BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. WASHINGTON WATER SUPPLY, INC., Respondent.	DOCKETS UW-240079 and UW-230598 (*consolidated*) WASHINGTON WATER SUPPLY, INC.'S PETITION FOR REVIEW OF THE INITIAL ORDER
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	

COMES NOW, Respondent Washington Water Supply, Inc. (the Company), through its undersigned counsel, and petitions for review of the Initial Order. The Company asks the Commission to revise the Initial Order on three issues: (1) the meter installation timeline, (2) the denial of the surcharge request, and (3) the increase of the general rate.

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BAGWELL LAW, PLLC
9057 WASHINGTON AVENUE N.W.
SILVERDALE, WASHINGTON 98383
(360) 516-6799 • FAX (360) 516-6899
ken@silverdalelawyers.com
alysa@silverdalelawyers.com

I. FACTS

For brevity, the Company adopts the facts relayed in Section I of Docket UW-240079 Order 06 and Docket UW-230598 Order 07.

II. ISSUES

1. Whether the ALJ erred by ordering the Company to install 17 meters by December 31, 2026.

2. Whether the ALJ erred by denying the Company's requested surcharge against Echo Glen Well customers.

3. Whether the ALJ erred by implementing an increased general rate across all water systems.

III. ARGUMENT

A. Standard of Review.

"[T]he review officer has broad decision-making authority and is intended to bring the agency's expertise to bear." *Crosswhite v. Dep't of Soc. & Health Servs.*, 197 Wn. App. 539, 548, 389 P.3d 731, 735 (2017). "The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing." RCW 34.05.464(4). "The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties." RCW 34.05.464(5). Although a reviewing officer must "give due regard to the presiding officer's opportunity to observe the witnesses," RCW 34.05.464(4), the reviewing officer has the authority to weigh evidence and the credibility of witnesses. *See Hardee v. Dep't of Soc. & Health Servs.*, 152 Wn. App. 48, 60-61, 215 P.3d 214, 220-21 (2009). The reviewing officer

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alysa@silverdalelawyers.com

also "has the ability and the right to modify or to replace an ALJ's findings." *Regan v. Dep't of Licensing*, 130 Wn. App. 39, 59, 121 P.3d 731, 742 (2005).

B. The meter installation timeline is unjust.

The ALJ ordered the Company to install 17 meters in the Echo Glen Water System by December 31, 2026. *See* Initial Order, ¶¶ 99, 146. The Company objects to the ALJ's decision as erroneously applying the law and as unsupported by substantial evidence. Accordingly, the Company assigns error to the Initial Order decision paragraphs 97, 98, and 99 and Conclusions of Law paragraphs 16 and 17.

First, the ALJ erroneously applied the law on this issue. The ALJ relied on RCW 80.28.030(1), RCW 80.28.030(2), and RCW 80.28.040(1) to conclude that the Commission may require the Company to install meters on the Echo Glen water system. However, the Commission did not rely on any of those statutes in its complaint. The Commission instituted a formal complaint against the Company, and that Complaint only cited to WAC 480-110-415(1). *See* Complaint, ¶ 36. In later testimony, Staff also cited to WAC 246-290-496. Ex. MY-1T at 17:1-6. Consequently, the Company only defended itself against WAC 480-110-415(1) and WAC 246-290-496. The ALJ even admitted in the Initial Order that none of the parties briefed the RCWs that the ALJ ultimately relied on. *See* Initial Order, ¶ 98. For the ALJ to conclude that the Company is required to install meters based on statutes the Company was never called to defend against is an unjust and erroneous application of the law.

Second, the ALJ's order that the Company must install 17 meters by December 26, 2026 is unsupported by substantial evidence. The ALJ does not consider the great cost of installing 17 meters within 18 months. The ALJ makes several statements that the Company

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alysa@silverdalelawyers.com

is operating at a financial loss and even states that "it is not entirely clear what capital investments may be needed in the near future and whether the Company will be able to finance those projects . . . ," and "it is not immediately clear that the Company has the capital necessary to comply with its agreement to complete meter installation by the end of 2026 with DOH." *See* Initial Order, ¶ 36. Yet, the ALJ ordered the Company to fund 17 meter installations within the next 18 months. This finding is not supported by substantial evidence and the timeline should be extended.

C. The Echo Glen Well rehabilitation costs should be recovered by a surcharge.

The ALJ concluded that a surcharge was not appropriate to recover Echo Glen rehabilitation costs because the rehabilitation was not a special expense. *See* Initial Order, ¶¶ 38-39. The Company objects to this conclusion as an erroneous application of the law and as unsupported by substantial evidence. Accordingly, the Company assigns error to the Initial Order decision paragraphs 38 and 39, Finding of Fact paragraph 10, and Conclusions of Law paragraphs 3 and 4.

The ALJ erroneously applied the law and did not support his conclusions with substantial evidence on this issue. The ALJ stated, "to approve the surcharge in this scenario would be straining the interpretation of WAC 480-110-455, and the expenses are better suited for recovery through base rates." *See* Initial Order, ¶ 39. This suggests the ALJ made a judgment call rather than relying on a hard and fast rule. Importantly, the ALJ did not state that the Echo Glen Well rehabilitation could not be a special expense. The ALJ only said that classifying such an expense "strained" the interpretation of the law. The Company proposes that such an interpretation is only strained when considering the well rehabilitation expenses

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in a vacuum. But when considering the entire record in this case, it becomes apparent that the costs of rehabilitating the well are a special expense.

For example, while rehabilitating the well could be considered maintenance of a capital asset in the context of one water system, the ALJ should have considered that this particular maintenance only affects one water system out of many owned by the Company. By recovering the well rehabilitation costs in a general rate increase, the Commission is charging water system customers for a benefit that they did not receive. To these other water system customers, the Echo Glen rehabilitation costs are "operating expenses that are independent and unique from normal operating expenses," or, "special expenses" under WAC 480-110-455. Contrary to the ALJ's conclusion, based on the entire record in this case, the well rehabilitation expenses are far better suited to be recovered as a surcharge against Echo Glen water system customers only. Therefore, the denial of the surcharge request is an erroneous application of law and not supported by substantial evidence. The Company asks that the denial of the surcharge request be reversed.

D. The general rate is unfair, unjust, and unreasonable.

The ALJ concluded that the Company's base rate should be increased from $43.25 to $56.77 per month. *See* Initial Order, ¶ 66. The Company objects to this conclusion as an erroneous interpretation of the law and as not supported by substantial evidence. Accordingly, the Company assigns error to Initial Order decision paragraphs 32, 35, 36, 37, and 66, and Conclusions of Law paragraphs 3 and 4.

First, the ALJ's application of the law on this issue is erroneous. The Commission must set rates that are fair, just, and reasonable. RCW 80.28.020. Here, the ALJ erroneously

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applied the law by increasing the Company's general rate over $10 per month from $43.25 to $56.77. This is not fair, just, or reasonable, especially when considering that the rates are going up for all customers due to issues that affected only the Echo Glen Well customers.

Second, the ALJ's conclusion is not supported by substantial evidence. The ALJ references evidence that the Company has been operating at its current rate since 2001. *See* Initial Order, ¶ 24. Even with the Echo Glen Well rehabilitation, the Company paid the costs to fix the well and truck in water. *Id.*, ¶ 33. The only reason this matter came before the Commission was because the Commission instituted a complaint against the Company for failing to provide adequate water and notice of the boil water advisory. However, the ALJ found in favor of the Company on those issues. If the Commission hadn't filed the Complaint, the Company would have continued with its current rate without incident. The Company presented evidence that an increase in the general rate would be an extreme hardship for certain customers. *Id.*, ¶ 30. This evidence should have been given greater weight. Therefore, the increased general rate is an erroneous application of law and not supported by substantial evidence, the increased general rate should be reversed, and the surcharge should be implemented instead.

IV. CONCLUSION

Based on the foregoing, Respondent asks the Commission to reverse the Initial Order regarding the meter installation timeline, the denial of the surcharge request, and the implementation of a new general rate.

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ken@silverdalelawyers.com
alysa@silverdalelawyers.com

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Bagwell Law, PLLC

Kenneth W. Bagwell, WSBA #32814
Alysa M. Grimes, WSBA #54658
Attorneys for Respondent

BAGWELL LAW, PLLC
9057 WASHINGTON AVENUE N.W.
SILVERDALE, WASHINGTON 98383
(360) 516-6799 • FAX (360) 516-6899
ken@silverdalelawyers.com
alysa@silverdalelawyers.com