310-120(2)(c); AR 752–53. Trios attempted to supplement its application by submitting public comment on its own application, insisting that the Department add Trios's PCI estimates to the numeric need forecast for Planning Area 2 under the state methodology. AR 846–52. Trios's comment further expanded on the theme of using procedure code, specifically ICD-10 procedure code, to define the PCI cases included in the need methodology. AR 851 n.3. This would capture not only

patients defined by DRGs 246–251, as required by rule, but it would also capture patients who had received a PCI incidental to treatment for their separately diagnosed condition. *See* AR 848–51. Trios's consultant had identified 52 such incidental PCI patients using ICD-10 procedure code. AR 848. Trios, however, elected to exclude 21 of these for various reasons, settling on 31 PCI patients that Trios believed the CN Program should have counted in addition to those identified by DRGs 246–251. AR 849–50.

The other public commenters, including Kadlec, objected to Trios's attempts to supplement the state forecasting methodology. AR 762–64, 802–04, 896–98, 907–08. They also objected to the CN Program's addition of Oregon data to the state forecasting methodology. AR 761, 801.

G. The CN Program Denied Trios's Application Because There Was Not Need

The CN Program concluded it could not approve a new elective PCI program in Planning Area 2 because the state forecasting methodology projected insufficient need.

AR 925–44. Trios's application was therefore denied. AR 919–20.

H. The Department Affirms Denial of Trios's Application

Trios requested an administrative hearing to contest the CN Program's decision. AR 2–7. The Presiding Officer permitted Kadlec, the existing CN-approved elective PCI program in the planning area, to intervene. RCW 70.38.115(10)(b); AR 172. Kadlec, joined by the Program, moved for summary judgment, arguing that Trios's proposed project must be denied because the Department's forecasting methodology did not project need. AR 183.

The Presiding Officer issued Findings of Fact, Conclusions of Law, and an Initial Order (Initial Order) granting Kadlec's motion for summary judgment. AR 421–36. The Initial Order rejected the CN Program's inclusion of Oregon data and Trios's arguments in support of adding data from sources other than those specified in rule, concluding that "the data sources for PCI case volumes can only be those sources named in

WAC 246-310-745(7) and (9).” AR 432–33. The Initial Order also concluded that WAC 246-310-745(4) plainly required the Department to rely on PCIs identified by DRGs, not procedure codes as advocated by Trios, when evaluating numeric need. AR 433. The Initial Order denied Trios’s application because of insufficient need. AR 435.

Trios petitioned for Administrative Review of the Initial Order. AR 438. The Review Officer issued Findings of Fact, Conclusions of Law, and a Final Order (Final Order) adopting and affirming the Initial Order. AR 582–89.

I. The Superior Court and Court of Appeals Affirm the Department’s Final Order

Trios petitioned for judicial review of the Final Order in Thurston County Superior Court. Clerk’s Papers (CP) 1–20. The Honorable Mary Sue Wilson determined the Department’s application of its rules was not erroneous and affirmed the Department’s Final Order. CP 33, 35, 44–61. Trios appealed, and in a published opinion, the Court of Appeals affirmed the Department’s Final Order, holding that the Department’s

interpretation of WAC 246-310-745(4) was consistent with the plain language of the rule. Opinion at 10. The court further concluded that even if the language was ambiguous, it would give deference to the Department's interpretation because the regulation falls within its area of expertise. Opinion at 11 (citing *Kenmore MHP LLC v. City of Kenmore*, 1 Wn.3d 513, 519-20, 528 P.3d 815 (2023)).

VI. ARGUMENT: REASONS WHY REVIEW SHOULD BE DENIED

The Court will accept a petition for discretionary review only if one or more of the criteria in RAP 13.4(b) is met. The criteria Trios identified are inapplicable so review should be denied.

The Department's interpretation and application of its need methodology rules is consistent with the plain language of the rules, and not contrary to legislative intent. Moreover, even if the Court finds the rules ambiguous, the Department's interpretation is a reasonable one to which deference should be accorded. These general legal principles, applicable here, are

entirely consistent with this Court's decisions so there is no basis for review under RAP 13.4(b)(1). Moreover, this case does not involve an issue of substantial public interest that the Court should determine because the Department's application of its rules is consistent with the state's health planning policy reflected in the CN statute. Accordingly, neither is there a basis for review under RAP 13.4(b)(4).

A. Legal Principles Governing Judicial Review

The Administrative Procedure Act (APA) governs judicial review of agency orders. RCW 34.05.570; *Kenmore MHP LLC*, 1 Wn.3d at 519-20. If review were granted, this Court would sit in the same position as the superior court and review the Department's Final Order. *Kenmore MHP LLC*, 1 Wn.3d at 519-20. The Department's decision is presumed valid, with the petitioner having the burden to establish invalidity. RCW 34.05.570(1)(a). Legal conclusions are reviewed de novo, but the Court grants substantial weight to the Department's interpretation. *Kenmore MHP LLC*, 1 Wn.3d at 520; *Kittitas*

County v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 155, 256 P.3d 1193 (2011). "An agency acting within the ambit of its administrative functions normally is best qualified to interpret its own rules, and its interpretation is entitled to considerable deference by the courts." *Kenmore MHP LLC*, 1 Wn.3d at 520. "We uphold an agency's interpretation of ambiguous regulatory language as long as the agency's interpretation is plausible and consistent with the legislative intent." *Id*.; *Cobra Roofing Serv., Inc. v. Dep't of Lab. & Indus.*, 122 Wn. App. 402, 409, 97 P.3d 17 (2004).

B. Projected Need for PCIs Is Determined Solely by the State Methodology

The Department "shall only grant a certificate of need to new programs within the . . . planning area if . . . [t]he state need forecasting methodology projects unmet volumes sufficient to establish one or more programs . . . ." WAC 246-310-720(2); WAC 246-310-745(10), Step 4. "The plain text of the Department's [PCI] regulations establishes that its standards are mandatory." *Swedish Health Servs. v. Dep't of Health*,

189 Wn. App. 911, 916, 358 P.3d 1243 (2015). Thus, the rule prohibits the Department from granting a CN to Trios for a new elective PCI program unless the state methodology forecasts need for at least 200 PCI cases.

C. The State Methodology Counts Only PCIs Defined by DRGs

WAC 246-310-745 establishes the state forecasting methodology. For the purposes of the need forecasting methodology in section 745, "PCI" means "cases defined by diagnosis related groups (DRGs) as developed under the Centers for Medicare and Medicaid (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest." WAC 246-310-745(4). The rule further specifies five DRGs for use in the 2008 methodology, providing for the Department to update the list administratively to reflect any CMS changes to the DRGs. This rule explicitly relies on certain DRGs to forecast need and does not use the general definition of "PCI" at WAC 246-310-705(4).

CMS established the system referred to as diagnosis related groups, or DRGs, to classify patient discharges for payment purposes, based on weighting factors assigned to each DRG.[2] CMS currently classifies cases by DRGs based on a number of factors, such as the principal diagnosis, up to 24 additional diagnoses, and up to 25 procedures performed during a hospital stay.[3] CMS adjusts DRG classifications and relative weighting annually.[4] At the time of the Trios evaluation, the Department included only those cases defined by CMS DRGs 246–251 in the methodology.

Trios argues WAC 246-310-745(4) requires PCI cases, other than those assigned DRGs 246-251, to be counted because "defined by" DRG is not synonymous with "coded by" DRG. Petition for Discretionary Review (Trios Petition) at

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[2] The Final Order takes judicial notice of https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/MS-DRG-Classifications-and-Software. AR 586.

[3] See website cited in n.2, *supra*.

[4] See website cited in n.2, *supra*.

20–24. This, Trios argues, results in "undercounting" of PCIs. *Id.* Trios is incorrect.

The Court of Appeals concluded that the plain language of the regulation supports the Department's position, noting that, "WAC 246-310-745(4) expressly defines PCIs with reference to DRGs, not ICD-10 procedure codes. In drafting [its] regulation[s], DOH could have defined PCI more generally as *any* 'catheter-based interventions involving the coronary arteries and great arteries of the chest.' . . . Instead, the regulation limits the definition to those procedures classified under certain DRG codes." Opinion at 10.

Trios also argued that the rule, viewed as a whole, must require the Department to count inpatient PCIs defined by something other than the DRGs because the methodology counts outpatient PCIs that are not defined by DRGs. Trios Petition at 25. However, when conducting surveys to identify outpatient PCIs to include in the methodology, the Department refers hospitals to the applicable DRGs. AR 871. And limiting the

inpatient PCIs that the Department counts to those identified by DRG is perfectly consistent with the plain language of WAC 246-310-745(4). The court also evaluated the PCI rules as a whole, and explained, "[s]ignificantly, the CN regulation contains a general definition of PCIs that does not reference DRG codes." Opinion at 11 (citing WAC 246-310-705(4)). "But WAC 246-310-745 contains more specific definitions '[f]or purposes of the need forecasting method.'" *Id.* Accordingly, had the Department not intended to limit the PCIs counted for purposes of the need methodology, "DOH could simply have used the general WAC 246-310-705(4) definition." *Id.*; *see Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002) (administrative rules and regulations are interpreted as a whole). The Department correctly applied the methodology in WAC 246-310-745 and therefore did not undercount PCIs that were not defined by DRGs 246-251. Opinion at 9–12.

Even if this Court finds the rule ambiguous, there is no basis to grant discretionary review. The Department's

interpretation limiting the PCIs it counts to those defined by DRGs is, at least, a plausible construction and not contrary to the legislative intent behind requiring CNs for tertiary services like elective PCIs. *See* RCW 70.38.015, .025(14) (sufficient patient volume needed to optimize effectiveness, quality, and improved outcomes of care). Moreover, the Court "accord[s] substantial deference to the agency's interpretation, particularly in regard to the law involving the agency's special knowledge and expertise." *Univ. of Wash. Med. Ctr. v. Dep't of Health*, 164 Wn.2d 95, 102, 187 P.3d 243 (2008); *Kenmore MHP LLC*, 1 Wn.3d at 520; *Cobra Roofing*, 122 Wn. App at 409. Here, the Department is authorized to implement the state's CN laws and application of the need methodology rules falls squarely within its expertise. Substantial weight should, as the Court of Appeals concluded, be given to its interpretation. Opinion at 11. The Court of Appeals decision is in accord with this Court's precedent. Discretionary review is not warranted under RAP 13.4(b)(1).

D. The Department's Decision Is Consistent with the State's Health Planning Policy Reflected in RCW 70.38

The Legislature created the CN program to control the number and type of health care services and facilities in a given planning area, thereby preventing unnecessary and disruptive duplication. *Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 47, 239 P.3d 1095 (2010). The Department is authorized to implement the CN statute through "appropriately tailored regulatory activities." RCW 70.38.015(1).

The "overriding purpose" of the CN law as a whole is to "promote, maintain, and assure the health of all citizens in the state, provide accessible health services, health manpower, health facilities, and other resources while controlling increases in costs, and recognize prevention as a high priority in health programs." *Overlake Hosp. Ass'n*, 170 Wn.2d at 50 (citing RCW 70.38.015(1)). Specific to tertiary services like elective PCIs, sufficient patient volume is required to optimize "effectiveness, quality of service, and improved outcomes of care." RCW 70.38.025(14).

Trios argues that the Department's interpretation is at odds with the legislative intent of the CN statute because it "undercounts" PCIs and thereby unnecessarily restricts access to care. Trios Petition at 26–30. But Trios's argument paints only part of the picture and is therefore unpersuasive.

The Department's interpretation and application of the PCI need methodology is consistent with CN statute's intent and purpose. The Department has tailored, through rulemaking, the state methodology to statistically forecast a probable volume of elective PCI patients that may be available to a new PCI program in a planning area. WAC 246-310-745. The methodology counts PCIs that have been defined by assignment of one of several DRGs. WAC 246-310-745(4). Accordingly, the Department's decision not to accept Trios's alternate methodology that goes beyond counting PCIs defined by DRG does not result in undercounting. Moreover, the central purpose of the forecast and the 200-case threshold before approving a new PCI program is to "optimize provider effectiveness, quality of service, and

improved outcomes of care." RCW 70.38.025(14). The Department's adherence to the patient volume threshold in rule is consistent not only with the plain language of the rule, but also with RCW 70.38.025(14).

Another aspect of the "overriding purpose" of CN law is to avoid unnecessary duplication and fragmentation of services. *Overlake Hosp. Ass'n*, 170 Wn.2d at 46-47. Here, planning area 2 is served by a CN approved elective PCI program, operated by Respondent Kadlec. The CN rules do not place an upper limit on the number of elective PCIs Kadlec may perform, so Kadlec may expand its program to accommodate growing need. But Kadlec must provide a minimum of 200 PCIs per year. WAC 246-310-755. Accordingly, the Department's adherence to the volume threshold ensures that the Kadlec (and similarly situated CN holders throughout the state) continues to have sufficient patient volume to ensure safe, effective care to patients.

E. Trios' PCI Counting Measures Are Unfair and Impractical

The Department's PCI need methodology has counted PCIs defined by DRGs since the rule was adopted in 2008, with the only change to the rule occurring in 2018 when the minimum volume threshold was reduced from 300 per year to 200 per year. *See* WAC 246-310-720(1). Trios argues that the Department erred by failing to deviate from its historic practice and should have, instead, adopted Trios's methodology. However, the Department correctly rejected Trios's approach because it was inconsistent with the rules, impractical, and unfair.

Despite need being a threshold requirement, Trios did not have an alternative methodology establishing need when it applied. AR 610. Trios labored to find enough PCIs to justify its proposal, adjusting its methodology as the application process unfolded. At the outset Trios was uncertain about the appropriate means to count the "uncounted" PCIs, offering to work with the CN Program to find data to support a finding of need. AR 610. After it applied, Trios scoured payer claims for procedure codes

to find "uncounted" PCIs in Oregon and at a defunct Washington hospital, while asking its sister hospital in Idaho to fill out a Department survey form. AR 669, 694–707. In the end, after its application was supposed to be complete and review had begun, Trios submitted public comments about its own application and used procedure code to identify 52 additional PCIs. AR 849. In so doing, Trios argued it was "ultra-conservative" and subtracted 20 records it thought to be questionable. AR 849. Trios also subtracted one it deemed incorrectly coded. AR 850. The uncertainty surrounding the counting and recalculation involved in Trios's shifting methodology provides insight into why the Department's rule prudently relies on specific data sources and a specific set of DRGs that do not require minute, subjective analysis to confirm whether the PCIs are "valid" inclusions.

As applied by the Department, the parameters of the state forecasting methodology help assure that competitors receive fair and evenhanded treatment in their applications, consistent with the directive that strategic health planning must be

supported by "appropriately tailored regulatory activities" to effectuate the statewide health resources strategy. RCW 70.38.015(1). Allowing competitors to introduce alternative, shifting estimates of PCI volume during the application process thwarts fairness, a critical aspect of the competitive CN process. As the CN Program noted in its evaluation, "[t]o accept novel data sources that could not have been public[ly] available prior to the concurrent review cycle . . . removes the element of transparency, fairness, and predictability in a Certificate of Need review." AR 942. It would also alter the regulatory scheme with the result of the Department evaluating a separate methodology for each planning area application instead of conducting the numeric methodology as required by the rule. WAC 246-310-745(10).

Trios believes that a different methodology would result in more accurate need forecasts, and Trios may petition the Department to conduct rulemaking to change the methodology. RCW 34.05.330(1). But the Department's interpretation of the

current methodology is consistent with the regulatory language and the purpose of the CN statute the Department is authorized to implement. Accordingly, there is no reason for discretionary review by this Court under RAP 13.4(b)(1) or (4).

VII. CONCLUSION

The Court of Appeals applied settled principles of agency law to affirm the Department's determination. And the Department interpreted and applied its PCI need methodology rule in a manner consistent with both the regulation's language and the legislative intent of RCW 70.38. The Department respectfully requests this Court deny Trios's petition for review.

This document contains 4,499 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 18th day of December, 2023.

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the 18th day of December 2023, I caused a true and correct copy of the foregoing document to be served in the above-captioned matter upon the parties herein as indicated below:

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DATED this 18th day of December 2023.

Makenzie Clark

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WASHINGTON STATE ATTORNEY GENERAL'S OFFICE AGRICULTURE & HEALTH DIVISION

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