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3 BEFORE THE
4 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

5 Sarah Hand,

6 Complainant,

7 v.

8 Rainier View Water Company, Inc.,

9 Respondent.
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DOCKET UW-170924

BRIEF ON JURISDICTIONAL ISSUES

11 INTRODUCTION

12 By way of the Notice of Request for Briefing ("Notice") issued October 26, 2017, the Commission
13 called for the parties to address the jurisdictional issues that are present in this matter. As set forth in the
14 Notice, the precise issue the Commission requests that the parties brief is "the extent to which the
15 Commission has jurisdiction to address water quality issues, including but not limited to the remedies
16 the Commission could provide under the facts alleged in the complaint." For purposes of clarity, the
17 complaint before the Commission will be referred to as the "Formal Complaint." This is to distinguish
18 the Formal Complaint from the complaint filed in Pierce County Superior Court ("Court Complaint").
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21 For context, the Commission describes the Formal Complaint as follows:

22 On November 8, 2016, Sarah Hand contacted the Washington Utilities and
23 Transportation Commission (Commission) to raise issues about the quality of the water
24 she is receiving from Rainier View Water Company, Inc. . . . She claimed that the water
25 provided by Rainier View is brown and has damaged her water pipes. She stated that she
26 paid \$654 in pipe repairs for which Rainier View declined to reimburse her.

1 As presented, the Formal Complaint primarily raises the question of recovery of damages. In this case,
2 the \$654 alleged to have been paid for repairs. Secondly, the Formal Complaint appears to reference,
3 but not directly raise, water quality issues.
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5 SCOPE OF COMMISSION JURISDICTION

6 It is clear that the Commission does not have any authority to award damages under any conventional
7 theory such as negligence, breach of contract, or otherwise. See e.g. Moore v. Pacific Northwest Bell,
8 34 Wn.App. 448, 451, 662 P.2d 398 (1983). See, also, Beck v. Cristalina, LLC, Docket UW-132268
9 (2014) at footnote 15.¹ To that extent, the relief sought in the Formal Complaint is clearly outside of the
10 Commission's jurisdiction.
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13 On the other hand, the Commission does have some jurisdiction over water quality matters. The
14 Commission has a shared responsibility with the Washington State Department of Health ("WSDOH")
15 on water quality issues.
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18 As an illustration of this shared jurisdiction, RCW 80.04.110(5) provides in part that "Any customer or
19 purchaser of service from a water system or company that is subject to commission regulation may file a
20 complaint with the commission if he or she has reason to believe that the water delivered by the system
21 to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW." In
22 such a case, the Commission is to work with the WSDOH to determine compliance and may order a
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26 ¹ In fact, the Commission website on water company FAQs states as much.

1 refund of rates paid for the water service.² See, also, WAC 480-110-395. However, from the facts set
2 out in the Formal Complaint, it does not appear that the Formal Complaint has invoked this type of
3 claim nor does it appear that the Complainant has requested such a refund.

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5 The Commission also has authority to order improvements to address water purity, quality, volume and
6 pressure. RCW 80.28.030(1). Further, the Commission has authority to order water system repairs or
7 improvements. RCW 80.28.130. Again, however, it does not appear that the Commission's jurisdiction
8 under these statutes has been invoked by the Formal Complaint as it is framed to date.
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11 COURT COMPLAINT

12 While the existing Formal Complaint before the Commission does not appear to raise matters within the
13 jurisdiction of the Commission, the Complainant has filed a complaint in superior court which does
14 contain certain items that appear to be within the Commission's purview. A copy of that Court
15 Complaint is attached as Exhibit 1.
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18 The idea that certain items within the Court Complaint raise issues that are within the Commission's
19 purview to address, at least as a matter of first instance, appears to have been confirmed by the action of
20 the Superior Court. The Court dismissed the Court Complaint, without prejudice, on the theory that the
21 Complainant had not exhausted her administrative remedies. The Court decision is attached as Exhibit

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26 ² It is not clear what calculation is appropriate for such refunds since the statute has an obscure reference to "pro rata basis" without defining the standard.

1 Unfortunately, if this matter proceeds before the Commission under the Formal Complaint as presently
2 postured, the Complainant will still have failed to exhaust her administrative remedies. This is because
3 the issues in the Court Complaint are not before the Commission at this time.

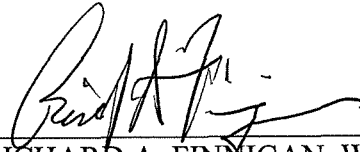
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5 Rainier View believes that the appropriate remedy is to dismiss the Formal Complaint, but invite
6 Complainant to refile a formal complaint raising those issues that are contained in the Court Complaint
7 that she believes are within the purview of the Commission to address. This would then
8 posture the case as a matter which could be addressed under the Commission's primary jurisdiction.³ If
9 such a new complaint is filed within a reasonably prompt period of time, for example within ninety days
10 of the Commission's order, Rainier View will not argue that the complaint is time barred under any
11 theory such as statute of limitations, laches or estoppel.
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13 14 15 CONCLUSION

16 Since the primary reach of the Formal Complaint appears to be recovery of damages, and it is not clear
17 that the Formal Complaint invokes the Commission's jurisdictional water quality issues, Rainier View
18 requests that the Formal Complaint be dismissed, with the invitation to file a complaint alleging such
19 matters as the Complainant believes are within the Commission's purview as set out in the Court
20 Complaint.
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25 ³ The Doctrine of Primary Jurisdiction in its essence means that there is a matter over which an agency
26 has special competence to address through an initial decision. See, e.g., Vogt v. Seattle-First Nat. Bank,
117 Wash. 2d 541, 554, 817 P.2d 1364 (1991) and In re Real Estate Brokerage Antitrust Litig., 95
Wash. 2d 297, 302-303, 622 P.2d 1185 (1980).

1 Respectfully submitted this 17th day of November, 2017.

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5 Attorney for Rainier View Water Company, Inc.
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