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BEFORE THE WASHINGTON STATE UTILITIES
AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

KALAMA WATER LLC.

UW-240615

RESPONSE OF KALAMA WATER LLC
TO MICHAEL AND DEANNA ROUSE’S
MOTION TO REOPEN RECORD

For an Order Pursuant to WAC 480-110-305

Kalama Water LLC. (“Kalama Water” or “Petitioner”), opposes the Respondents’ Michael and Deanna Rouse’s (“Rouses” or “Respondents”) Motion to Reopen Record. Respondents’ new evidence consists of a declaration from their attorney, Mr. Lindberg, who indicates that the Rouses unlocked the pumphouse and notified Kalama Water that the key is inside the pumphouse. Respondents note that they have also paid past due bills owed to Kalama Water. Respondents further argue that this new evidence “effectively moots the sole issue provided in Kalama Water’s petition.” Motion to Reopen Record ¶ 6.

The latter assertion is simply incorrect. As explained by both Commission staff (Staff) and Kalama Water at the recent hearing in this docket, a water company customer cannot condition access to water company pumphouses, pipes, or other property. This endangers the water company’s ability to provide safe, clean water. The Company has authority to access the pumphouse and other water company property pursuant to WAC 480-110-305. As Kalama

1 Water further explained, the Company has access to the property as a license pursuant to its
2 Commission-approved tariff, which is a contract with its customers. The Rouses interfered with
3 Kalama Water’s obligations as a regulated water company by conditioning access, demanding
4 notification in excess of what is required under Commission rule, and demanding that Kalama
5 Water’s owner surrender hundreds of thousands of dollars in vacant lots to the Rouses.

6 The Rouses do not render these issues “effectively moot” by simply providing a key, or
7 by paying their overdue water bills. If this were true, nearly any customer could lock a utility
8 out of pumphouses or bar entry to utility company property, and voluntarily cease their
9 behavior once faced with formal proceedings, without any consequence or any remedy for the
10 utility. This would be an absurd result, which the common law has long recognized and sought
11 to prevent.

12 The Supreme Court has recognized an exception to the mootness doctrine to prevent
13 these, and other such injustices, from taking place. Voluntary cessation of challenged conduct
14 moots a case only if it is “absolutely clear that the allegedly wrongful behavior could not
15 reasonably be expected to recur. *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222
16 (2000) (per curiam, emphasis in original) (quoting *United States v. Concentrated Phosphate
17 Export Ass’n*, 393 U.S. 199, 203 (1968). A parties burden to avoid the “voluntary cessation”
18 doctrine is “formidable.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (emphasis added).

19 In this case, the Rouses do not provide any evidence that it is absolutely clear that the
20 wrongful behavior could not recur. The Rouses make no effort to explain how they would be
21 prevented by taking the same actions again, nor could they plausibly assert such a position. It is
22 clear that the Rouses have free agency and ability to condition Kalama Water’s access to the
23 property. They are not hindered or prevented from accomplishing this by anything beyond their
24 apparent apprehension about the outcome of this proceeding, which they now seek to dismiss.
25 The Rouses therefore have failed to meet their “formidable” burden to establish that the case

1 should be deemed “moot” simply on account of their voluntarily cessation of the offending
2 conduct.

3 For these reasons, Kalama Water requests that the Commission deny the Rouses’s
4 Motion to Reopen the Record as irrelevant. If the Commission disagrees and grants the Motion
5 to Reopen the Record, Kalama Water requests that the Commission only reopen the record for
6 the limited purpose of accepting the new evidence provided by the Respondents, but that the
7 Commission decline to dismiss this proceeding as “moot” because there is no evidence making
8 “absolutely clear” that this conduct cannot simply recur. The Commission should enter an
9 order affirming Kalama Water’s rights pursuant to WAC 480-110-305.

10 DATED this 5th day of November, 2024.

11
12
13 /s/ Michael S. Howard
14 Michael S. Howard, WSBA #41034
15 Attorney for Kalama Water LLC.
16 WILLIAMS, KASTNER & GIBBS PLLC
17 601 Union Street, Suite 4100
18 Seattle, WA 98101-2380
19 Telephone: (206) 628-6652
20 Fax: (206) 628-6611
21 Email: mhoward@williamskastner.com
22
23
24
25

1 CERTIFICATE OF SERVICE

2 I hereby certify that I have this day filed the RESPONSE OF KALAMA WATER LLC
3 TO MICHAEL AND DEANNA ROUSE'S MOTION TO REOPEN RECORD with the WUTC
4 via their web portal and served the same upon the below parties of record by electronic
5 transmission:

6
7 COMMISSION STAFF:

8
9 Jeff Roberson
10 Office of the Attorney General
11 Utilities & Transportation Commission
12 P.O. Box 40128
13 Olympia, WA 98504-0128
14 Jeff.Roberson@atg.wa.gov

15
16 Betsy DeMarco, Legal Assistant
17 Elizabeth.demarco@atg.wa.gov

18
19 Jeanne Roth, Legal Assistant
20 jeanne.roth@atg.wa.gov

21
22 RESPONDENTS:

23
24 Jeff Lindberg
25 Landerholm, P.S.
805 Broadway Street, Suite 1000
PO Box 1086
Vancouver, WA 98666
Jeff.Lindberg@landerholm.com

Michael and Deanna Rouse
DRouse019@gmail.com

Vlad and Irean Tretnikov
Vladislavtretnikov@gmail.com

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RESPONSE OF KALAMA WATER LLC TO MICHAEL AND
DEANNA ROUSE'S MOTION TO REOPEN RECORD - 4

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 DATED at Seattle, Washington this 5th day of November, 2024.

2
3 s/ Katie Olson
4 Katie Olson
5 Legal Assistant
6 WILLIAMS KASTNER & GIBBS PLLC
7 601 Union Street, Suite 4100
8 Seattle, WA 98101
9 206-233-2972
10 kolson@williamskastner.com