

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

SARAH HAND

Complainant,

v.

RAINIER VIEW WATER COMPANY, INC.,

Respondent.

DOCKET UW 170924

BRIEF OF COMPLAINANT
SARAH HAND

I. INTRODUCTION

The brief submitted by UTC counsel has a thorough and accurate chronology of events and summary of legal issues. Complainant agrees with many of the conclusions and recommendations set forth in the UTC brief and will endeavor to avoid duplication.

II. SUMMARY OF FACTS

Sarah Hand (Hand) and her family moved into their home at 7202 201st Street East in Spanaway, WA in May of 2015. *SH-1T, pg. 1, lines 4-8*. Rainier View Water Company (RVWC) supplies water to the Hand residence through a system of wells described in detail by the UTC in its brief.¹

Since the time she moved into her home, Ms. Hand has observed that the water which runs through her faucets is regularly light to dark brown in color and has floating debris.²

¹ *UTC-Brf, Pg. 3, ¶ 10-11*
² *SH-1T, pg. 4, lines 7-12*

1 The water also has an unpleasant, musty odor.³ Ms. Hand and her family refuse to drink the
2 water due to its dirty appearance and smell and fear of what it might do to their bodies.⁴

3 Between May 2015 and the time of this brief, Ms. Hand has had to pay approximately
4 **\$3,520.00**⁵ to replace the water needed for human consumption of drinking and cooking.

5
6 RVWC's Operations Manager, Robert Blackman, admits that Ms. Hand's refusal to drink the
7 water is reasonable⁶ under the circumstances.

8 The Hands do not cook with the water unless it is boiled first.⁷ Showering or bathing in
9 the brown water is unpleasant but there is no practical alternative.⁸ Kitchen plates and utensils
10 often come out from the dishwasher dirty and spotted.⁹ Aside from going to a public
11 laundromat, the Hands have no practical alternative but to use the water to wash their clothes
12 even though it tends to stain clothing (especially whites) and leave an unpleasant odor.¹⁰
13 Finally, the excessive levels of manganese in the water stains porcelain and corrodes metal,
14 pipes, plumbing and fixtures.¹¹ Mr. Blackman himself acknowledges these issues and concerns
15 and agrees that the Hands complaints are reasonable¹² under the circumstances.
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21 ³ *Id.*

22 ⁴ *Id.* lines 17-26.

23 ⁵ *Ms. Hand has bought eight cases of bottled water a month for drinking at a cost of \$3.00 per case or*
24 *\$24.00 per month and nine 5-gallon dispensers at \$7 per dispenser or \$64 per month since 2015*
(calculating 40 months). Id at lines 20-26.

25 ⁶ *Blackman, TR. at 101:22-102:12*

26 ⁷ *SH-IT, Pg. 5, lines 1-3*

27 ⁸ *Id at lines 3-7*

28 ⁹ *Id, at lines 8-13*

¹⁰ *Id, at lines 14-20*

¹¹ *SH-IT, pg. 5, lines 21-28; pg. 6, lines 1-5.*

¹² *Blackman, TR. at 101:22-102:12.*

1 Ms. Hand began discussing her water quality concerns with RVWC’s service technicians
2 and Mr. Blackman, in 2016.¹³ Mr. Blackman admitted the brown water looked unpleasant but
3 guaranteed that it was safe to drink¹⁴ although he would not drink it himself.¹⁵ RVWC
4 suggested that Ms. Hand let the water run through her faucets until it turns clear.¹⁶ The
5 company also sent crews to flush the lines when Ms. Hand complained. Flushing the lines
6 involves opening the water main and letting water spill out into the street for several minutes.
7 RVWC charges the customer for all water used.¹⁷ Sometimes this would help temporarily with
8 water quality but sometimes it made it worse. When Ms. Hand continued to complain, Mr.
9 Blackman told her that the company had no obligation to do anything further and was “protected
10 by a commission.” *SH-1T, pg. 8, lines 2-5*

13 This prompted Ms. Hand to call the Washington Utilities and Transportation
14 Commission (“UTC”) on November 8, 2016. *SH-12*. She complained about the water quality
15 and asked what RVWC meant when it said that it was “protected by a commission.” *Id.* UTC
16 Consumer Specialist, Rachel Stark, began to investigate by forwarding the complaint to Bob
17 Blackman at RVWC. *Id.*

19 While Ms. Hand’s complaint was pending at the UTC, a KIRO 7 news reporter
20 telephoned the Washington State Department of Health Northwest Regional Office of Drinking
21 Water (“ODW”) and asked about the brown water problem at Springwood Estates which he had
22 been investigating for over one year.¹⁸ ODW Manager, Robert James, took the call in
23

25 ¹³ *SH-1T, pg. 7, lines 15-20*

26 ¹⁴ *SH-38, pg. 64, Ln. 22-23*

27 ¹⁵ *SH-1T, pg. 7, lines 21-26*

28 ¹⁶ *SH-38, pg. 65, lines 12-13*

¹⁷ *Blackman TR, pg. 159, lines 14-19*

¹⁸ *SH-19, pg. 10, lines 4-7*

1 November 2016. *Id.*, lines 1-2. This was the first time Mr. James or the DOH ever heard of the
2 problem.¹⁹ The DOH had no record of any complaints on file.²⁰

3 In November 2016, Mr. James met with Mr. Blackman and other RVWC staff and they
4 tested the water at several well sites located within RVWC’s Southwood System which supplies
5 water to Springwood Estates.²¹ Mr. James says that he chose to personally attend the testing so
6 he could “clarify for the reporter what happened.”²² The tests revealed that one of the wells had
7 manganese which far exceeded the Secondary Maximum Contaminant Levels (“MCL”) set
8 forth in WAC 246-290-310 even though RVWC had promised to fix the problem a year ago. *Id.*
9 *pg. 14, lines 4-7.* RVWC told Mr. James that it was installing a filtration system that should fix
10 the problem and promised to take the one well offline. *Id. pg. 15, lines 1-8*

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12
13 The DOH was satisfied with this response but was under the false impression that only
14 one customer had complained about the water quality. Mr. James and the DOH had no idea that
15 there were hundreds of complaints²³ located in RVWC’s own service order data system.

16
17 **III. WAIVER OF ISSUES RE UTC’S HANDLING OF INFORMAL COMPLAINT**
18 **IN 2016**

19 In her formal complaint filed with the UTC, and in her direct testimony, Ms. Hand
20 raised questions and concerns regarding how the UTC investigated and resolved her informal
21 complaint in 2016. During the hearing, however, Rachel Stark explained her actions and
22 conclusions and why she relied on what she was told by the DOH and Mr. Blackman. Ms.
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25 ¹⁹ *Id. pg. 11, lines 10-18*

26 ²⁰ *Id.*, *pg. 12, lines 4-6*

27 ²¹ *Id. Pg. 10, lines 12-17*

28 ²² *Id. Pg. 13, 10-13.*

²³ *Blackman TR, pg. 130, lines 13-15*

1 Hand believes that Mr. Blackman intentionally misled Ms. Stark and the UTC about the
2 regulation of manganese under WAC 246-290-310 and the massive number of customer
3 complaints.²⁴ She also believes that the DOH misled Ms. Stark by telling her that the standards
4 governing manganese are voluntary and set by the EPA.²⁵ However, Ms. Hand now
5 understands how and why it happened and feels that no further discussion of the informal
6 complaint process is necessary.

8 **IV. WAIVER OF ISSUES RE DOH DESIGN MANUAL**

9 WAC 246-290-320(1)(c) states that when a secondary contaminant violation occurs, the
10 water purveyor “shall notify the DOH and take action as directed.” WAC 246-290-320 (3)(d)
11 states that the water purveyor with secondary contaminant exceedances, shall take “follow up
12 action” which shall be commensurate with the degree of consumer acceptance of the water
13 quality and their willingness to bear the costs of meeting the secondary standard.”

14 WAC 246-290-320 is obviously intended to protect the right of customers who have to
15 pay the bills to participate in decisions that may affect their health or pocketbook. The right of
16 paying customers to participate in decisions that affect their health or pocketbook is also made
17 clear in the DOH 2009 Water System Design Manual which states in pertinent part:

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19
20 **Secondary Contaminant Treatment Requirements and**
21 **Options Washington State Department of Health**

22 **DOH will require action by the purveyor when the purveyor**
23 **receives five or more specific complaints associated with a**

24
25 ²⁴ *RS-4, pg. 1* Mr. Blackman told Ms. Stark that he was surprised that the DOH had not received more
26 complaints if the water quality was that bad. He said this knowing that RVWC had received hundreds of
27 complaints which were never forwarded to told to the DOH.

28 ²⁵ DOH ODW engineer, Virpi Solo-Zieman told Ms. Sark that secondary contaminants were regulated by
the EPA which published voluntary (as opposed to mandatory) standards. Her assurance that RVWC
was in compliance with all water quality standards was flat wrong.

1 secondary contaminant from different customers in a 12-
2 month period. DOH may receive the complaints individually or
3 through a petition signed by five or more customers. When a
4 problem is determined to be significant, the requirements
5 below apply.

6 **I. Iron and Manganese (Fe/Mn)**

7 Compliance with the secondary standards for Fe/Mn is not
8 required for water systems in existence prior to January 15,
9 1992, unless the iron or manganese is creating a “significant”
10 problem as defined previously.

11 If a water system has a “significant” problem, it will be
12 required to take the following actions:

- 13 1. The water supplier must prepare an engineering report
14 with recommended corrective actions necessary to bring
15 the water system into compliance with the Fe/Mn
16 standards. The report must evaluate all reasonable
17 alternatives and determine the costs associated with each
18 alternative. The study must be prepared by a professional
19 engineer registered in Washington State.
- 20 2. The results of the study conducted by the water supplier
21 should be made available to the customer at an
22 appropriately noticed public meeting, or by document
23 distribution.
- 24 3. The water system must prepare a proposed survey of the
25 regularly billed customers, which provides for
26 questionnaires to be sent to each service connection to
27 determine the customer preference regarding the quality of
28 the water and the cost of compliance. The questionnaire
should be as objective as possible and be based on the
engineering report. The estimated capital and operation
costs to the consumer should be based on the most cost-
effective alternative presented in the engineering report.
This alternative must also be acceptable to DOH.
4. The proposed survey questionnaire and the engineering
report must be submitted to DOH for review and approval
prior to its distribution.
5. Upon approval of the survey questionnaire, the water
supplier must distribute it to the consumers. Customer

1 **responses to the questionnaire should be tabulated by the**
2 **water system for submission to DOH.**

3 **6. Water systems that do not serve regularly billed customers**
4 **similar to a community, will be reviewed and evaluated in a**
5 **manner determined to be appropriate by DOH.**

6 RVWC took a shortcut and bypassed WAC 246-290-320(3)(d) and the DOH Design
7 Manual. The company made no effort to properly survey customers or to present options as
8 they were required to do. It simply asked APEX Engineering to create a filtration system with
9 no competitive bidding and zero input from the public. RVWC then submitted a request to
10 extend a surcharge to pay for everything which was approved by the UTC on December 22,
11 2016 followed by a request for another surcharge to cover pay raises and benefits which was
12 granted by the UTC six months later.

13 Ms. Hand believes this was a dishonest way for RVWC to dodge its responsibilities and
14 win big rate hikes and employee pay raises. However, as the UTC points out in its brief,
15 RVWC can get away with it because its customers were never told and did not know to send
16 their water quality complaints to the DOH.²⁶

17
18 **V. LEGAL ARGUMENT**

19 **A. The Water Supplied By RVWC To Sarah Hand Contained Excessive Levels Of**
20 **Manganese In Violation Of WAC 246-290-310 Which Made It Impure Under RCW**
21 **80.28.030 And The Commission Should Order Corrective Action**

22 RCW 80.28.030(1) states in pertinent part that:

23
24 *Failure of a water company to comply with state board of health*
25 *standards adopted under RCW 43.20.050(2)(a) or department*

26
27 ²⁶ Ms. Hand agrees with the UTC's recommendation to require RVWC to instruct customers on
28 their bills and in their annual reports to submit water quality complaints to the DOH.

standards adopted under chapter 70.116 RCW for purity, volume, and pressure is prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

The Washington State Department of Health Office of Drinking Water adopted drinking water quality standards which are set forth in WAC 246-290-310. The regulation sets the Secondary Maximum Contaminant Level (SMCL) for manganese at 0.05 mg/l. The evidence is overwhelming that RVWC has been supplying water to the Hand residence and many others in Pierce county with levels of manganese far in excess of the SMCL which makes the water impure as a matter of law.²⁷

B. The Water Supplied By RVWC To Sarah Hand Is Unfit For Human Consumption As Defined In Wac 246-290-010 (133)

RVWC sells water to the public that it represents to be fit for human consumption meaning fit for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.²⁸ Given its appearance and characteristics, however, the water is obviously not fit for human consumption or regular household use.

C. RVWC Uses False And Deceptive Statements To Market And Sell Its Product But The UTC Has No Legal Authority To Order Corrective Action

RVWC has made many false and deceptive statements²⁹ to promote its business including but not limited to the following:

1. *RVWC has “always and will continue to provide the safest possible water to every last free flowing tap that we serve.”*

²⁷ The evidence is summarized well by the UTC in its brief and includes RVWC’s own test results and direct observation.

²⁸ See WAC 246-290-010(133)

²⁹ SH-10, pg. 2

- 1 2. *“There have been times throughout the year that the product delivered to*
2 *you has been aesthetically displeasing, but I guarantee it has been safe to*
3 *drink or cook with.”*
- 4 3. *“It is of the upmost importance to us to remain in compliance with all*
5 *State and Federal guidelines regarding water quality.”*
- 6 4. *“You can count on Rainier View to provide you with the highest quality*
7 *water possible. We continually sample, test and treat your water on a*
8 *regular basis. We are committed to meet every water quality standard on*
9 *every system we operate every single day.”*

10 Mr. Blackman himself guarantees the water is safe to drink.³⁰ Such guarantees
11 are phony and deceptive when RVWC claims immunity from any kind of legal claim for
12 breach of contract, breach of warranty, negligence or false advertising.

13 **D. The UTC Has Legal Authority To Order Refund Of Third Party Water Testing Per**
14 **RCW 80.04.110.**

15 Pursuant to RCW 80.04.110, Ms. Hand requests the Commission order reimbursement of
16 the cost of private water testing in the amount of \$4310.46. *SH-62X.*

17 **V. CONCLUSION**

18 Ms. Hand respectfully requests that the Commission find that RVWC sold impure water
19 to Ms. Hand from 2015 to the present and order RVWC to take corrective action to include the
20 “pigging” described in the UTC brief.

21 Ms. Hand understands that the UTC is not authorized to order compensatory monetary
22 damages and withdraws any prior request to the contrary. However, she does ask the
23 Commission to find that she has been reasonably required to purchase substitute drinking water
24 at her own expense and that the accuracy and regulation of RVWC’s marketing and promotional
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26 _____
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28 ³⁰ *SH-38, pg.64, lines 22-23*

1 statements are outside the purview of the UTC and should be decided by a court of law under
2 the state Consumer Protection Act.

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4 Dated this 28th day of August, 2018

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