

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

WASHINGTON WATER SUPPLY,
INC.,

Respondent.

DOCKET UW-240079

(Consolidated)

ORDER 04

In the Matter of the Request of

WASHINGTON WATER SUPPLY,
INC.,

To Approve Tariff Revisions Regarding
a Temporary Surcharge for Recovery of
Purchased Water Expenses

DOCKET UW-230598

(Consolidated)

ORDER 05

GRANTING PETITION FOR
ADMINISTRATIVE REVIEW

BACKGROUND

- 1 On July 12, 2023, Washington Water Supply, Inc., (Washington Water Supply or Company) filed with the Washington Utilities and Transportation Commission (Commission) a tariff revision in Docket UW-230598 to include a surcharge of \$60 per month for the recovery of purchased water expenses on the Echo Glenn water system located in Maple Valley. The total number of connections on the Echo Glenn water system is 42.
- 2 On August 10, 2023, the Commission issued Order 01 in Docket UW-230598 (Order 01) that allowed the surcharge in the amount of \$60 per month to become effective August 15, 2023, subject to the following conditions:
 - (1) the surcharge will expire on November 15, 2023,

- (2) the Company will file a general rate case with an effective date no later than February 15, 2024, and
- (3) per Washington Administrative Code (WAC) 480-110-455(4), the Company will report to the Commission within 60 days of the end of each calendar quarter that the surcharge is in effect:
 - i. Quarter beginning balance.
 - ii. Amounts received, detailed by source (i.e., customer billing, customer one-time payments, or interest earned on amounts held in accounts).
 - iii. Amounts spent, detailed by project or type of expense.
 - iv. Quarter ending balance; and,
 - v. Reconcile the bank balance to the general ledger.

3 The Company completed well rehabilitation and ceased trucking water in September 2023.

4 On January 22, 2024, the Company filed tariff pages, which were assigned to Docket UW-240079, requesting a surcharge in the amount of \$24,000, to recover the costs incurred by the Company to rehabilitate the Echo Glen well.

5 On February 1, 2024, the Company notified customers of the proposed surcharge.

6 Commission staff (Staff) reviewed the Company's documentation. Staff recommended the tariff revisions be suspended and that the docket be consolidated with Docket UW-230598. Staff reasoned that the requested surcharge for well rehabilitation did not qualify for a surcharge pursuant to WAC 480-110-455. Staff advanced the position that the costs were capital costs and should be recovered through a general rate case, and if they were instead recovered through a surcharge, the Company would likely only be able to recover up to 70 percent of costs.

7 On February 22, 2024, the Commission suspended the tariff revisions for well rehabilitation and consolidated Dockets UW-240079 and UW-230598. The Commission agreed with Staff that the costs were costs more appropriately evaluated in a general rate case.

8 On March 5, 2024, Washington Water Supply filed a motion to sever dockets UW-240079 and UW-230598.

9 On March 12, 2024, Staff filed a response to Washington Water Supply's motion to sever, requesting the Commission deny the Company's motion.

- 10 On April 1, 2024, the Commission entered Order 02/03 Denying Motion to Sever; Imposing Penalty (Order 02/03). As relevant to the matter at hand, in addition to denying the Motion to Sever, Order 02/03 imposed a \$1,000 penalty against Washington Water Supply pursuant to Revised Code of Washington (RCW) 80.04.380 for failure to file a general rate case by February 15, 2024, as required by Order 01.
- 11 On April 10, 2024, Staff filed a Petition for Administrative Review (Petition) challenging the authority of the administrative law judge (ALJ) to impose penalties under RCW 80.04.380 that become due and payable upon written notice from the Commission. Staff states that RCW 80.04.405, which allows additional penalties of \$100 per violation of statute, rule, regulation, or order, explicitly grants authority to the Commission to impose those penalties upon notice alone, whereas RCW 480.04.380 contains no such provision.¹
- 12 Staff argues that penalties under RCW 80.04.380 are subject to the statutory complaint process, and that Staff is already in the process of preparing a complaint for the Company's violation of Order 01.²
- 13 On April 22, 2024, the Company filed a Response to the Petition supporting withdrawal of the penalty.

DISCUSSION AND DECISION

- 14 We agree with Staff that the penalty should be withdrawn. This is the first time we have had the opportunity to decisively interpret the statutory authority granted to ALJs under RCW 80.04.380 and, although there is room for alternative interpretation, we are convinced by Staff's reasoning, supported by our own reading of the statute, that it falls short of granting authority to ALJs to impose penalties authorized by the statute on written notice alone.
- 15 First, we recognize the rule of statutory construction that "[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous."³ A reading of chapter 80.04 RCW that permits imposition of penalties under RCW 80.04.380 by written notice alone would render the provision granting such authority over penalties pursuant to RCW 80.04.405 superfluous. If such authority were tacitly granted over the larger penalties contemplated in the earlier section,

¹ Petition, ¶4.

² *Id.*, ¶6, fn.6.

³ *Spokane Cty. V. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018).

there would be no need for explicit grant of authority over the lesser penalties contemplated in the latter section.

- 16 Additionally, RCW 80.04.405 requires that when imposing penalties under that provision the Commission provide an opportunity for persons to apply for mitigation of penalties and provides for a required fifteen-day response period. The Commission gives notice of penalties under RCW 80.04.405 through its penalty assessment process. The penalty assessment notice provided by the Commission includes detailed instructions on how and when to respond to challenge the underlying violations or request mitigation of the penalty amount. Order 02/03 did not provide the Company the opportunity to respond or challenge the penalty amount or the violation, nor did the Commission provide advance notice that penalties were being contemplated. We believe this raises concerns regarding whether due process was provided to the Company.
- 17 The procedural due process clause requires “notice and an opportunity to be heard.”⁴ The kind of notice and the timing of opportunity to be heard are determined by balancing the property interest threatened against the state interest involved. Chapter RCW 80.04 clearly determines that the property interest represented by penalties of \$100 for violations under RCW 80.04.405 is outweighed by the state interest of administrative efficiency and that providing an opportunity to respond after such penalties are imposed by notice is sufficient. The same is not true of the larger penalties contemplated under RCW 80.04.380.
- 18 RCW 80.04.110 details the due process required for penalties sought by the Commission for violations under chapter RCW 80.04 that do not fall within section 405. This process includes advance notice of the alleged violations and an opportunity for hearing prior to penalties being imposed. The penalty imposition by Order 02/03 falls short of that standard and thus fails to provide adequate due process. We thus grant the Petition and withdraw the penalty.
- 19 We note, however, that Washington Water Supply may likely still be subject to a penalty for this violation. We agree with the ALJ that if we find, after adequate notice and hearing, that Washington Water Supply has failed to abide by the terms of Order 02/03, penalties may be imposed for such failure and that RCW 80.04.380 authorizes such penalties. Indeed, RCW 80.04.380 provides that for continuing violations, every day’s continuance shall be deemed a separate and distinct offense for which the Commission

⁴ *State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995).

may impose a \$1,000 penalty. It has already been over 90 days since the deadline for Washington Water Supply to file its general rate case.

FINDINGS AND CONCLUSIONS

- 20 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, and practices of public service companies, including water companies.
- 21 (2) Washington Water Supply is a water company and a public service company subject to Commission jurisdiction.
- 22 (3) Order 02/03 imposed a \$1,000 penalty pursuant to RCW 80.04.380 for violation of Order 01 that purportedly became due and payable upon receipt of Order 02/03 by the Company.
- 23 (4) RCW 80.04.380 does not authorize ALJs to impose penalties against public service companies for violations of Title 80 RCW outside the complaint process provided under RCW 80.04.110.
- 24 (4) Staff's Petition should be granted, and the \$1,000 penalty imposed by Order 02/03 should be withdrawn.

ORDER

THE COMMISSION ORDERS:

- 25 (1) Commission Staff's Petition is GRANTED.
- 26 (2) The penalty imposed by Order 02/03 Granting Motion to Sever; Imposing Penalty is WITHDRAWN.

DATED at Lacey, Washington, and effective May 16, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission order, reviewing an interlocutory order. 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 and WAC 480-07-870.