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*) COMMISSION STAFF'S RESPONSE TO WASHINGTON WATER SUPPLY, INC.'S PETITION FOR ADMINISTRATIVE REVIEW
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.	

I. INTRODUCTION

1 The Commission should deny Washington Water Supply, Inc.'s (Washington Water) Petition for Administrative Review.

II. BACKGROUND

2 On June 30, 2025, the presiding Administrative Law Judge (ALJ) issued Order 06/07 Initial Order Rejecting Tariff Filing; Assessing and Suspending Penalties (Initial Order) in which Washington Water was ordered to install meters on a certain timeline, the ALJ found that a surcharge was inappropriate, and Washington Water's general rates were set.[1] This case

[1] *Wash. Utils. & Transp. Comm'n v. Wash. Water Supply*, Dockets UW-230598 & UW-240079, Order 06/07 Initial Order Rejecting Tariff Filing; Assessing and Suspending Penalties (June 30, 2025) (Initial Order). The ALJ made other rulings as well that are not at issue under Washington Water's petition.

originated when Washington Water requested to institute a surcharge related to the cost of trucked-in water for the Echo Glen water system in Docket UW-230598.

III. ARGUMENT

3 In its petition, the Company alleged that the ALJ has, with respect to three issues, erroneously interpreted or applied the law and failed to support the order with substantial evidence. WAC 480-07-825(2) allows parties to challenge any finding of fact, conclusion of law, remedy, or result in an initial order. If the petitioning party fails to demonstrate any error in the initial order, or any reason why the Commission should grant its petition, the Commission will deny the petition.[2]

4 RCW 34.05.570 sets forth the standards to be applied in judicial review of an agency action. The burden of demonstrating the invalidity of the agency action is on the party asserting invalidity.[3] A court shall grant relief from an agency order in an adjudicative proceeding only in certain circumstances, such as when the agency has erroneously interpreted or applied the law or if the order is not supported by evidence that is substantial when viewed in light of the whole record before the court.[4] A court shall grant relief from an agency action only if a person has been substantially prejudiced by the action.[5]

5 In this case, Washington Water has failed to demonstrate that the initial order erred and has not shown any other reason why the Commission should grant its petition. As a result, the Commission should deny the petition.

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[2] *See Washington Utilities & Transportation Comm'n, Complainant*, No. 02, 2010 WL 766480 (Mar. 4, 2010).
[3] RCW 34.05.570(1)(a).
[4] RCW 35.05.570(3)(d) & (e).
[5] RCW 34.05.570(1)(d).

A. The ALJ Appropriately Required the Company to Install Water Meters on a Particular Timeline

6 The Company argues that the ALJ erroneously applied the law when ordering the Company to install 17 meters on the Echo Glen water system before January 1, 2027. When applying the error of law standard, a court may substitute its own judgment for that of the agency, although it must give substantial weight to the agency's view of the law it administers.[6] The Company claims the ALJ erred by relying on RCW 80.28.030 and RCW 80.28.040 to conclude that the Commission has broad authority to order the Company to install meters because the Commission's complaint did not cite to these statutes, but instead cited WAC 480-110-415.

7 The Company's argument misunderstands the ALJ's reliance on RCW 80.28.030 and RCW 80.28.040 and incorrectly assigns a duty to the Commission to plead violations of those statutes in its Complaint. The Commission's complaint alleged violations of WAC 480-110-415,[7] and the ALJ found violations of this WAC.[8] Therefore, the Company had sufficient notice of the legal basis for the violations of WAC 480-110-415 and ample opportunity to defend itself. Indeed, the Company filed testimony and exhibits, participated in the evidentiary hearing, and submitted legal briefing.[9]

8 Moreover, contrary to the Company's argument, the Complaint did provide notice of the Commission's authority under RCW 80.28.030. That statute is cited in the applicable law section of the Complaint,[10] and thus provides actual notice to the Company of the basis upon which the

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[6] *Beatty v. Washington Fish and Wildlife Com'n*, 185 Wash. App. 426, 443, 341 P.3d 291 (2015).
[7] *WUTC v. Washington Water Supply Inc*, Docket UW-230598, Complaint and Notice of Prehearing Conference, ¶ 35-36 (May 30, 2024)(Complaint).
[8] Initial Order, ¶ 99.
[9] Poppe, Exh. WWS-1T through WWS-14T; Transcript – Vol IV (April 22, 2025); Washington Water's Closing Brief (May 21, 2025); *See also*, cross examination exhibits offered by Washington Water, Exh. JL-8X through JL-19X, Exh. MY-13X through MY-24X.
[10] Complaint, ¶ 28. In the Complaint, Staff also requested that the Commission order such other or further relief as is appropriate under the circumstances. The Company was therefore on notice that the Commission may order relief,

Commission may exercise authority. Even so, as a regulated public service company under the Commission's jurisdiction, Washington Water has an obligation to understand the scope of the Commission's authority and the laws to which it is subject.[11]

9 Even if the Commission were to determine that the ALJ erred, it should find that error harmless.[12] Instead of relying on RCW 80.28.030 and RCW 80.28.040, the ALJ could have alternatively relied on RCW 80.28.130, which also provides the Commission with authority to order installation of meters. Under that statute, the Commission may order repairs or improvements to a water system to promote the security or convenience of the public or employees or to secure adequate service or facilities for distributing or supplying water.[13] The Commission's Complaint specifically requests relief under this statute.[14]

10 The ALJ's conclusion in the initial order was correct. The public service laws provide the Commission with broad authority under multiple statutes to order public service companies to take actions to improve their systems, including installing meters. The Commission also has authority under the public service laws to penalize a company that fails to comply with its orders.[15] Thus, the Commission has the authority to order installation of meters by a certain deadline, or the authority to order installation would be meaningless. The ALJ correctly applied

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such as the installation of meters on a timeline, as it deems appropriate based on its findings and authority. Complaint, ¶47.

[11] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Docket UE-200027, Order 01, ¶ 12, (Sept. 3, 2020) ("The Commission requires companies to abide by their legal obligations."); *See also*, *In re Application of Schlosser and Blake, d/b/a The Paper Jogger*, Order M. V. No. 129297 (March 16, 1984) (Finding of Fact No. 5 states "The applicant is aware of the obligation to abide by the laws and rules governing motor freight carriers and has the ability to comply therewith.").

[12] *See Azorit-Wortham v. Department of Labor and Industries*, 32 Wash. App. 2d 84, 98 (2024) ("A harmless error is an error which is trivial,…formal,…merely academic,…was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.") (citing *State v. Wanrow*, 88 Wash.2d 221, 237 (1977)).

[13] RCW 80.28.130.

[14] Complaint, ¶ 46.

[15] RCW 80.28.030(1); RCW 80.28.040(1); RCW 80.04.110; RCW 80.04.380; and RCW 80.04.405.

the law in determining that the Commission has both the authority to order installation of meters, and the authority to direct the Company to do so on a specific timeline.

11 In its petition, the Company asserts that the meter installation timeline imposed by the ALJ was not supported by substantial evidence. When reviewing an agency's findings of fact under RCW 34.05.570(3)(e), the test of substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order."[16] The substantial evidence test is highly deferential to the agency fact finder.[17] In this matter, the ALJ ordered the meters to be installed by January 1, 2027, and selected this deadline because the ALJ found that (1) the Company already has an agreement with the Department of Health (DOH) to install the meters by this same deadline and (2) it is appropriate to adopt this instead of a separate deadline.[18]

12 The Company does not challenge this finding of fact. Instead, the Company suggests that the ALJ failed to consider the cost of meter installation, cherry picking quotes from the ALJ's initial order to create the appearance that the ALJ was aware of the Company's dire financial condition but nevertheless ordered meter installation without regard for the cost. In doing so, the Company omits important context for the ALJ's comments. In paragraphs 31-37 of the initial order, the ALJ explained the basis for finding that the Company's rates needed to be increased. Specifically, the Company operated at a substantial loss for many years and relied upon the Company owner's personal retirement account to fund capital projects.

13 It is clear from reading these paragraphs in their entirety that the ALJ reasoned that without a rate increase, it was doubtful that the Company could make needed capital investments

[16] *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wash.2d 543, 553, 14 P.3d 133 (2000) (citing *Callecod v. Wash. State Patrol*, 84 Wash. App. 663, 673, 929 P.2d 510 (1997)).
[17] *Beatty v. Washington Fish and Wildlife Com'n*, 185 Wash. App. 426, 341 P.3d 291 (2015) (citing *ARCO Prods. Co. v. Utils. & Transp. Comm'n*, 125 Wash.2d 805, 812, 888 P.2d 728 (1995).
[18] Initial Order, ¶ 99.

in the future and continue to install meters as required by DOH. The ALJ did consider that meters are costly,[19] and ordered a rate increase with that, as well as other factors, in mind. Given the rate increase granted to the Company, there is no evidence in the record indicating that the Company cannot afford to install meters by the deadline agreed to by DOH and imposed by the Commission.

14 The ALJ's meter installation deadline is supported by substantial evidence and the Company's argument to the contrary is without merit. So, too, is the Company's request for the Commission to extend the deadline. It is unclear what relief the Company is seeking, as it fails to propose an alternative deadline by which meters should be installed, nor does it offer any citations to the record that would support an alternative deadline. The Commission should reject this request.

15 The record in this matter supports the Commission ordering installation of meters under RCW 80.28.130 as well as under RCW 80.28.030 and RCW 80.28.040. The evidence establishes that of the 43 connections Washington Water has in its Echo Glen water system, 26 meters are installed, leaving 17 connections unmetered.[20] These 17 connections are unmetered despite the requirements under WAC 246-290-496 to install meters by 2017. The record also shows that accurately calibrated meters, as required by WAC 480-110-415(1), would accurately measure water consumption and could identify the existence and source of system leaks.[21] The record shows that the Company agreed with DOH to install a certain number of meters per year and to begin reading meters currently installed.[22] The record also shows that the Company estimated

[19] Initial Order, ¶ 36 ("it is known that the Company must continue to install meters, which are costly….").
[20] Young, Exh. MY-1T at 17:8-11.
[21] Poppe, TR. 106:5-22. Mr. Poppe attempted to argue that meters may not be the most accurate way of measuring customer consumption. However, Mr. Poppe concedes that the Commission's rule requires that meters be accurate and in working order. Poppe, TR. 106:23 – 107:18.
[22] Poppe, Exh. WWS-6T at 16:7-10; Young, Exh. MY-11 at 5.

meter installation to cost approximately $700 per customer and that each installation takes approximately four hours.[23] The record also reflects that failure to install meters contributed to the catastrophic failure of the Echo Glen well.[24]

16 Based on these facts, the Commission should now find that the ALJ did not err because the Commission may order the Company to install 17 meters by January 1, 2027, under RCW 80.28.130, in addition to the ALJ's findings under RCW 80.28.030 and RCW 80.28.040.[25]

B. The ALJ Properly Determined That the Echo Glen Well Rehabilitation Costs Should be Recovered Through Base Rates and Not Through a Surcharge

17 The Company argues that the ALJ erroneously applied the law when finding that the Echo Glen well rehabilitation expenses should be recovered through base rates rather than a surcharge. It also argues that the ALJ's order was not supported by substantial evidence. Neither argument has merit. Specifically, the Company argues that the ALJ should have considered the well rehabilitation costs to be a special expense under WAC 480-110-455. However, as the ALJ correctly noted, under Commission rules, a surcharge may be used to fund special expenses, which are operating expenses independent and unique from normal operating expenses.[26] The ALJ reasoned that because the well rehabilitation costs are capital expenses, not operating expenses, they are not special expenses as that term is defined in WAC 480-110-455.

18 The Company faults the ALJ for making a "judgment call," asserting that the nature of the expense (capital or operating) is essentially in the eye of the beholder, and depends on whether a water system is directly served by the infrastructure for which the expense is incurred. Under this reasoning, every capital expense could be deemed a special operating expenses for

[23] Young, Exh. MY-11 at 5; Order 01, ¶ 6.
[24] Young, Exh. MY-10T at 11:1-10.
[25] 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).
[26] Initial Order, ¶ 38.

which a surcharge may be imposed, and this interpretation would defeat the purpose of the limited categories of expenses for which WAC 480-110-455 authorizes a surcharge.

19 "Such an interpretation could lead to absurd results, which we are bound to avoid when we can do so without doing violence to the words of a statute."[27] In interpreting language, the rule must be interpreted as a whole such that "no clause, sentence, or word shall be superfluous, void, or insignificant."[28] The ALJ's reasoning is consistent with rules of statutory interpretation. In contrast, the Company fails to support its argument with legal authority or citations to the record, and the Commission should reject it.

20 Additionally, the ALJ's decision to reject the surcharge is supported by substantial evidence. The initial order sets forth what the ALJ considered and his reasoning for rejecting Washington Water's surcharge proposal.[29] The ALJ considered Washington Water's testimony regarding paying its bills, charging rates approved in 2001, characterizing the well rehabilitation as a "special expense," and how happy customers are.[30] The ALJ also considered Staff testimony about the Company's expenses and the annual revenue needed to cover those expenses.[31] Ultimately, the ALJ weighed the evidence in favor of adjusting the Company's rates to reflect its current operating expenses and providing a reasonable opportunity to earn a fair return. Because the ALJ's decision is supported by substantial evidence, the Commission should deny the petition.

[27] *State v. Hall*, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010).
[28] *Ralph v. State Dep't of Nat. Res.*, 182 Wn.2d 242, 248, 343 P.3d 342 (2014).
[29] Initial Order, ¶¶ 12-40.
[30] Initial Order, ¶¶ 23-25 and 30, citing Poppe, Exh. WWS-1T, Exh. WWS-6T, Exh. WWS-11, and Exh. WWS-14T.
[31] Initial Order, ¶¶ 26-29, citing Leggett, Exh. JL-1T.

C. The ALJ's Decision to Increase the Company's Base Rates was Legally Justified and Supported by Substantial Evidence

21 The Company asserts, in a conclusory manner, that the ALJ misapplied RCW 80.28.020 by increasing the Company's general rate. The Company fails to support its argument with legal authority or citations to the record. The Company merely claims that rates will go up for all customers due to issues that only affected customers of the Echo Glen water system. This is misleading. Staff examined all the Company's records to determine the costs of running the entire Company, not simply the Echo Glen system, and found that the general rate was insufficient to adequately run the entire Company.[32] The ALJ was persuaded that a rate increase was needed for the Company to sufficiently operate, not merely for one system to sufficiently operate.[33]

22 The Company hints at certain expenses primarily affecting Echo Glen customers that the ALJ included in general rates, which apply to all Washington Water customers. Again, the Company states in conclusory fashion that this was unjust. However, Washington Water operates on a single tariff.[34] The Commission has long favored the single tariff model, which allows companies to charge a single rate across all its water systems, as discussed in Staff's closing brief.[35] Single tariff pricing distributes risk across a water company's entire customer base, which diminishes the impact of major capital investments on individual water system customers.[36] Single tariff pricing maximizes economies of scale and is in the public interest.[37] In this case, the Company's single tariff pricing allows investments to be spread across all of its

[32] Leggett, Exh. JL-1T.
[33] Initial Order, ¶¶ 37, 41-66.
[34] Poppe, TR. 128:11-16.
[35] Staff Brief, ¶¶ 122-129.
[36] *Wash. Utils. & Transp. Comm'n v. Washington Water Service*, Docket UW-090733, Order 02, ¶ 8 (July 30, 2009).
[37] *Wash. Utils. & Transp. Comm'n v. Illiad Water Companies*, Docket UW-161155, Order 02, ¶ 10 (March 29, 2017).

customers, which leverages the benefits of economies of scale and reduces the impact of the costs on a per-customer basis.

23 The Company's petition cites to no legal authority supporting its claim it cannot be fair, just, and reasonable to include costs related to one water system in a general rate that also applies to other systems within the same company. The ALJ properly applied the law that rates must be fair, just, reasonable, and sufficient when the ALJ raised the Company's base rate and included expenses related to Echo Glen water system in the general rate.

24 The Company also argues that the ALJ's decision to raise rates is not supported by substantial evidence. To support this claim, the Company makes two arguments. First, the Company argues that it would have continued charging its current rate without incident if the Commission had not filed a complaint against the Company. It asserts that the only reason the matter came before the Commission was because the Commission instituted a complaint against the Company for failing to provide adequate water. This assertion is demonstrably false. It was the Company that first brought the issue of rates before the Commission in July 2023 when it filed with the Commission a request to implement a surcharge to cover the cost of the trucked-in water.[38] During the open meeting on the Company's surcharge request, the failure of the Echo Glen well was discussed, along with the Company's failure to update its general rates since 2001.[39] At that meeting, the Commission ordered Staff to file a complaint against the Company, and it ordered the Company to file a general rates case.[40] The Company's own actions placed these issues before the Commission. The Company's assertion on this point is without merit and should be given no consideration by the Commission.

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[38] *In re Request of Washington Water Supply, Inc*, Docket UW-230598, Order 01, ¶ 1 (August 10, 2023)(Order 01).
[39] *See* Open Meeting Recording, beginning at 39:12, *In the Matter of the Request of Washington Water Supply, Inc.* (2023) (UW-230598), https://wutc.app.box.com/v/OpenMeetings/file/1288044702722.
[40] Order 01, ¶ 21-22.

25 Second, the Company argues that the ALJ should have given greater weight to potential hardship to customers. With respect to weighing evidence, the trier of fact generally determines weight and credibility. An agency's factual findings are supported by substantial evidence when evidence is sufficient to persuade a fair-minded person of the stated premise.[41] Factual findings are overturned only if they are clearly erroneous, which requires that the entire record demonstrates conclusively that a mistake was made.[42]

26 Here, the record lacks evidence of the harm to customers. The only facts in the record are Mr. Poppe's bare assertion, unsupported by documentation or other evidence, that a rate increase would result in hardship for ratepayers. As noted above, the ALJ specifically considered this evidence, and afforded it the weight he deemed appropriate.

27 The ALJ's decision to raise the Company's rates was supported by substantial evidence. The initial order states, "While the Commission appreciates the Company's apparent desire to keep rates low because customers are 'happy with their rates,' the evidence in this case suggests that the rates currently charged by the Company are unreasonably less than what is 'sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.'"[43] The record contains evidence of the catastrophic failure and the hardships endured by customers as a result of the Echo Glen failing. The record contains evidence of the Company operating at a significant loss for at least 10 years.[44] The record shows that the Company paid for trucked-in water and well rehabilitation

[41] *Honeywell v. Wash. Dept. of Ecology*, 2 Wn. App. 601, 613, 413 P.3d 41 (2017).
[42] *Id.*
[43] Initial Order, ¶ 32, citing *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 693 (1923).
[44] Poppe, Tr. 81:5-17.

through the owner's personal deferred compensation account.[45] The ALJ considered evidence that was sufficient to convince a fair minded person that the Company's rates were insufficient to allow recovery of its reasonable costs. Moreover, there was sufficient evidence in the record on which to base a rate adjustment and to calculate the Company's revenue requirement.

28 Finally, the Company has not shown that it is substantially prejudiced by the ALJ's decision to raise the Company's general rate. To the contrary, the Company and customers will be better off with more resources. The Commission should deny the Petition.

IV. CONCLUSION

29 For the reasons stated above, the Commission should deny Washington Water's petition for administrative review.

DATED this 31st day of July 2025.

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[45] Washington Water's Brief at 6:1-14 *citing* Poppe, Exh. WWS-6T at 14:7-8; Exh. WWS-11; Poppe, Exh. WWS-1T at 2:17-18; and Poppe, Tr. at 127:15-20.