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June 6, 2014

Via First Class Mail

The Washington Utilities and Transportation Commission
Attn: Clerk/Exe. Dir. & Secretary
Post Office Box 47250
1300 South Evergreen Park Dr SW
Olympia, WA. **98504-7250**

Re: **In Re the Complaint of Mike and Glenda Beck Against Cristalina Water Company**
Case Nos. 117759 and 132268

"Complainants' Memorandum and Closing Arguments"

Dear **Clerk:**

Enclosed herein please find the original **plus one copy** of "Complainants' Memorandum and Closing Arguments and Certificate of Service." Please file this document today on behalf of Mike and Glenda Beck. My office has also filed this document in WORD and .pdf **via records@utc.wa.gov** and via facsimile.

Should you have any questions, please do not hesitate to call. Thank you for your assistance in this matter.

Very truly yours,

/s/

Barry C. Kombol

Rainier Legal Center, Inc. P.S.

BCK:sjb
Enclosures
cc: WUTC [Enclosures] and **Via Facsimile: 360-586-1150**
cc: Cristalina Water Co., LLC [Enclosures]
cc: Eric P. Gillett [Enclosures]
cc: Mike and Glenda Beck [Enclosures]

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re the Complaint of:	No. **117759** and
MIKE and GLENDA BECK,	No. **132268**
against	**MEMORANDUM and CLOSING ARGUMENTS**
CRISTALINA WATER COMPANY, Regulated Utility.	

To: **The Washington Utilities and Transportation Commission**
1300 South Evergreen Park Dr. SW
Olympia, WA. 98504
Via **Facsimile 360.586.1150**
Via **Email: atorem@utc.wa.gov**
Via **Email: rpearson@utc.wa.gov**

And to: **Eric P. Gillett, Esq.**
Attorney at Law
901 Fifth Avenue, Suite 3400
Seattle, WA. 98164
Via **Email: egillet@pregodonnell.com**

2014 JUN -6 PM 4:32

Discussion of Testimony

The testimony of Glenda Beck, Susan Burnett and Maria Lindquist reveals the following facts exist in this case:

a. Between 2009 and May of 2014 The Becks regularly tendered monthly payments to and the Cristalina Water Company (hereafter 'Cristalina') cashed many of the Beck's payments for water service as billed to the Beck household - and on occasions the Beck family tendered checks for billings they received but Cristalina did not cash payment checks for reasons not entirely disclosed by the testimony.

b. Cristalina's billing agents submitted billings to the Becks which contained wildly different statements regarding the 'Past Due' balances Cristalina alleged the Becks owed;

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c. Cristalina's bills regularly included 'Interest' assessments against the Becks in excess of what the Washington Utility and Transportation Commission (WUTC) set and approved in Cristalina's Tarrif rates;

d. Specifically, Exhibit TF-9 initially submitted by Cristalina - and thereafter 'Corrected' by Cristalina purporting to properly calculate interest on the Beck's account from May, 2009 until May, 2014. However, the "Interest" calculation on both are wildly inaccurate if a 'Beginning Balance' $6,014.05 and a 2% Default Interest Rate - per annum - on that balance is assumed;[1]

e. Water service provided by Cristalina to the Beck household was of insufficient/inadequate pressure and quality to permit the Beck's to have household water service at their home. Those deficits were largely corrected by 2010 - when the Water Company improved the water system - but at times during power outages after 2010 the Beck's water service was disrupted;

f. Testimony was given - and exhibits filed which showed some of the monthly checks sent by the Becks to Cristalina where sometimes [i] were "cashed" by the Water Company or [ii] were "mailed" by the Becks but not cashed by Cristalina.

g. Cristalina's actions/non-actions as regards its dealings with the Beck's repeatedly violated its obligations to its customers under (among various others) the following WAC Rules and Authorities:

- The Settlement Agreement in WUTC Docket UW-101818;

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[1] A simple Calculation of $6,014.05 x 2% = 120.28 (if the interest were assumed for a full year, *not* for thirty days) To calculate a thirty day period of interest, the Annual Interest of $120.28 must be divided by 12, yielding $10.02 in interest "penalty" for May, 2009 - NOT the $117.92 that Exhibit TF-9 suggests is what the Beck's account should be assessed.

This remarkably inappropriate manner of calculating interest continued throughout Exhibit TF-9. For example, Cristalina asserts that in May of 2014 the (disputed) previous month's account balance had increased to $15,331.03 - and then asserts that such a balance entitled it to assess an interest penalty of $306.62 for the previous thirty days! However, calculating interest for thirty days on a $15,331.03 balance at 2% SHOULD YIELD $25.55 not $306.62! [$15,331.03 x 2% = $306.62 *per annum* -/- 12 = $25.55 *per month*]

Mr. Elliott of WUTC made a similar mistake when, by his calculations he determined that the 'Beginning Balance' on the Beck's account in May of 2009 had been $6,014.05. For Example, by Mr. Elliott's calculation of the 2% penalty for the thirty days between April-09 and May-09 would suggest that interest of $117.92 could be added to the Beck's account balance. The proper 'Interest' penalty for those thirty days should have been $9.75 based upon the proper manner of calculating monthly interest at two percent - [which is as follows 5,851.13 x 2% = $117.02 -/- 12 = $9.75]

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- WAC 410-110-345: A water company cannot permanently deny service to a ... customer because of a prior obligation *to* the company;
- WAC 480-11–355: (Before a Water Provider) Disconnects Service

(1) . . .

(a) . . .

(b) Company-directed: Notice requirements - After properly notifying the customer, as explained in subsection (3) of this section, the water company may discontinue service to its customers for:

(i) Unpaid Bills/But See Required Form of Bills (WAC 480-110-375)

(2) . . .

(3) Required notice prior to disconnecting service. Each water company must notify customers before disconnecting their service except in case of danger to life or property, fraudulent use, impairment of service, or violation of law. In all other cases, the company must not disconnect service until it has (done) the following

(a) The company must serve a written disconnection notice . . . either by mail, or, at the company's option, by personal delivery of the notice to the customer's address, attached to the primary door. Each disconnection notice must include:

(i] A delinquent date that is no less than eight business days after the date of personal delivery or mailing if mailed from inside the state of Washington or a delinquent date that is no less than eleven days if mailed from outside of the state of Washington; and

(ii) All pertinent information about the reason for the disconnection notice and how to correct the problem; and

(iii) The company's name, address, and telephone number by which a customer may contact the company to discuss the pending disconnection.

(b) In addition to (a) of this subsection, a *second* notice must be provided by one of the two options listed below:

(i) Delivered notice. The company must deliver a second notice to the customer and attach it to the customer's primary door. The notice must contain a deadline for compliance that is no less than twenty-four hours after the time of delivery that allows the customer until 5:00 p.m. of the following day to comply; or

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(ii) Mailed notice. The company must mail a second notice, which must include a deadline for compliance that is no less than three business days after the date of mailing if mailed from within the state of Washington or six days if mailed outside the state of Washington.

DISCUSSION and AUTHORITIES

At the outset the Becks urge this tribunal to utterly reject the inaccurate (and usurious) manner the Cristalina has sought to impose interest against the Beck's water account. The method Cristalina employs to calculate default interest on the Beck's account imposes a Two Percent Interest penalty to the balance - every month. For a creditor to charge interest by starting with a principal balance and multiplying that balance by 2% yields an annual (per annum) penalty rate *every month*.

Failing to divide the annual interest rate into twelve equal parts (so as to impose a monthly default interest rate) yields a wildly usurious result. If Cristalina and its accounting expert are correct, between May 1, 2009 and April 30, 2010 the Beck's initial account balance of $6,014.05 would have gone to $7,175.41 - an increase of $1,161.36.

Factoring in the Water Service billed to the Becks during those twelve months ($824.30) minus the $683.00 which the Company's accounting records shows the Beck's paid during those twelve months the difference between water bill and customer payments equals $824.30 minus $683.00 = $141.30.

Assuming $141.30 represents water service charged minus payments made in 2009, Cristalina's calculations increased the Beck's account by $1,161.36 - $1,020.06 of which is pure interest ($1,161.36 minus $141.30 = $1,020.06). If one were to assume that the correct beginning balance in May of 2009 had been $6,014.36 then the default interest penalty calculated at Two Percent *per* ***month*** would have been only slightly more than $10.00 a month, something slightly over $120.00 *per* ***year***. However, Cristalina was assessing a ***monthly*** interest penalty in excess of $117.00, not the correct monthly amount of $10.00.

As is shown above, Cristalina's calculation of default interest an annual bases **every** month produced a result over eleven times what should have been assessed to the Beck's account every month.

I estimate that the actual annual rate of interest Cristalina imposed on the Beck's account in 2009 - using the methodology the company used was slightly over 17% Per Annum [$6,014.36 x 17% = $1,022.39]

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By year 2012, the annual default interest rate increased even more. Between January and December of 2012, the Beck's water bills totaled $945.04 *and* the Company's records show payments made by the Becks and deposited to its accounts in the sum of $705.15, a difference/purported deficit of $239.89.

However, Cristalina's calculation methodology caused the Beck's account to increase from $9,629.24 on January 1st to $11,612.81, in December of that year; an increase of $1,983.57. If the 'deficit' of payments versus charges is actually $239.89, then Cristalina would have this Tribunal believe that $1,743.68 in interest assessments had accrued against a beginning balance of $9,629.24 on Jan. 1st of that year.

Cristalina's default interest assessments in 2012 to the Beck's water account using that methodology in 2012 means assessed interest at a rate exceeding 18% per annum -[$9,629.24 (Principle Balance) x 18% = $1,733.26].[2]

The maximum rate of interest a vendor of goods and services may charge a customer, without a written contract, is limited to 12% per annum, RCW 19.52.020. The remedy available to one who has suffered from usurious acts and practices includes requiring the vendor to furnish the debtor/customer credit of ' . . . twice the amount of the interest paid, *and* less the amount of all accrued and unpaid interest; *and* the debtor shall be entitled to costs and reasonable attorney's fees plus the amount by which the amount the debtor has paid under the contract exceeds the amount to which the creditor is entitled. RCW 19.52.030.

> " (1) If a greater rate of interest that is allowed by statute shall be . . . received . . . , the contract shall be usurious, . . . If in any action on such contract be made that greater rate of interest has been directly or indirectly . . . taken . . . the creditor shall only be entitled to the principal, less the amount of interest accruing thereon . . . and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid and less the amounts of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys fees. . . .

The statute does not discriminate between a District Court or Superior Court or Administrative 'Action' but only refers to " . . . Any action . . ." The penalties set forth in RCW 19.52.030 should be imposed in this 'Action'.

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[2] Note: The Eighteen Percent Interest Rate does not take into account the fact that Cristalina's methodology also 'compounds' interest from all prior periods - and the 'Default Interest' amount is calculated on that compounded interest rate of between 17-18% per annum. It is not within this writer's ability to calculate the actual "APR" rate as is done in mortgages, but one can assume the actual rate Cristalina was assessing increases the APR even more than the rates shown above in the "simple" interest rate calculation

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Cristalina's usuruous manner of calculating and assessing interest to the Beck's account not only violated the Company's WUTC permitted tariff maximum of Two Percent, it also violated the consumer protection act of Washington *See* RCW 19.52.036 .

> "... Transacting a usurious contract is hereby declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in Chapter 17.86 RCW."

It is not within the scope of this Memorandum to attempt to calculate the amount of penalty which should, by statute, be imposed against the Company for its attempt to collect (and actual collection on the Beck's account) of the usurious interest it's methodology has caused the Beck's to suffer.

Once this Tribunal issues its rulings, the Beck's propose that they and the offending creditor or its attorney use the Tribunal's ruling as to the method of correctly calculating default interest - based on what the ALJ determines is an appropriate "Beginning Balance" - and after accounting for any credits or offsets awarded the Becks - if any are awarded.

The Becks also urge this Tribunal to rule that the proper 'look-back' of charges which may be imposed to their account under Washington's Statute of Limitations' should be limited to three years. Three years is the 'default' limitation period under of Chapter 4 Title 16 Revised Code of Washington.

An interesting (but unpublished) opinion of Division One of the Court of Appeals contains a thorough discussion of the application of the Statutes of Limitations when a Utility district seeks to collect unpaid water charges.

Although unpublished opinions are not to be cited as Authority, this unpublished decision, City of Snohomish v. Seattle-Snohomish Mill Co is attached to this Memorandum solely for purposes of showing one type of reasoning in the application of the general statute of limitations to utility cases. That opinion is attached to this Memorandum as 'Exhibit A'.

CONCLUSION

Mike and Glenda Beck ask this Tribunal to review the documents and testimony before it and, based upon the statutes, Administrative code provisions and Cases cite above make the following findings and rulings:

Find that Cristalina Water Company's billing practices violated Washington's Usury Act, the Consumer Protection Act, its authority and obligations under the

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Interest Tariff set by the Washington Utilities and Transportation Commission and its agreement/Consent Order in WUTC Docket No. UW-101818;

Find that the methodology used by Cristalina Water Company in calculating interest on the Beck's Account was seriously in error, that the Company's methodology caused interest to be assessed at rates between Seventeen and Eighteen Percent, Per Annum to the Beck's account between 2009 and 2014;

Conclude that under Washington's Statute of Limitations the Water Company should only be entitled to assert that monies or account liabilities accrued on the Beck's account for the three year period between October, 2011 and November, 2014 when this action/complaint against Cristalina was commenced;

Order that the Company and Complainant (and their counsel) recalculate the Deck's outstanding Account Balance *based upon* whatever date and amount of a beginning account balance this Tribunal deems to be appropriate in this cae *and* then using the manner ALJ determines is the appropriate way to calculate any 'default' interest which may have accrued on the outstanding account balance at two percent per annum.

Award Mike and Glenda Beck the statutory penalties and damages in this action as set forth in RCW 19.52.030(1); and ruling that should the Company not pay those damages within a reasonable period of time, that the Beck's water account shall be given future credits in the amount of the statutory damages for Usury, including costs, fees, and statutory credits (in the form of double damages for usury).

DATED this 6th day of **June, 2014.**

BARRY C. KOMBOL, WSBA #8145
Attorney for Complainants
MIKE and **GLENDA BECK**

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CERTIFICATE OF SERVICE

I, Susan Burnett, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed by Rainier Legal Center. At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

A true and correct copy of the document of which this is attached to [Memorandum and Closing Arguments] was delivered on this day in the manner so stated below:

Via U.S. First Class Mail, Facsimile, and Email to:
The Washington Utilities
and Transportation Commission
1300 South Evergreen Park Dr. S.W
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Via **Facsimile 360.586.1150**
Via **Email: atorem@utc.wa.gov**
Via **Email: rpearson@utc.wa.gov**

Via U.S. First Class Mail and Email to:
Eric P. Gillett, Esq.
Attorney at Law
901 Fifth Avenue, Suite 3400
Seattle, WA. 98164
Via **Email: egillet@pregodonnell.com**

DATED this 6th day of **June, 2014.**

Rainier Legal Center

By: Susan Burnett
Susan Burnett, Paralegal

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EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF SNONOMISH, Respondent, v. SEATTLE-SNOHOMISH MILL Co., Inc., a Washington corporation, Appellant.	No. 51639-6-I DIVISION ONE Unpublished Opinion

COLEMAN, J. The City of Snohomish undercharged the Seattle-Snohomish Mill for water service from 1990-98, then sued to collect the difference in 2002. The trial court granted summary judgment to the Mill because the statute of limitations had expired. On appeal, the City argues that its cause of action did not accrue until 2001, when it sent the Mill a bill for the undercharges. In the alternative, the City argues that under the 'discovery rule,' the statute of limitations did not begin to run until a year after the City installed a new meter, since that was the earliest the City had a reasonable basis for calculating the amount the Mill owed. We affirm because the latest possible date the City learned all the facts giving rise to this claim was three and a half years before it filed this lawsuit. Therefore, the trial court correctly concluded as a matter of law that the City failed to comply with the three-year statute of limitations.

FACTS

The City sells water to the Mill, which operates outside city limits in Snohomish County. In 1990, the City first raised with the Mill the City's concern that the City's metering was insufficient to account for all of the Mill's water usage. The City's public works director wrote to the Mill's president concerning the need to install a new meter. The City's code provides that customers are responsible for the cost of installing meters for existing, unmetered uses. The code also allows the City to install meters itself and bill customers for them in installments. The Mill claimed it could not afford to install the new meter because of its financial situation. During that same time, the City also demanded that the Mill install devices to prevent backflow and bring the Mill's system into compliance with health codes.

Over the next several years, the City continued to demand that the Mill install the meter and upgrade its system to comply with health codes. In 1994, the Mill's president sent a letter to the City informing it that the Mill had installed some of the required backflow protection, but he remained concerned about the cost of installing the master meter. He stated that he hoped to be in a financial position to install the meter in July of that year. The Mill, however, did not install the meter that year, and the City didnt elect to install the meter itself.

In 1996, city treasurer Brad Nelson conducted a revenue audit and concluded that the City

was underbilling the Mill for its water use. Nelson suggested that the City pursue collection of the undercharges, but the city engineer believed the City was properly metering the Mill, so the City did not pursue the matter further. In 1998, the City conducted a pressure test on water lines near the Mill. According to Nelson's declaration, that test made it 'abundantly clear' that the Mill was indeed using more water than it was paying for.

Finally, in September 1998, the City installed the master meter. Readings from the new meter confirmed that the City had under billed the Mill for its water use. A month later, the City conducted a fixture count at the Mill. During that count, inspectors found a six-inch water service line connected directly to a nonmetered fire hydrant. According to City officials, the size and service demand of this connection was so significant that it constrained the City's ability to provide service and fire flows to other City water consumers down line of the Mill. On September 20, 1999, city manager Bill McDonald reported to the Snohomish City Council that the meter results for the Mill's water consumption before and after the master meter's installation showed a difference in excess of $7,000 per two-month billing cycle. Based on this information, McDonald recommended that the City attempt to collect the amount the Mill owed for uncharged water usage.

On December 11, 2001, the City mailed the Mill its first bill for the undercharges. It sent a revised bill for a higher amount on March 15, 2002. Two weeks later, on March 28, 2002, the City filed this lawsuit.

ANALYSIS

The City argues that the trial court erred in deciding on summary judgment that the statute of limitations barred this claim. We disagree.

The City was on notice of this claim as early as 1990 and at the latest by October 1998. The City therefore failed to comply with the statute of limitations when it filed this lawsuit in 2002. Generally, the statute of limitations begins to run from the time an action accrues. A cause of action accrues when a party has a right to apply to a court for relief. U.S. Oil & Refining Co. v. State Dep't of Ecology, 96 Wn.2d 85, 91, 633 P.2d 1329 (1981). 'In general terms, the right to apply to a court for relief requires each element of the action be susceptible of proof.' Haslund v. City of Seattle, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976). That point generally occurs when the party has sustained an appreciable injury. Mayer v. City of Seattle, 102 Wn. App. 66, 76, 10 P.3d 408 (2000).

Further, under the 'discovery rule,' the statute of limitations does not begin to run until the date the plaintiff discovered, or in the exercise of due diligence should have discovered, the facts giving rise to all the elements of the cause of action. Janicki Logging & Constr. Co. v. Schwabe, Williamson & Wyatt, P.C., 109 Wn. App. 655, 659, 37 P.3d 309 (2001), review denied, 146 Wn.2d 1019 (2002). Thus, discovery usually occurs when the party knows it has suffered a compensable injury or damage at the hands of the defendant. But the party need not know the full amount of the damage before the statute of limitations begins to run; rather, a party is charged with knowledge of the damage on the date the party knows or should know that some appreciable damage has occurred. See Janicki, 109 Wn. App. at 660; McLeod v. N.W. Alloys, Inc., 90 Wn. App. 30, 36, 969 P.2d 1066, review denied, 136 Wn.2d 1010 (1998) (citing Gazija v. Nicholas Jerns Co., 86 Wn.2d 215, 219, 543 P.2d 338 (1975)). The question of when a party discovered or should have discovered facts for purposes of the discovery rule is a question of fact for the jury unless the facts are susceptible of only one reasonable conclusion. Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 45 (2000).

I. Accrual at Date of Billing

The City first argues that its cause of action did not accrue until it billed the Mill for the undercharges because 'there is no cause of action on a debt until it becomes payable.' Graves v. Cascade Natural Gas Corp., 51 Wn.2d 233, 238, 316 P.2d 1096 (1957). But the City's reliance on Graves is misplaced. In Graves, the plaintiffs had charged the defendant for legal services on a per diem basis but billed the defendant monthly. When the plaintiffs sued to collect, they argued that the statute of limitations did not begin to run until all the services were completed. The defendant argued that the statute of limitations for each day's work began to run on the day the work was performed. The court rejected both arguments, holding that the limitations period began to run at the end of each month when the bill for services became due. Graves, 51 Wn.2d at 238. If this were a suit to recover the amount stated in monthly water bills, Graves would be directly on point, and the City's cause of action would accrue when each bill became due. But this is not a claim for unpaid bills; it is a claim for unbilled undercharges. In Graves, the cause of action accrued at the same time the bills became due because that was the first point when the plaintiffs had a right to collect the debt. Here, however, the City's right to collect the undercharges arose at the end of each billing cycle between 1990 and 1998, not when the City finally billed the Mill for the undercharges in 2001. Thus, under the discovery rule, the date the City's cause of action accrued is the date the City knew or should have known it had undercharged the Mill, not the date that the City decided to send the Mill a backbill.

The City would have us read Graves to mean that a utility seeking to collect for unbilled undercharges can unilaterally extend the statute of limitations until it prepares a bill for the uncharged amount, even though it knew much earlier that it had suffered a compensable injury. Under such a rule, there would be no limit to how long parties could extend the limitations period for an unbilled debt. Nothing in Graves suggests that the court intended such a consequence.

The City argues that the policy against rate discrimination prohibits the Mill from using the City's delay in billing as a defense. For this argument, the City relies on this court's opinion in Housing Authority of King County v. Northeast Lake Wash. Sewer & Water Dist., 56 Wn. App. 589, 784 P.2d 1284, 789 P.2d 103 (1990). In that case, we held that equitable defenses were unavailable against a water district seeking to collect undercharges, even though the undercharges resulted from the district's negligent billing. We reasoned that applying equitable defenses in this context would result in an unlawful preference in favor of the defendant, by preventing the district from exercising its statutory duty to collect undercharges. Housing Auth., 56 Wn. App. at 594-95. The City argues that Housing Authority and Graves, read together, compel the conclusion that a cause of action for unbilled undercharges does not accrue until after the utility has prepared and presented a bill for the undercharges and the bill has become due. The City reasons that otherwise, the statute of limitations will prevent it from exercising its statutory duty to collect undercharges and will result in rate discrimination to the same extent as allowing equitable defenses.

But this argument ignores a vital distinction between court-created equitable defenses and legislatively mandated statutes of limitations. Equitable defenses are not available in this context because courts must not use their powers of equity to interfere with the proper exercise of governmental duties or contravene the statutorily defined public policy against utility rate discrimination. Housing Auth., 56 Wn. App. at 593 (citing Finch v. Matthews, 74 Wn.2d 161, 169-71, 443 P.2d 833 (1968) and Federal Way Disposal Co. v. City of Tacoma, 11 Wn. App. 894, 896 n.2, 527 P.2d 1387 (1974)). The statute of limitations, on the other hand, is not an equitable defense. Rather, it is a legislatively imposed limitation on actions that represents a separate and distinct public policy, namely, that "it is better for

the public that some rights be lost than that stale litigation be permitted." Golden Eagle Mining Co. v. Imperator-Quilp Co., 93 Wn. 692, 696, 161 P. 848 (1916) (quoting Thomas v. Richter, 88 Wn. 451, 456, 153 P. 333 (1915)).2 Thus, although we held in Housing Authority that the City's negligence in undercharging is not itself a defense, if such negligence, once discovered, is not remedied within the applicable statute of limitations, the countervailing legislative policy against stale claims is implicated and must be given weight.

We therefore hold that public utilities are subject to the same rules regarding accrual and discovery as other plaintiffs. A utility's cause of action for undercharges accrues when it has a right to collect the undercharges and has discovered all the facts giving rise to its claim. In this case, the City had the right to collect the undercharges at the end of each billing period between 1990 and 1998 long before it issued its 2001 backbill. Accordingly, the dispositive question is when the City knew or should have known all the facts supporting its claim against the Mill.

II. The Discovery Rule

The City argues that even if its cause of action accrued before the 2001 backbill, it complied with the statute of limitations because it did not 'discover' this claim until it had enough data to accurately bill the Mill for the undercharges. This argument also fails, however, because the latest possible point at which the City knew the facts supporting this claim was three and a half years before the City filed this lawsuit. The City therefore failed, as a matter of law, to comply with the three-year statute of limitations. The Mill argues that the City was on notice of its claim as early as 1990, when the City first raised the concern that it was improperly metering the Mill's water usage. The City, on the other hand, argues that the statute of limitations did not begin to run until September 1999 because the City did not have the means to quantify the Mill's overuse of water until it compiled a year's worth of data from the master meter it installed in 1998.4 In addition, the City argues that if we are unwilling to reach that conclusion as a matter of law, we should still reverse the trial court's order granting summary judgment because questions of fact remain regarding when the City first discovered or should have discovered all the facts supporting its claim. See Mayer, 102 Wn. App. at 76 (noting due diligence normally a question of fact). But while questions of fact might exist as to whether the City acted with due diligence between 1990 and 1998, there is no genuine dispute that the City knew by October 1998 that it had undercharged the Mill for water service. According to the City's own evidence, a pressure test the City conducted in 1998 made it 'abundantly clear' that the Mill was using more water than it was paying for. And the City was certainly on notice that it had undercharged the Mill in October 1998, when it caught the Mill taking water from an unmetered fire hydrant. The City filed this action three and a half years later, in March 2002.

The trial court, therefore, properly concluded as a matter of law that the statute of limitations had expired. The City argues that the statute of limitations should not begin to run until the date the City had a reasonable factual basis for calculating the Mill's uncharged water usage. The City asserts that the date of that 'discovery' was September 20, 1999, when the city manager reported the estimated amount of the undercharges to the city council. But the discovery rule only delays accrual until the plaintiff knows it has been injured, not until the plaintiff is able to calculate the full extent of the injury.

Although the damage must be 'appreciable,' that does not mean it must be fully appreciated. Mayer, 102 Wn. App. at 76; McLeod, 90 Wn. App. at 36. Rather, '{o}nce the plaintiff has notice of facts sufficient to prompt a person of average prudence to inquire into the presence of an injury, he or she is deemed to have notice of all facts that reasonable inquiry would disclose.' Mayer, 102 Wn. App. at 76. The limitation period chosen by the legislature therefore represents the reasonable amount of time deemed sufficient to inquire fully into a matter and file suit once a party discovers that it has been wronged and by whom. The date of discovery is not when inquiry ends; it is the point at which inquiry should begin.

Here, assuming the latest possible date of discovery of October 1998, the City had three years to conduct its inquiry and file this lawsuit. It simply failed to do so. Therefore, the trial court properly granted the Mill's motion for summary judgment.

III. UTILITY LIEN STATUTE

In dismissing this case, the trial court also relied on the utility lien statute, RCW 35.21.290, which provides that a municipality has a lien against a property for unpaid utility bills, 'but not for any charges more than four months past due{.}' This 'lien' may be enforced 'only by cutting off the service until the delinquent and unpaid charges are paid{.}' RCW 35.21.300. The trial court concluded that under this statute, 'The City is clearly limited to a 4 month period seeking back charges.' Although the trial court reached the right result under the statute of limitations, we take this opportunity to clarify that the lien statute does not limit the period for which a customer can be held responsible for past utility charges; it merely limits the scope of the lien available against the property and, thus, the amount a customer must pay to avoid having his or her utilities turned off. Other methods of collection are subject to the statute of limitations, but are not limited by the lien provisions of RCW 35.21.290 or similar local ordinances.

CONCLUSION

The three-year statute of limitations begins to run on a claim for unbilled utility undercharges when the utility knows or should know that it has undercharged the customer. In this case, the City knew by October 1998, at the latest, that it had undercharged the Mill. The trial court therefore correctly concluded, as a matter of law, that the statute of limitations barred the City's claim. Therefore, we affirm.

WE CONCUR:

Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 51639-6-I
Title of Case: City of Snohomish, Appellant v. Seattle-Snohomish Mill Co., Inc., Respondent
File Date: 09/08/2003

SOURCE OF APPEAL

Appeal from Superior Court of Snohomish County
Docket No: 02-2-06022-4
Judgment or order under review
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JUDGES

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FAX COVER SHEET

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NOTES: In Re the Complaint of Mike and GLenda Beck Against Cristalina Water Company

Case Nos. 117759 and 132268

Attached is Complainants' Memorandum and Closing Arguments, Certificate of Service and cover letter to WUTC.