

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

SARAH HAND,

Complainant,

v.

RAINIER VIEW WATER COMPANY,
INC.,

Respondent.

DOCKET UW-170924

ORDER 02

INITIAL ORDER

BACKGROUND

- 1 On November 8, 2016, Sarah Hand contacted the Washington Utilities and Transportation Commission (Commission) to complain about the quality of the water she and her family were receiving from Rainier View Water Company, Inc. (Rainier View or Company). The Commission determined that the Washington Department of Health (DOH) was the appropriate state agency to address her concerns and took no action on her complaint.
- 2 Ms. Hand subsequently filed suit against Rainier View in Pierce County Superior Court, seeking a judicial determination that the Company was violating its legal obligations to provide acceptable water service. In the context of those proceedings, the Commission reviewed its position and acknowledged that it has jurisdiction over water quality complaints from customers of utilities the Commission regulates. The Court dismissed Ms. Hand's suit without prejudice to allow the Commission to adjudicate her water quality issues in the first instance.
- 3 On August 31, 2017, the Commission issued a notice converting Ms. Hand's informal complaint to a formal complaint and initiating adjudicative proceedings. The Commission requested briefing from the parties on the extent of the Commission's jurisdiction to resolve Ms. Hand's complaint. Rainier View and Commission regulatory staff (Staff)¹ each filed briefs on November 17, 2017, and Ms. Hand filed a brief on

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do

November 22. All parties agreed that the Commission has jurisdiction to address water quality issues in conjunction with DOH and could order the Company to improve its service but lacks authority to award compensatory damages.

4 On December 18, 2017, the Commission conducted a prehearing conference and entered Order 01, Prehearing Conference Order, two days later. On January 9, 2018, the Commission issued a notice adopting the parties' agreed procedural schedule.

5 On January 8, 2018, Ms. Hand filed a formal complaint. The complaint makes the following claims:

- Rainier View's water is "impure" as a matter of law and unfit for normal residential use;
- The Company misrepresents the quality of its water to the public;
- Rainier View failed to report excess manganese levels in its water to DOH in violation of WAC 246-290-320(1)(c);
- The Company failed to conduct water testing as frequently as DOH required;
- Rainier View misdirects the public where and how to submit water quality complaints;
- The Company fails to process complaints and maintain complaint records in violation of WAC 480-110-385; and
- Rainier View passed on the costs of its new filtration system to the public without obtaining public input or approval in violation of WAC 246-20-320(3)(d) and the DOH Water System Design Manual.

The complaint seeks the following relief:

- Monetary damages, including reimbursement of Ms. Hand's expenses, decreased property value, and refunds of amounts she has paid the Company for water service;
- An order requiring Rainier View to improve the quality and purity of its water so that it meets state safe drinking water standards within 30 days; and
- An order requiring the Company to improve its customer service and to change specified unjust or unreasonable acts and practices, including:

not discuss the merits of this proceeding with regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- accurately advising customers of the jurisdictional authority of the Commission and DOH;
- testing the Company's water every 30 days, reporting the results to DOH, and posting them on its website;
- documenting and maintaining every customer complaint for a period of five years;
- taking all required steps to survey and engage its customers in any future efforts to improve water quality; and
- modifying its bills to instruct customers to contact DOH with any complaints about water quality.

6 On January 29, 2018, Rainier View filed its Answer and Affirmative Defenses. The Company denies all of the claims in the complaint and states that Ms. Hand is not entitled to any of the remedies she requests. Rainier View requests that the Commission enter judgment in the Company's favor, award Ms. Hand nothing, and enter findings and conclusions upholding the Company's actions and confirming it has complied with applicable law.

7 On March 20, 2018, Ms. Hand filed testimony and exhibits in support of her complaint. She testified that she and her family have had problems with the quality of the water they receive from Rainier View since they moved into their home in 2015. "The color of the water running from our faucets has ranged from light to dark brown. It often has visible floating debris and a musty, unpleasant odor."² They do not drink the water but use it for bathing and washing dishes and clothes, even though the water leaves the dishes dirty and spotted, stains their clothing, and leaves an unpleasant odor. She also states that the water has stained or corroded their porcelain, pipes, fixtures, and appliances. She contends that others in her community have had similar problems.³

8 Ms. Hand testified that she repeatedly contacted Rainier View to complain about the quality of the water. She states that the Company refused to do anything more than flush the lines in response to her complaints, which sometimes helped temporarily and other times made the problem worse. She also complained to the Commission but following an investigation was told that the Commission lacked jurisdiction over water quality issues, the Company was in compliance with state water quality standards, and the Commission

² Hand, Exh. SH-1T at 3:8-10.

³ *Id.* at 3-6.

had closed her complaint. Based on her reading of applicable law, she claims that Rainier View is in violation of state water quality regulations and engages in unlawful business practices, and she seeks the relief requested in her formal complaint.⁴

9 On May 3, 2018, Rainier View filed the testimony of Bob Blackman, its general manager. Mr. Blackman testified that the “Company has not been sanctioned, cited, or received any formal punishment or remedial order from [DOH] or the . . . Commission in the last five years.”⁵ He explained that manganese is a naturally occurring mineral that is beneficial to human health in small quantities. The state and federal governments regulate it as a secondary contaminant to drinking water, which affects the aesthetics of water but is deemed not be a health risk. “When water containing manganese passes through the chlorination process, the manganese oxidizes, creating very, very small flecks of matter that can appear brown-ish or black-ish.”⁶ These flecks settle to the bottom of delivery pipes but are stirred up and pushed further into the system when water moves rapidly through the pipes.⁷

10 Mr. Blackman testified that Rainier View discovered elevated levels of manganese coming from one of its wells in early 2016. The Company informed DOH of the issue, which directed Rainier View to proceed with obtaining DOH and Commission approval to install a filtration system. The Company obtained that approval, and the filtration system went online in June 2017. Since that time, tests have shown either non-detectable or the lowest detectable levels of manganese in the Company’s water supply. Because manganese still exists in the distribution system past the point of filtration, however, Rainier View has increased its large-scale flushing efforts. The Company nevertheless does not consider its water to be “impure” because such a designation applies in the Company’s view only when the water contains contaminants not naturally found in the groundwater.⁸

11 Mr. Blackman also described Rainier View’s customer complaint process and the history of complaints the Company received related to manganese. In addition, he related his interactions with Ms. Hand, specifically her initial contact in November 2016 to request that Rainier View reimburse her for the costs she incurred to replace a pressure release

⁴ *Id.* at 6-19.

⁵ Blackman, Exh. BB-1T at 5:11-13.

⁶ *Id.* at 6:19-21.

⁷ *Id.* at 6:22 – 7:3.

⁸ *Id.* at 12-16.

valve, which she claimed was necessary due to the quality of the Company's water. Rainier View declined her request because the Company takes the position that it is not liable for plumbing issues inside customers' homes. He subsequently spoke with her on the phone or in person approximately 10 times.⁹

- 12 On May 3, 2018, Staff filed the testimony of Rachel Stark, a Consumer Program Specialist for the Commission. Ms. Stark described Ms. Hand's informal complaint to the Commission against Rainier View, Staff's investigation of her complaint, and Staff's decision to close the complaint.¹⁰
- 13 On July 2, 2018, Ms. Hand filed reply testimony in which she described tests of the water inside her home that she arranged in April 2017 and the results of those tests. Among the results was a manganese level above the state's secondary contaminant limit and color and turbidity levels well above permissible limits. She also took issue with Mr. Blackman's testimony concerning the Company's allegedly spotless record, stating that a 2014 Staff investigation report on Rainier View found 28 violations of Commission rules. She opined that DOH had not received more customer complaints about the Company's water quality because Rainier View directs customers to make such complaints to the Commission, rather than to DOH.¹¹
- 14 On July 16, 2018, Rainier View filed the surreply testimony of Bob Blackman. Mr. Blackman criticized the methodology and validity of the tests on the water in Ms. Hand's home. He observed that even using the results of those tests, the average of the samples is below the state limit for manganese. He also stated that the turbidity regulations Ms. Hand cites are inapplicable to the water system that serves her home and that the water that Rainier View provides is safe to drink.¹²
- 15 The Commission conducted an evidentiary hearing on July 25, 2018. At the hearing, Mr. Blackman testified that it could take two to three years for the manganese to be cleared from the Company's distribution system.¹³ He also described a process for removing manganese in water pipes called "pigging," which consists of inserting a bullet-shaped

⁹ *Id.* at 10:4 – 12:12.

¹⁰ Stark, Exh. RS-1T.

¹¹ Hand, Exh. SH-26T.

¹² Blackman, Exh. BB-2T.

¹³ Blackman, TR 134:15 – 135:3 & 144:11-19.

piece of styrofoam into the pipes to scour them.¹⁴ Ms. Hand testified that she is still receiving brown water from Rainier View. She continues to flush her lines twice a month, which sometimes helps but not enough to drink the water. She and her family buy bottled water for that purpose. They use tap water only for bathing and washing, despite the resulting odor of rotten eggs.¹⁵

- 16 Staff filed its post-hearing brief on August 27, 2018. Staff takes the position that Rainier View supplied and continues to supply Ms. Hand with impure water. Staff recommends that the Commission order the Company to take just and reasonable steps to provide her with water that complies with DOH's drinking water standards but that the Commission should decline to award her monetary damages or a refund. Staff further contends that Rainier View did not engage in any misrepresentations but that the Commission should determine whether it permitted, prohibited, or otherwise regulated the Company's statements. Staff does not recommend that the Commission require Rainier View to change its business practices except to order the Company to tell its customers to bring water quality complaints directly to DOH. Staff also recommends that the Commission decline to find that Rainier View failed to follow DOH's design manual.
- 17 Rainier View filed its closing brief on August 28, 2018. The Company contends that Ms. Hand produced no reliable evidence that the water she receives from Rainier View is substandard, and her failure to inform the Company of her alleged issues for more than a year after she purchased her home undermines her claims. Even if the Commission finds the water quality to be substandard, Rainier View maintains that Ms. Hand cannot recover any damages or refunds, and the Company claims it is already taking effective remedial measures. Rainier View argues that Ms. Hand is not entitled to recover her costs for water testing because that testing used improper sampling techniques, includes expert fees, was conducted for purposes of litigation rather than a complaint filed pursuant to RCW 80.04.110, and does not prove that the water Ms. Hand received failed to meet state drinking water standards. The Company asserts that the Commission should dismiss Ms. Hand's other claims as unsubstantiated or contrary to record evidence.
- 18 Ms. Hand filed her post-hearing brief on August 29, 2018. She argues that the water Rainier View provided and continues to provide to her is unfit for human consumption and impure under RCW 80.28.030, and that the Commission should order corrective action. She also requests reimbursement for the cost she incurred for private water testing in the amount of \$4,310.46. She waives or withdraws her claims related to Staff's

¹⁴ *Id.* 141:18 – 143:2.

¹⁵ Hand, TR 217:16 – 219:7.

investigation of her informal complaint, Rainier View's alleged noncompliance with the DOH Water System Design Manual, the Company's alleged use of false and deceptive statements to market its water, and compensatory damages.

- 19 Nigel Malden, attorney, Tacoma, Washington, represents Ms. Hand. Eric Gillett and Daniel Rankin, Preg O'Donnell & Gillett PLLC, Seattle, Washington, and Richard A. Finnigan, attorney, Olympia, Washington, represent Rainier View. Sally Brown and Jeff Roberson, Assistant Attorneys General, Olympia, Washington, represent Staff.

DISCUSSION AND DECISION

- 20 The Commission and DOH each have jurisdiction over certain companies that provide water service. In a 2009 Memorandum of Understanding (MOU), these agencies agreed that the Commission "regulates in the public interest the rates, services, facilities, and practices of jurisdictional investor-owned water companies that supply water service to the public," while "DOH's Office of Drinking Water (ODW) assures all public water systems, including those owned by [Commission] regulated companies, meet or exceed federal (Group A) and state (Group B) drinking water regulations."¹⁶ The Commission's jurisdiction, however, derives from Title 80 RCW, particularly Chapter 80.28, and the Commission must regulate consistent with that legislative grant of authority.

Water Quality

- 21 Commission and DOH responsibilities overlap with respect to the quality of the water that jurisdictional companies provide. The Commission has the authority to determine whether that water is impure and if so, to order improvements, and DOH standards are an important factor in that determination:

Whenever the commission finds, after such hearing, that the . . . purity, quality, volume, and pressure of water, supplied by any . . . water company . . . is insufficient, impure, inadequate or inefficient, it shall order such improvement in the . . . storage, distribution or supply of water, or in the methods employed by such . . . water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter

¹⁶ Exh. BRR-1, Attachment B at 1-2.

70.116 RCW for purity, volume, and pressure is prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.¹⁷

The Commission's general statutory authority also provides, "Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards."¹⁸ The Commission must investigate and take appropriate action if it determines that the water does not meet these standards. Ms. Hand's formal complaint against Rainier View is such a complaint, and she also alleges that the water she receives is impure and unfit for human consumption.

22 The Commission in this proceeding, therefore, considers whether the water Rainier View supplies to Ms. Hand fails to meet DOH drinking water standards or is otherwise impure as that term is used in RCW 80.28.030(1). We find that it is.

23 Ms. Hand produced credible testimony that the water she has received since she moved into her home in 2015 is brown, has an unpleasant odor, should not be consumed, and is only marginally useful for bathing and washing.¹⁹ She also submitted the results of a laboratory test showing that in one part of her house, the level of manganese exceeds DOH water quality standards.²⁰ Rainier View acknowledged in its testimony that prior to installation of a filtration system in June 2017, the manganese level was higher than legal limits in the water coming from one of its wells used to supply water to Ms. Hand's neighborhood.²¹ The Company also concedes that manganese continues to be present in the Company's distribution system and may not be cleared out for two to three years.²² This evidence demonstrates that the water Rainier View has provided and continues to provide to Ms. Hand is well below acceptable quality standards.

24 Rainier View disagrees. The Company contends that Ms. Hand's testimony is anecdotal personal opinion that is undermined by her conduct and insufficient to support a finding that the water does not meet applicable standards. Ms. Hand, however, has personal

¹⁷ RCW 80.28.030(1).

¹⁸ RCW 80.04.110(5).

¹⁹ Hand, Exh. SH-1T at 3-6; Hand, TR 217:16 – 219:7.

²⁰ Hand, Exh. SH-26T.

²¹ Blackman, Exh. BB-1T at 12-16.

²² Blackman, TR 134:15 – 135:3 & 144:11-19.

knowledge of the water coming into her home, and she does not need to have special credentials to testify as to the color and smell of the water and the effects that her family has experienced. Her testimony, moreover, is consistent with other evidence in the record describing the indicators and effects of manganese contamination, as well as the results of the testing of the water in her home. And while she may not have taken steps to remedy the issues she described when she first moved into her house, for the last two years she has consistently and persistently sought to compel the Company to improve the quality of the water she receives. We find her testimony credible and compelling and that it amply supports the conclusion that the water she receives from Rainier View is impure.

25 Rainier View also argues that the tests Ms. Hand had performed on the water in her house was fundamentally flawed, unreliable, and actually show that the water meets DOH standards. We note that neither the Company nor DOH tested the water coming into her home, despite her requests that the Company do so. The test results Ms. Hand provided thus are the only ones in the record before us, and while the Company raises legitimate concerns with the testing methodology, we do not find it so deficient as to render the results without value. Nor do we find that averaging the results from samples taken in different locations in her home as the Company suggests is appropriate under the circumstances presented here. A test result showing that manganese contamination exceeds the legal limit in any part of her home is sufficient to demonstrate that the water is impure and fails to meet applicable standards.

26 The Company, without discussion, also requests findings that “[w]ater is not ‘impure’ as a matter of law as a result of Secondary [Maximum Contaminant Level] exceedances” and that such water is not unsafe or unfit for human consumption or normal household use as a matter of law.²³ Such findings conflict with the statute, which provides that a water company’s failure to comply with DOH standards “is prima facie evidence that the water supplied is . . . impure.”²⁴ Nor does the evidence submitted in this proceeding support the Company’s proposed findings. To the contrary, the record evidence demonstrates that the water Rainier View supplies Ms. Hand is not fit for human consumption or normal household use as a result of manganese contamination.

27 The Commission, therefore, finds that Rainier View has supplied and continues to supply Ms. Hand with water that is impure within the meaning of RCW 80.28.030(1) and fails to meet DOH drinking water quality standards.

²³ Rainier View Closing Brief at 6:17-24.

²⁴ RCW 80.28.030(1).

Remedies

- 28 Having found that the water Rainier View supplies to Ms. Hand is impure, the Commission must “order such improvement in the . . . storage, distribution or supply of water, or in the methods employed by such . . . water company, as will in its judgment be efficient, adequate, just and reasonable.”²⁵ Ms. Hand requests an order requiring Rainier View to improve the quality and purity of its water so that it meets state safe drinking water standards within 30 days. Staff poses three alternative methods for improving the water quality – continued flushing, pigging, and replacement of distribution lines – but does not recommend any particular method. The Company claims that it is already taking appropriate actions and that the Commission should not require anything further.
- 29 We agree with Ms. Hand and order Rainier View to ensure that the water it supplies to her home consistently meets or exceeds DOH drinking water quality standards within 60 days from the effective date of this order. We do not specify the methods Rainier View must use to comply with this requirement other than to state that the Company’s current flushing practices are insufficient. Rainier View, in consultation with Staff and DOH, must test the water entering Ms. Hand’s home no less than bi-weekly and must continue those tests and remediation efforts until the results are consistently comparable to the results from the tests at the filtration point that the Company has provided to the Commission.²⁶ Rainier View is responsible for all costs it incurs to comply with these requirements.
- 30 The Commission is also concerned with manganese sediment in the pipes in Ms. Hand’s home. The Company generally is not responsible for the pipes on the customer’s side of the meter, but in this case, any manganese deposits in those pipes are the result of Rainier View’s failure to meet DOH water quality standards and consequential delivery of impure water. The Company, therefore, is responsible for removing any manganese it introduced into Ms. Hand’s home that continues to remain there. Accordingly, Rainier View must work with Ms. Hand, Staff, and DOH to inspect Ms. Hand’s pipes and remove any manganese once the results of the tests of the water coming into her home show that the Company is in compliance with this order. Rainier View is responsible for all inspection and removal costs to comply with this requirement.
- 31 Ms. Hand requests reimbursement for the \$4,310.46 she incurred for private testing of the water in her home as authorized in RCW 80.04.110(5). Rainier View disputes such

²⁵ RCW 80.28.030(1).

²⁶ Exh. BRR-2.

reimbursement, arguing that Ms. Hand arranged for those tests in the context of her superior court litigation, not for the purposes of RCW 80.04.110(5), and that their questionable methodology does not demonstrate that the water she receives from the Company fails to meet DOH standards.

- 32 We find that Ms. Hand is entitled to reimbursement for the costs she incurred to test the water in her home. The statute provides that a complainant “may, at the customer’s option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission.”²⁷ Ms. Hand did so. That she arranged for the testing in conjunction with her superior court litigation is irrelevant. The statute does not limit the circumstances under which the customer obtains a water quality test, and neither will we.
- 33 Having found that the water Rainier View supplies to Ms. Hand does not meet state drinking water quality standards, RCW 80.04.110(5) provides that the Commission “shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test.” We so order. The invoices Ms. Hand provided to the Commission, however, include amounts that do not appear to be related to the water quality test. Costs that are demonstrably for testing total \$2,275,²⁸ which is the amount the Company must remit to her.
- 34 The statute also authorizes the Commission, “where appropriate, [to] order a refund to the customer on a pro rata basis for the substandard water delivered to the customer.” The Commission provides by rule, however, that such refunds are available only when there are violations of DOH water quality standards and the company does not take the follow up steps DOH requires to remedy those violations.²⁹ Staff and the Company assert that DOH has not required Rainier View to take any follow up steps and thus no refund is appropriate. We reluctantly agree that WAC 480-110-395 constrains us from ordering a refund for the impure water the Company has previously supplied to Ms. Hand. On the Commission’s own initiative, however, we waive that rule in this case,³⁰ and we order

²⁷ RCW 80.04.110(5).

²⁸ See Hand, Exh. SH-62X (testing costs calculated as the sum of the invoiced “lab fees” (\$359, \$318, and \$359), “preparation for testing” (\$295 and \$590), and “review lab data” (\$354)).

²⁹ WAC 480-110-395(1).

³⁰ See WAC 480-07-110(1) (authorizing the Commission on its own initiative to “grant an exemption from, or modify the application of, any of its rules in individual circumstances”). The

that beginning on the effective date of this order, Rainier View may not charge Ms. Hand for the water it supplies to her until the Company has fully complied with the terms of this order.³¹

Business Practices

35 Ms. Hand’s complaint makes several allegations challenging Rainier View’s business practices and actions. In her post-hearing brief, however, she withdrew her claim with respect to the Company’s alleged lack of compliance with the DOH Design Manual,³² and she requests only that the Commission find “that the accuracy and regulation of [Rainier View’s] marketing and promotional statements are outside the purview of the [Commission] and should be decided by a court of law under the state Consumer Protection Act.”³³ Accordingly, she has waived all other such claims in her complaint.³⁴

36 Ms. Hand effectively seeks a declaratory order or advisory opinion on the extent of the Commission’s jurisdiction. We decline to enter such an order or render such an opinion. As an initial matter, her request is procedurally improper. A person may file a complaint or petition for a declaratory order, but may not do both in the same pleading or proceeding.³⁵ Nor would it be appropriate for the Commission to facilitate any Consumer Protection Act action Ms. Hand may file in superior court. Our obligation is to resolve the disputed issues presented to us that are within the Commission’s jurisdiction. To that end, we find only that Ms. Hand failed to allege, and no party identified, any provision of Title 80 RCW or any order or rule of the Commission that either permitted or prohibited the statements by Rainier View and its employees that Ms. Hand alleges were false and misleading.

37 Staff, for its part, recommends that the Commission grant the request in Ms. Hand’s complaint for an order requiring Rainier View to inform customers that they should send

Commission cannot retroactively waive the rule consistent with due process. We thus grant the exemption in this case only on a prospective basis.

³¹ Ms. Hand has withdrawn her request for other monetary damages, and accordingly we need not address those issues.

³² Hand Brief at 5:8 – 7:17.

³³ *Id.* at 9:24 – 10:2.

³⁴ Even if she did not waive those claims by failing to pursue them, we agree with Staff that she failed to produce sufficient evidence to support them. *See* Staff Post-Hearing Brief ¶¶ 60-64. To the extent that her claims involved alleged violations of DOH regulations, moreover, the Commission lacks jurisdiction to enforce that agency’s rules.

³⁵ WAC 480-07-930(1)(b).

water quality complaints directly to DOH. Staff points out that the number of such complaints DOH receives determines whether that agency will require a company to study and potentially implement treatment options. “Ordering [Rainier View] to tell its customers to contact DOH will ensure that the agency is aware of all water quality complaints and that its procedures for improving water quality are properly deployed.”³⁶ Rainier View contends that the evidence demonstrates that the Company followed the process in the Commission’s rules governing customer complaints.

38 The Commission has broad authority to regulate water company business practices. A company need not be in violation of statutes, rules, or prior orders for the Commission to order a change to a company practice. The Commission must only find, following a hearing, that the practice is unjust, unreasonable, improper, insufficient, inefficient, or inadequate:

Whenever the commission finds, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any . . . water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.³⁷

39 Rainier View has not violated any Commission rule or order by informing its customers that they should contact the Commission with any complaints about the Company’s service. We agree with Staff, however, that not telling customers to send water quality complaints to DOH is insufficient and inefficient. According to its design manual, DOH will not take action on a company’s water quality issue until it receives five or more customer complaints within a 12-month period.³⁸ Such a requirement emphasizes the importance of DOH receiving all water quality complaints. Currently the Commission forwards water quality complaints it receives to DOH, but having the customer contact DOH directly would be more efficient and potentially more effective.

³⁶ Staff Post-Hearing Brief ¶ 67.

³⁷ RCW 80.28.040(1).

³⁸ Hand, Exh. SH-43X at 1.

40 Accordingly, we will require Rainier View to work with Staff to revise the information
the Company provides to its customers to direct them to submit water quality complaints
directly to DOH.

FINDINGS AND CONCLUSIONS

41 (1) The Commission is an agency of the State of Washington, vested by statute with
authority to regulate rates, rules, regulations, practices, and accounts of public
service companies, including investor or privately owned water companies that
meet certain jurisdictional thresholds.

42 (2) The Commission has jurisdiction over the subject matter of, and parties to, this
proceeding.

43 (3) Manganese is a naturally occurring mineral that the human body needs in very
small amounts to function properly. When exposed to air and chlorination,
manganese present in ground water oxidizes into brown or black flakes that
discolor the water and give it an unpleasant taste and odor.

44 (4) DOH has established drinking water quality standards. Those standards identify
manganese as a secondary contaminant, which means that DOH largely treats the
mineral as an aesthetic problem in water systems. DOH limits the permissible
amount of manganese in drinking water to 50 micrograms per liter of water.

45 (5) Rainier View discovered in 2016 that the water from one of its wells contained
levels of manganese that substantially exceeded DOH's maximum contaminant
level. Rainier View installed a filtration system in 2017, and measurements the
Company has taken since that time show no or only minimal quantities of
manganese in the water at the filtration point.

46 (6) Manganese sediment remains in Rainier View's water distribution system. The
Company periodically flushes its pipes to remove this sediment, but it could take
two to three years to reduce the amount of manganese to an acceptable level.

47 (7) The water Ms. Hand has received from Rainier View since she moved into her
home in 2015 is brown, has an unpleasant odor, should not be consumed, and is
only marginally useful for bathing and washing.

48 (8) Ms. Hand arranged for the water in her home to be tested in 2017. The testing was
sufficiently reliable for the Commission to base a finding on its results.

- 49 (9) The results of the testing demonstrate that the water Ms. Hand receives from Rainier View contains manganese in excess of the amounts permitted under state drinking water standards.
- 50 (9) The water Ms. Hand receives from Rainier View is impure as that term is used in RCW 80.28.030(1) and has been impure since she moved into her home in 2015.
- 51 (10) Rainier View should take all reasonable steps necessary to ensure that the water it supplies to Ms. Hand consistently meets or exceeds DOH drinking water quality standards within 60 days from the effective date of this order.
- 52 (11) Rainier View, in consultation with Staff and DOH, should test the water entering Ms. Hand's home no less than bi-weekly and continue those tests and remediation efforts until the results are consistently comparable to the results from the tests at the filtration point that the Company has provided to the Commission.
- 53 (12) Rainier View is responsible for any manganese sediment in the pipes in Ms. Hand's home. The Company should work with Ms. Hand, Staff, and DOH to inspect those pipes and remove the manganese once the results of the tests of the water the Company supplies to her show that the Company is in compliance with this order.
- 54 (13) Rainier View should be responsible for all testing, inspection, and remediation costs it incurs to comply with the requirements in this order.
- 55 (14) Ms. Hand spent \$2,275 to test the water in her home. She is entitled to be reimbursed by Rainier View for that amount.
- 56 (15) WAC 480-110-395 constrains the Commission from ordering a refund for the water Rainier View has supplied Ms. Hand in the past.
- 57 (16) The Commission on its own initiative should waive WAC 480-110-395 on a prospective basis. Rainier View should not charge Ms. Hand for the water it supplies to her until the Company has fully complied with the terms of this order.
- 58 (17) Ms. Hand has withdrawn or waived her claims with respect to Rainier View's business practices except for her request that the Commission find that the accuracy and regulation of Rainier View's marketing and promotional statements are beyond the Commission's jurisdiction and should be decided by a court under the Consumer Protection Act.

- 59 (18) Ms. Hand may not request a declaratory order or advisory opinion on the Commission's jurisdiction in this complaint proceeding.
- 60 (19) Ms. Hand failed to allege, and no party identified, any provision of Title 80 RCW or any order or rule of the Commission that either permitted or prohibited the statements by Rainier View and its employees that Ms. Hand alleges were false and misleading.
- 61 (20) Rainier View's practice of informing customers to contact the Commission with any complaints about water quality, while not unlawful, is insufficient and inefficient.
- 62 (21) Rainier View should work with Staff to inform customers to submit water quality complaints directly to DOH.

ORDER

THE COMMISSION ORDERS That

- 63 (1) Rainier View Water Company, Inc., must take all reasonable steps necessary to ensure that the water it supplies to Ms. Hand consistently meets or exceeds Washington Department of Health drinking water quality standards within 60 days from the effective date of this order. For these purposes, continuing to flush the Company's pipes, without more, is insufficient.
- 64 (2) Rainier View Water Company, Inc., in consultation with Commission Staff and the Washington Department of Health, must test the water entering Sarah Hand's home no less than bi-weekly and continue those tests and remediation efforts until the results are consistently comparable to the results from the tests at the filtration point that the Company has provided to the Commission.
- 65 (3) Rainier View Water Company, Inc., must work with Sarah Hand, Commission Staff, and the Washington Department of Health to inspect the pipes in Sarah Hand's home and remove any manganese once the results of the tests of the water the Company supplies to her show that the Company is in compliance with this order.
- 66 (4) Rainier View Water Company, Inc., is responsible for all testing, inspection, and remediation costs it incurs to comply with the requirements in this order.

- 67 (5) Within 10 days from the effective date of this order, Rainier View Water Company, Inc., must reimburse Sarah Hand for the costs she incurred to test the water in her home in the amount of \$2,275.
- 68 (6) The Commission on its own initiative waives WAC 480-110-395 on a prospective basis and prohibits Rainier View Water Company, Inc., from charging or collecting any moneys from Sarah Hand for the water it supplies to her until the Company has fully complied with the terms of this order.
- 69 (7) Rainier View Water Company, Inc., must work with Commission Staff to inform customers that they should submit to the Washington Department of Health all complaints about the quality of the water the Company supplies.

Dated at Olympia, Washington, and effective October 2, 2018.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).