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**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

SARAH HAND

DOCKET UW-170924

Complainant,

**SARAH HAND'S BRIEF RE WUTC  
JURISDICTION OVER WATER  
QUALITY**

v.

RAINIER VIEW WATER COMPANY, INC.,

Respondent.

13 Comes now the complainant, Sarah Hand, by and through her attorney, Nigel Malden,  
14 and hereby submits her brief regarding WUTC's jurisdiction over water quality complaints.

15 **I. SUMMARY OF FACTS**

16 Sarah and Gretchen Hand bought their house at 7202 201st Street East in Spanaway,  
17 Washington in May 2015. They have lived their continuously with their three children ever  
18 since. The house is situated in a community of 179 homes called *Springwood Estates* which  
19 gets its water (along with 15,000 or so other Pierce County residents) from a system of wells  
20 owned and managed by Rainier View.  
21

22 As soon as they moved in, the Hands noticed a problem with the water. It was brown in  
23 color and had small pieces of debris even after running through the faucets for more than 20  
24 minutes. The Hands were uncomfortable drinking the water and almost immediately started  
25 buying replacement bottled water for daily use. They had other problems as well. The brown  
26 water tends to stain clothing, so it cannot be used for normal washing and has caused excessive  
27

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**COMPLAINANT'S BRIEF RE WUTC  
JURISDICTION - Hand et al v Rainier View  
Water Company, Inc.**

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1 corrosion and staining of plumbing fixtures and appliances. Showering or bathing in brown  
2 water is unpleasant, may irritate the scalp or skin, and does not leave one feeling clean.

3 Sarah Hand repeatedly complained about the brown water to Rainier View for 18 months  
4 after her family moved into their new home. Rainier View had no solution other than to “flush  
5 the lines.”  
6

7 Flushing the lines would occasionally improve the Hand’s water quality on a temporary  
8 basis but sometimes it made no difference or made things worse. The Hands continued to press  
9 Rainier View for solutions because they felt the water was undrinkable and unfit for normal  
10 household use. Sarah Hand asked Rainier View to install a filter and pay for a pressure relief  
11 valve damaged by excessive corrosion. Rainier View said they understood the brown water was  
12 “aesthetically displeasing” but guaranteed it was “safe to drink” and that it was “the highest  
13 quality of water possible.”<sup>1</sup> The company said it would continue to flush the lines upon request  
14 but it was immune from any lawsuit and could not be legally required to do anything more. This  
15 prompted Ms. Hand to complain directly to the WUTC on November 16, 2016 as she was  
16 instructed to do on the back of her monthly bill.  
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19 A WUTC Consumer Complaint Investigator, Rachel Stark, told Ms. Hand that the  
20 WUTC does not have jurisdiction over water quality and she would close Ms. Hand’s complaint.  
21 Ms. Hand was told the same thing at a WUTC hearing on Rainier’s request for a rate increase on  
22 December 22, 2016. Consequently, Ms. Hand filed suit against Rainier View in Pierce County  
23 Superior court on February 17, 2017. The suit alleged multiple claims and sought compensatory  
24 damages. Rainier View filed for summary dismissal claiming that the WUTC has primary  
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27  
28 <sup>1</sup> See Rainier View Water Company Annual Water Quality Report: 2016

1 jurisdiction over water quality complaints and that Rainier View is immune from any civil claim  
2 in a court of law under the terms of a Tariff. Plaintiff responded by arguing that the WUTC had  
3 denied jurisdiction so the plaintiff had no further administrative process to complete and that the  
4 Tariff does not immunize Rainier View from potential liability for gross negligence, intentional  
5 misconduct, or violations of state law which cause bodily injury, physical damage to property, or  
6 economic damage or loss.  
7

8 At the hearing on the summary judgment motion on October 13, 2017, the trial court  
9 suggested that plaintiff's counsel ask a WUTC official authorized to speak on the record and  
10 bind the Commission whether the WUTC had jurisdiction over any of Ms. Hand's issues or  
11 claims. Shortly thereafter, before any statement or deposition could be taken, the WUTC  
12 announced that it would initiate this adjudicative proceeding on its own motion. This prompted  
13 the trial court to dismiss the plaintiff's case *without prejudice* in order to allow the WUTC  
14 administrative process to run its course.  
15

16 **II. LEGAL DISCUSSION**

17 **A. THE WUTC MAY INITIATE AN ADJUDICATIVE PROCEEDING TO**  
18 **DETERMINE WHETHER RAINIER VIEW'S WATER MEETS STATE PURITY**  
19 **STANDARDS**  
20

21 The plaintiff believes that the WUTC initiated this adjudicative proceeding on its own  
22 motion to determine whether Rainier View has been selling water with manganese levels which  
23 violate state quality standards.<sup>2</sup> The plaintiff believes the Commission is authorized to take this  
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27 <sup>2</sup> WAC 246-290-310 sets the secondary maximum contaminant level (MCL) for manganese in  
28 drinking water at 0.05 mg/L.

1 action by RCW 80.04.110 and is prepared to go forward on this basis even though the process  
2 will not resolve all of plaintiff's legal claims or her request for compensatory damages.

3 **B. THE WUTC MAY ORDER RAINIER VIEW TO TAKE REMEDIAL ACTION**  
4 **TO IMPROVE WATER QUALITY**  
5

6 RCW 80.28.030 states that, if the Commission finds after a hearing that the water  
7 supplied by a water company is "impure" or its quality "inadequate," then it may order  
8 "improvements" that will be "efficient, adequate and reasonable."<sup>3</sup>

9 In this case, Rainier View has been supplying water with manganese levels far in excess  
10 of state standards which makes the water "impure" as a matter of law.<sup>4</sup> The Commission should  
11 order Rainier View to take whatever action is necessary to correct the problem.  
12

13 Ms. Hand knows that Rainier View installed a new filtration system on one of the wells  
14 which was supposed to mitigate the manganese problem beginning in June of 2017. But this  
15 should not end the Commission's inquiry into the matter. Rainier View violated state law by  
16 designing and installing the filtration system with zero customer input or approval. The DOH  
17 approved the design ex post facto but there is no guarantee it will improve water quality. The  
18 WUTC should order Rainier View to take and test water samples every month so that the  
19 efficacy of the filtration system can be objectively determined and additional remedial measures  
20 may be ordered if or as necessary.  
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26 <sup>3</sup> Violation of state DOH or other state safe drinking water standards is prima facie evidence that  
the water is "inadequate" or "impure." RCW 80.8.030 (1).

27 <sup>4</sup> Rainier View Water Company Annual Water Quality Report: 2016 states that the water coming  
28 from the Southwood well had manganese levels almost five times over the relevant state standard.

1           **C. THE WUTC MAY ORDER RAINIER VIEW TO TAKE REMEDIAL ACTION**  
2           **TO IMPROVE CUSTOMER SERVICE**

3           The Commission is authorized to order a water company to correct the quality of its  
4 water or its customer service.<sup>5</sup> Two aspects of Rainier View’s customer service that must be  
5 addressed include how customer complaints and water samples are taken and reported to the  
6 public and to the government because allowing a private, for profit company like Rainier View  
7 free reign to police and report itself is ridiculous.

8  
9           At a WUTC hearing in December of 2016, Rainier View advised the Commission that  
10 there was no problem with brown water until the summer of 2016. Specifically, Mr. Finnigan  
11 testified to the WUTC Commissioners that:

12                               “one of the questions that you both asked was for these wells that  
13 we are proposing treatment, were they needing the treatment in  
14 2014, then the answer is no. This was an issue that has arisen with  
15 these wells since that time.”

16           The WUTC merely accepted what was said at face value despite the reality that the wells  
17 (Fir Meadows wells #1, #2, #3 and #4) which serve the Springwood Estates residents, have  
18 supplied water with manganese levels which violate state secondary maximum contaminant  
19 levels since 1983.<sup>6</sup> When a water purveyor exceeds the primary or secondary Maximum  
20 Contaminant Levels (MCLs), follow-up action is required including special notice to the DOH.  
21 WAC 246-290-320(1)(c). It appears that no such action was ever taken until December of 2016  
22 when Rainier View finally began talking to DOH about installing a filtration system.  
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27           <sup>5</sup> Wash. Utils. & Transp. Comm’n. v. Alderton-McMillan Water System, Inc., Docket No. UW-  
28 911041, Third Supplemental Order, at 1 (Aug. 31, 1992).

1 At the December 2016 WUTC hearing, Rainier View manager, Bob Blackman, told the  
2 Commission that he was aware of no more than “a couple dozen” complaints from customers  
3 over brown water over the last year. When questioned under oath at deposition a few months  
4 later, however, Mr. Blackman said there were 400 complaints from customers regarding brown  
5 water between June 2015 and June 2016 and there were 180 between June 2016 and June 2017.<sup>7</sup>  
6  
7 **These are staggering numbers when you consider that the DOH relies on the WUTC and**  
8 **Rainier View to forward customer complaints to its attention and was blissfully unaware**  
9 **of a single customer making a single brown water complaint against Rainier View.<sup>8</sup>**  
10

11 **D. MS. HAND SHOULD RETAIN THE RIGHT TO LITIGATE HER TORT AND**  
12 **OTHER CLAIMS FOR DAMAGES IN PIERCE COUNTY SUPERIOR COURT**  
13

14 The plaintiff agrees with the WUTC that the Commission has the authority to review  
15 whether Rainier View’s water meets state quality standards and, if it does not, to consider  
16 ordering some kind of remedial action. The WUTC is not authorized to determine whether  
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23 <sup>6</sup> In March of 2013, for example, tests results showed manganese levels in the water 240% higher  
24 than the maximum allowed.

25 <sup>7</sup> See Robert L. Blackman Deposition, Pgs. 105:8 to 109:13.

26 <sup>8</sup> DOH Deputy Director for the Office of Drinking Water, Michael Means, and DOH Northwest  
27 Region Manager, Robert James, both testified at depositions on August 30, 2017 that the DOH was  
28 unaware of a single brown water complaint against Rainier View. Part of the problem is that customers  
are instructed on the back of their water bill to file complaints with Rainier View or the WUTC, not the  
DOH.

1 Rainier View's particular acts or omissions violated tort, product liability, consumer protection  
2 or other laws making the company liable for compensatory or punitive damages.<sup>9</sup>  
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5 DATED: This 22nd day of November, 2017.

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9 NIGEL S. MALDEN, WSBA#15643  
10 Attorney for Sarah Hand  
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24 <sup>9</sup> RCW 80.04.440 states that in case any public service company shall do, cause to be done or  
25 permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit  
26 to do any act, matter or thing required to be done, either by any law of this state, by this title or by any  
27 order or rule of the commission, such public service company shall be liable to the persons or  
28 corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in  
case of recovery if the court shall find that such act or omission was willful, it may, in its discretion, fix a  
reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case.  
An action to recover for such loss, damage or injury may be brought in any court of competent  
jurisdiction by any person or corporation.

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1 **CERTIFICATE OF SERVICE**

2  
3 I, Anna Lee, do hereby declare that this 22nd day of November, 2017, I forwarded a true and  
4 correct copy of **SARAH HAND'S BRIEF RE WUTC JURISDICTION OVER WATER**  
5 **QUALITY** by electronic service to parties listed below:

6 **Counsel for Plaintiff, Sarah Hand:**

7  
8 Nigel Malden (attorney), nm@nigelmaldenlaw.com  
9 Anna Lee (paralegal), anna@nigelmaldenlaw.com

10 **Counsel for Rainier View Water Company:**

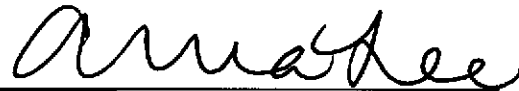
11 Richard Finnigan : rickfinn@localaccess.com

12 **UTC**

13 Kopta, Gregory : gkopta@utc.wa.gov  
14 Roberson, Jeff : jroberso@utc.wa.gov  
15 Brown, Sally : sbrown@utc.wa.gov  
16 Gross, Krista : kgross@utc.wa.gov

17  
18  
19 I declare under penalty of perjury under the laws of the State of Washington that the foregoing  
20 is true and correct.

21  
22 DATED: This 22nd day of November, 2017 in Tacoma, Washington.

23 

24 Anna Lee  
25 Paralegal to Nigel S. Malden

26  
27  
28 **COMPLAINANT'S BRIEF RE WUTC**  
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