

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

SARAH HAND,

Complainant(s),

DOCKET UW-170924

v.

RESPONDENT'S MOTION TO COMPEL
RESPONSES TO DATA REQUESTS

RAINIER VIEW WATER COMPANY, INC.,

Respondent(s).

RELIEF REQUESTED

1. Respondent Rainier View Water Company, Inc. ("Rainier View") requests an Order compelling Complainant Sarah Hand ("Hand") to respond to Rainier View Water Company, Inc.'s First Document Request to Sarah Hand, attached hereto at Appendix 1, consistent with this motion. Rainier View brings this discovery motion pursuant to WAC 480-07-405(3) and WAC 480-07-425.

RELEVANT FACTS

2. Hand alleges Rainier View provided her with impure water that was unfit for human consumption and ordinary household use over several years. Hand also alleges Rainier View failed to comply with procedural requirements when it implemented a filtration system benefiting the water system of which she is a customer. She seeks monetary compensation and requests

1 other specific remedies be imposed against Rainier View.

2 3. Hand first filed an informal complaint with the Washington Utilities and
3 Transportation Commission ("Commission") on November 8, 2016. The Commission investigated
4 and entered a disposition of "Company Upheld" in favor of Rainier View. Hand then filed suit in
5 Pierce County Superior Court, Civil Case 17-2-0538-2. On August 31, 2017, the Commission
6 entered Notice Converting Informal Complaint to Formal Complaint; Calling for Answer; And
7 Initiating Adjudicative Proceeding, Docket UW-170924. Shortly thereafter, the Superior Court
8 dismissed Hand's claims for failure to exhaust her administrative remedies.

9 4. Hand filed an amended complaint and Rainier View filed its answer. Hand, Rainier
10 View, and the Commission Staff have submitted pre-filed testimony.

11 5. The parties have exchanged the following discovery to date:

- 12 a. On January 19, 2018, Hand propounded Plaintiff's First Request for
13 Production of Documents to Rainier View Water Company, Inc. on Rainier
14 View. Rainier View responded timely and completely.
- 15 b. On February 20, 2018, Commission Staff propounded Staff DR1 on Rainier
16 View. Rainier View responded timely and completely.
- 17 c. On April 2, 2018, Hand propounded Sarah Hand's First Set of
18 Interrogatories to Rainier View Water Company, Inc. Set #1. After
19 negotiations between Hand and Rainier View, Hand withdrew those
20 interrogatories.
- 21 d. On April 5, 2018, Hand propounded Sarah Hand's First Set of Request for
22 Documents to Rainier View Water Company Inc Set #1. Rainier View
23 responded completely after an agreed-upon extension of time.

24 ///

1 6. On April 2, 2018, Rainier View propounded Respondent Rainier View Water
2 Company, Inc.'s First Document Request to Complainant Sarah Hand (hereinafter the "Data
3 Requests"). These Data Requests seek basic discovery about Hand's claims, her alleged
4 damages, and other potential relief she requests.

5 7. Hand did not respond to Rainier View's Data Requests, and counsel for the parties
6 twice met and conferred. Hand objected to the scope of the requests seeking correspondence
7 from social media and other electronic sources. In response, RVWC agreed to withdraw
8 Document Request Nos. 2, 7, and 11 in exchange for guarantees of data preservation for
9 contemplated future litigation. Counsel for Hand affirmed that responses would be forthcoming –
10 first, during the first week of May, and then again during the second week of May. *See Declaration*
11 *of Daniel Rankin*, Exs. 1 and 2.

12 **RAINIER VIEW'S DATA REQUESTS ARE APPROPRIATE IN THIS MATTER.**

13 8. Under WAC 480-07-400(2), data requests are a discovery tool available to parties
14 in adjudicative proceedings involving violations of provisions of Title 80 or Title 81 RCW. Among
15 other relief, Hand seeks remedies arising from several provisions of Title 80 RCW.¹ Thus, the
16 Commission should find that data requests pursuant to WAC 480-07-405 are available to the
17 parties in this adjudicative proceeding.

18 9. Even without a Commission finding that data requests are an available discovery
19 device, Hand should be estopped from refusing to answer Rainier View's Data Requests. The
20 parties, including Hand, freely engaged in discovery, including data requests; Hand should not be
21 allowed to later avoid her reciprocal duty to answer discovery. Further, when counsel conferred
22 about the permissible scope of these Data Requests, Hand's counsel twice conveyed an intent to
23 respond to the negotiated scope of the Data Requests. It would be unjust for Hand to receive the
24

25 _____
¹ See *Complaint*, Docket UW 170924, ¶¶ 5.2, 5.3.

1 benefit of cooperative discovery, only to object when it is her turn to provide information to valid
2 discovery requests.

3 **RAINIER VIEW'S DATA REQUESTS ARE APPROPRIATELY RELEVANT**
4 **AND LIMITED IN SCOPE**

5 10. WAC 480-07-400(3) allows discovery of "information that is relevant to the issues
6 in the adjudicative proceedings or that may lead to the production of information that is relevant."
7 Requests for information that are "unreasonably cumulative or duplicative, or is obtainable from
8 some other source that is more convenient, less burdensome, or less expensive" are disallowed.
9 *Id.*

10 11. Rainier View's Data Requests are relevant to the issues in the adjudicative
11 proceeding. The crux of Hand's complaint is that Rainier View provided her with poor quality water
12 that caused her to suffer damages. Document Request ("DR") No. 1 seeks photos, videos, or
13 other documents and images relating to the alleged incidents described in the complaint, such as
14 visual proof of water quality, property damage, and the like. DR Nos. 3 and 4 seek reports of
15 home inspections, tests, or investigations, which would demonstrate poor water quality and/or
16 property damage. DR Nos. 5 and 6 seek privately commissioned water tests, obviously relevant
17 to her allegation of poor water quality. DR Nos. 8, 9, and 12 seek information substantiating
18 Hand's alleged damages, including diminished home value and property damage to plumbing and
19 fixtures. DR No. 10 seeks the CVs and reports of any expert witnesses Hand has retained. Each
20 of these requests² are relevant to the issues in this adjudicative proceeding and are necessary to
21 fully and fairly resolve Hand's claims.

22 12. Further, the Data Requests are not unreasonably cumulative or duplicative and do
23 not seek information available from less burdensome sources. Although the parties engaged in
24

25 ² DR Nos. 2, 7, and 11 are also relevant to the issues in this adjudicative proceeding, but were limited by party agreement as disproportionately burdensome, given the limited remedy anticipated.

1 extensive discovery in the preceding Superior Court litigation, Hand's duty to supplement her
2 discovery responses in that matter ended when the Court dismissed her complaint. These data
3 requests effectively extend Hand's duty to supplement her discovery responses from that prior
4 matter by requesting substantially the same information and expressly excluding "documents
5 produced by Sarah Hand to Rainier View Water Company in Pierce County Superior Court Case
6 No. 17-2-05538-2." See *Data Requests*, at 1. In general, these requests seek new photos,
7 inspection and investigation reports, appraisals, and other similar materials for the time period
8 since the Superior Court matter ended. Thus, these requests are not cumulative, not duplicative,
9 and the information sought is not obtainable from any less burdensome source. Thus, an Order
10 compelling Hand to respond to Rainier View's Data Requests is appropriate.

11 **COMPLAINANT MUST ANSWER RAINIER VIEW'S DATA REQUESTS**
12 **BECAUSE SHE FAILED TO TIMELY OBJECT IN WRITING**

13 13. WAC 480-07-405(6)(a) expressly states that "a party must present any objections
14 to a data request to the requesting party in writing by the time the response is due ... and must
15 state the objection and explain the basis for the objection." Responses to data requests are due
16 within ten days of service, unless a written request for extension is served before the response
17 deadline. WAC 480-07-405(7)(a).

18 14. Rainier View served the Data Requests on April 2; 2018, thus, Hand's written
19 objections and/or request for extension were due ten days later, April 12, 2018. Hand served no
20 written requests for extension or written objections by the April 12, 2018 deadline. *Rankin*
21 *Declaration*, ¶ 5.

22 15. "A party that fails to interpose a timely objection to providing a full response to a
23 data request waives any right to object for purposes of discovery and must provide a full
24 response." WAC 480-07-405(6)(a).

25 ///

1 16. Hand failed to timely object to Rainier View's Data Requests. Instead, Hand
2 provided no response and waited for Rainier View to initiate a discovery conference. During this
3 conference and a follow-up discussion two weeks later, counsel for the parties discussed
4 objections and appropriate scopes of discovery. Ultimately Rainier View agreed to withdraw three
5 requests seeking electronically stored information that could be disproportionately burdensome
6 as compared to the anticipated remedies in this adjudicative proceeding; in turn, Hand agreed to
7 respond to the remaining data requests.

8 17. As a result of Hand's failure to interpose a timely written objection, an Order
9 compelling Hand to respond to Rainier View's Data Requests consistent with the parties' agreed-
10 upon limitations, is appropriate.

11 **CONCLUSION**

12 18. Data Requests are an appropriate and available discovery tool in this adjudicative
13 proceeding under WAC 480-07-400 and is consistent with the parties' conduct. Rainier View's
14 Data Requests are relevant to the issues in this adjudicative proceeding, are not duplicative or
15 cumulative, and avoid imposing a burden disproportional to Hand's claims and requested
16 remedies. Therefore, an Order compelling Hand to respond to Rainier View's Data Requests is
17 appropriate.

18 DATED this 14 day of June, 2018.

19 PREG O'DONNELL & GILLETT PLLC

20
21 By 

22 Eric P. Gillett, WSBA #23691

23 Daniel W. Rankin, WSBA #49673

24 Attorneys for Respondent Rainier View Water
25 Company, Inc.

APPENDIX 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

SARAH HAND,

Complainant(s),

DOCKET UW-170924

v.

RESPONDENT RAINIER VIEW WATER
COMPANY, INC.'S FIRST DOCUMENT
REQUEST TO COMPLAINANT SARAH
HAND

RAINIER VIEW WATER COMPANY, INC.,

Respondent(s).

TO: Sarah Hand, Complainant

AND TO: COUNSEL OF RECORD Nigel S. Malden, Attorney for Complainant.

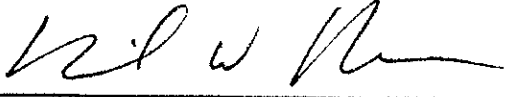
Pursuant to WAC 480-07-405(7), please provide the date the response was prepared, the individual who prepared the response, and the name of any witnesses testifying on behalf of the responding party who is knowledgeable about and can respond to questions concerning the response. Please also include the telephone number and email address of the preparer.

This Document Request expressly excludes documents produced by Sarah Hand to Rainier View Water Company in Pierce County Superior Court Case No. 17-2-05538-2.

Further, please direct your response to Dan Rankin, Attorney for Rainier View Water Company, Inc., drankin@pregodonnell.com.

DATED this 2 day of April, 2018.

PREG O'DONNELL & GILLETT PLLC

By 
Daniel W. Rankin, WSBA #49673
Attorneys for Rainier View Water Company, Inc.

1 **DOCUMENT REQUEST**

2 **DOCUMENT REQUEST NO. 1:** Please produce any and all written, graphic materials,
3 photographs, slides, video and/or other imaging depicting and/or relating to the incident alleged
4 in your Complaint, and the injuries and damages you allege you have sustained including
5 setting forth the date, time, place taken, recorded, and/or created, and the person who took,
6 recorded and/or created same.

7 **RESPONSE:**

8

9

10 **DOCUMENT REQUEST NO. 2:** Please produce any written or recorded statements from any
11 witnesses concerning this action including setting forth the date, time, place taken, recorded,
12 and/or created, and the person who took, recorded and/or created same. If any documents are
13 withheld as privileged, please provide who made the statement, who requested that the
14 statement be made, and when the statement was given.

15 **RESPONSE:**

16

17

18 **DOCUMENT REQUEST NO. 3:** Please produce the types and dates of any and all inspections,
19 tests, or investigations done to your home, including the name, address, and phone of each
20 person or facility that performed the inspection, tests, or investigation, and results and/or
21 findings for each.

22 **RESPONSE:**

23

24

25

1 **DOCUMENT REQUEST NO. 4:** Please produce any inspections, tests, or investigations you,
2 the HOA, any other homeowner, or any other person or entity has performed or caused to be
3 performed on water from Defendant, including the name, address and phone of each person
4 and facility that performed the inspection, test, or investigation, type of inspection, test, or
5 investigation, the date of the test/investigation, and result or findings of each inspection, test, or
6 investigation. Please also describe any actions taken by you or others as a result of each
7 inspection, test, or investigation.

8 **RESPONSE:**

9

10

11 **DOCUMENT REQUEST NO. 5:** Please produce a copy of all water tests and/or test results for
12 all water tests conducted at your home, including any remaining samples and chains of custody
13 of samples tested.

14 **RESPONSE:**

15

16

17 **DOCUMENT REQUEST NO. 6:** Please produce a copy of all water tests and/or test results for
18 any water test conducted by any person or facility on behalf of any homeowner in Springfield
19 Estates or on behalf of the HOA in the last 10 years.

20 **RESPONSE:**

21

22

23 **DOCUMENT REQUEST NO. 7:** Please produce a copy of any all documents, including, but not
24 limited to emails, newsletters, texts, correspondence from any homeowner in Springfield Estates
25 and/or the HOA concerning water contamination, water quality, and/or Defendant.

1 **RESPONSE:**

2

3

4 **DOCUMENT REQUEST NO. 8:** Please produce a copy of any all appraisals or other valued
5 home or assessments done on your home.

6 **RESPONSE:**

7

8

9 **DOCUMENT REQUEST NO. 9:** lease produce a copy of any all documents, including, but not
10 limited to receipts, invoices, payments, credit card statements or emails, for any replacement,
11 maintenance, or repairs or replacement to your home related to your plumbing fixtures and/or
12 pipe work, including inspection or replacement of pipes, plumbing, water heaters, waterlines,
13 pressure reduction valves, fittings, and/or fixtures performed by any person or entity since you
14 purchased the home.

15 **RESPONSE:**

16

17

18 **DOCUMENT REQUEST NO. 10:** For each of your retained experts, please produce the expert's
19 CV, documents relied on and documents provided to each of your experts, and draft reports and
20 reports from each of your experts.

21 **RESPONSE:**

22

23

24 **DOCUMENT REQUEST NO. 11:** Please produce copies of all correspondence, including
25 letters, emails, text messages, or written notes that you have sent or received concerning water

RESPONDENT RAINIER VIEW WATER COMPANY,
INC.'S DOCUMENT REQUEST TO PLAINTIFF SARAH
HAND - 4
00567-4500 5479078.doc
DOCKET UW-170924

PREG O'DONNELL & GILLETT PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 contamination, your lawsuit, or any of your alleged injuries or damages that are in the
2 possession of you, your attorney, or anyone acting on your behalf that are not attorney-client
3 privileged.

4 **RESPONSE:**

5
6
7 **DOCUMENT REQUEST NO. 12:** Please produce any and all documents that support all losses,
8 expenses, special and general damages, economic and non-economic, which are you are
9 claiming were incurred by you as a result of the incident alleged in the Complaint.

10 **RESPONSE:**

11
12
13
14 RESPONSES DATED this ____ day of _____, 2018.

15 NIGEL MALDEN LAW, PLLC

16
17 By _____
18 Nigel S. Malden, WSBA #15643
19 Attorneys for Complainant, Sarah Hand

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below, a copy of the foregoing document directed to the following individuals:

Counsel for Plaintiff Sarah Hand:

Nigel S. Malden, Esq.
Nigel S. Malden Law, PLLC
711 Court A, Suite 200
Tacoma, WA 98402

- Via Messenger
- Via Facsimile – (844) 273-6067
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email to:
nm@nigelmalddenlaw.com

Commission Staff

Jeff Roberson
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

- Via Messenger
- Via Facsimile – (844) 273-6067
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email to:
jrobertson@utc.wa.gov
sbrown@utc.wa.gov
bdemarco@utc.wa.gov

DATED this 2nd day of April, 2018, at Seattle, Washington.



Ana I. Todakozie, Legal Assistant