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7 BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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9 SARAH HAND,

10 Complainant(s),

DOCKET UW-170924

11 v.

ANSWER AND AFFIRMATIVE
DEFENSES

12 RAINIER VIEW WATER COMPANY, INC.,

13 Respondent(s).

14 TO: WUTC

15 AND TO: COUNSEL OF RECORD
16

17 COMES NOW Respondent Rainier View Water Company, Inc., by and through its counsel
18 of record, Preg O'Donnell & Gillett, PLLC, and answers Complainant's Complaint as follows:

19 I. **PARTIES**

20 1.1 Respondent lacks sufficient information to form a belief as to the truth or falsity of
21 the allegations contained in paragraph 1.1 of the Complaint and therefore denies the same.

22 1.2 Respondent admits that it is an investor-owned water utility provider and supplies
23 water to Complainant's residential address.
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II. JURISDICTION

2.1 Respondent admits the Washington Utilities and Transportation Commission (the "Commission") is the proper venue to adjudicate portions of this Complaint.

III. FACTS

3.1 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.1 of the Complaint and therefore denies the same.

3.2 Respondent denies the allegations contained in paragraph 3.2 of the Complaint.

3.3 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.3 of the Complaint and therefore denies the same.

3.4 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.4 of the Complaint and therefore denies the same.

3.5 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.5 of the Complaint and therefore denies the same.

3.6 Respondent denies the allegations contained in paragraph 3.6 of the Complaint.

3.7 Admit.

3.8 Respondent admits Complainant called the Commission and Commission staff employee Rachel Stark opened an informal complaint. The document attached to the Complaint as Exhibit 1 speaks for itself and requires no answer. Respondent denies all other allegations contained in paragraph 3.8 of the Complaint.

3.9 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.9 of the Complaint.

3.10 Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 3.10 of the Complaint and therefore denies the same.

1 3.11 Respondent lacks sufficient information to form a belief as to the truth or falsity of
2 the allegations contained in paragraph 3.11 of the Complaint and therefore denies the same.

3 3.12 Respondent admits that Mr. James and Mr. Blackman tested water on or about
4 November 18, 2016. Respondent denies all other allegations contained in paragraph 3.12 of the
5 Complaint.

6 3.13 Respondent admits that one source well tested above the Secondary Maximum
7 Contaminant Level ("SMCL") for manganese before the treatment system. This source well was
8 relegated to only operate on an emergency basis until the water treatment process was approved
9 and implemented. Respondent denies all other allegations contained in paragraph 3.13 of the
10 Complaint.

11 3.14 Respondent lacks sufficient information to form a belief as to the truth or falsity of
12 the allegations contained in paragraph 3.14 of the Complaint and therefore denies the same.

13 3.15 The document attached to the Complaint as Exhibit 2 speaks for itself and requires
14 no answer. Respondent lacks sufficient information to form a belief as to the truth or falsity of all
15 other allegations contained in paragraph 3.15 of the Complaint and therefore denies the same.

16 3.16 The document attached to the Complaint as Exhibit 3 speaks for itself and requires
17 no answer. Respondent admits it was informed by Commission staff that Ms. Hand's informal
18 complaint was closed with a disposition of "Company Upheld". Respondent lacks sufficient
19 information to form a belief as to the truth or falsity of any remaining allegations contained in
20 paragraph 3.16 of the Complaint and therefore denies the same.

21 3.17 Respondent denies the allegations contained in paragraph 3.17 of the Complaint.

22 3.18 Respondent admits Complainant filed suit against Respondent in Pierce County
23 Superior Court on or about February 17, 2017, but denies all other allegations contained in
24 paragraph 3.18 of the Complaint.
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1 4.8 Respondent denies the allegations contained in paragraph 4.8 of the Complaint.

2 C. Heading "C" of the Complaint is a legal conclusion that requires no answer;
3 nonetheless, Respondent denies the allegations contained in Heading "C" of the Complaint.

4 4.9 Respondent denies the allegations contained in paragraph 4.9 of the Complaint.

5 4.10 Respondent admits that RVWC's attorney represented to the Commission that the
6 volume of brown water complaints escalated around summertime and denies all other allegations
7 contained in paragraph 4.10 of the Complaint.

8 4.11 Respondent admits that Commissioner Rendahl and Mr. Blackman made the
9 statements quoted in paragraph 4.11 of the Complaint and denies any other allegations contained
10 in paragraph 4.11 of the Complaint.

11 4.12 Respondent admits that Mr. Blackman testified that he knew of roughly 400 service
12 calls -- for the entire company, not just the Springwood Estates subdivision, and for all water
13 service concerns, not limited to elevated manganese -- between June 2015 and June 2016.
14 Respondent further admits that Mr. Blackman testified that he knew of roughly 180 complaints
15 between June 2016 and June 2017 -- for the entire company, not just the Springwood Estates
16 subdivision, and for all water quality concerns, not limited to elevated manganese. Respondent
17 denies all other allegations contained in paragraph 4.12 of the Complaint.

18 4.13 Rainier View's 2016 Annual Water Quality Report speaks for itself and requires no
19 answer.

20 4.14 Rainier View's 2016 Annual Water Quality Report speaks for itself and requires no
21 answer. To the extent paragraph 4.14 requires an answer, Respondent denies the same.

22 4.15 Rainier View's 2016 Annual Water Quality Report speaks for itself and requires no
23 answer. To the extent paragraph 4.15 requires an answer, Respondent denies the same.

24 4.16 Rainier View's 2016 Annual Water Quality Report speaks for itself and requires no
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1 answer. To the extent paragraph 4.16 requires an answer, Respondent denies the same.

2 4.17 Rainier View's 2016 Annual Water Quality Report speaks for itself and requires no
3 answer. To the extent paragraph 4.17 requires an answer, Respondent denies the same.

4 4.18 Respondent denies the allegations contained in paragraph 4.18 of the Complaint.

5 4.19 Respondent denies the allegations contained in paragraph 4.19 of the Complaint.

6 4.20 Respondent denies the allegations contained in paragraph 4.20 of the Complaint.

7 D. Heading "D" is a legal conclusion that requires no answer; nonetheless,
8 Respondent denies the allegations contained in Heading "D" of the Complaint.

9 4.21 WAC 246-290-320 speaks for itself and requires no answer. To the extent
10 paragraph 4.21 requires an answer, Respondent denies the allegations contained in paragraph
11 4.21 of the Complaint.

12 4.22 Respondent denies the allegations contained in paragraph 4.22 of the Complaint.

13 E. Heading "E" is a legal conclusion that requires no answer; nonetheless,
14 Respondent denies the allegations contained in Heading "E" of the Complaint.

15 4.23 WAC 246-293-300 speaks for itself and requires no answer. To the extent
16 paragraph 4.23 requires an answer, Respondent denies the allegations contained in paragraph
17 4.23 of the Complaint.

18 4.24 Respondent denies the allegations contained in paragraph 4.24 of the Complaint.

19 F. Heading "F" is a legal conclusion that requires no answer; nonetheless,
20 Respondent denies the allegations contained in Heading "F" of the Complaint.

21 4.25 The UTC's statements speak for themselves and require no answer. To the extent
22 paragraph 4.25 requires an answer, Respondent denies the allegations contained in paragraph
23 4.25 of the Complaint.

24 4.26 The UTC's statements speak for themselves and require no answer. To the extent
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1 paragraph 4.26 requires an answer, Respondent denies the allegations contained in paragraph
2 4.26 of the Complaint.

3 4.27 Respondent denies the allegations contained in paragraph 4.27 of the Complaint.

4 G. Heading "G" is a legal conclusion that requires no answer; nonetheless,
5 Respondent denies the allegations contained in Heading "G" of the Complaint.

6 4.28 WAC 480-110-385 speaks for itself and requires no answer. To the extent
7 paragraph 4.28 requires an answer, Respondent denies the allegations contained in paragraph
8 4.28 of the Complaint.

9 4.29 Respondent denies the allegations contained in paragraph 4.29 of the Complaint.

10 H. Heading "H" is a legal conclusion that requires no answer; nonetheless,
11 Respondent denies the allegations contained in Heading "H" of the Complaint.

12 4.30 WAC 246-290-320 speaks for itself and requires no answer. To the extent
13 paragraph 4.30 requires an answer, Respondent denies the allegations contained in paragraph
14 4.30 of the Complaint.

15 4.31 WAC 246-290-320 speaks for itself and requires no answer. To the extent
16 paragraph 4.31 requires an answer, Respondent denies the allegations contained in paragraph
17 4.31 of the Complaint.

18 4.32 Respondent denies the allegations contained in paragraph 4.32 of the Complaint.

19 4.33 The DOH 2009 Water System Design Manual speaks for itself and requires no
20 answer. To the extent paragraph 4.33 requires an answer, Respondent denies the allegations
21 contained in paragraph 4.33 of the Complaint.

22 4.34 Respondent denies the allegations contained in paragraph 4.34 of the Complaint.

23 4.35 Respondent admits it followed the proper Commission procedures to fund water
24 system improvements and a payroll increase, including an open hearing before the Commission.
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1 Respondent denies all other allegations contained in paragraph 4.35 of the Complaint.

2 4.36 The UTC's statements speak for themselves and require no answer.

3 4.37 Respondent denies the allegations contained in paragraph 4.37 of the Complaint.

4 **V. RELIEF REQUESTED**

5 5.0 Respondent denies that Complainant is entitled to entry of any of the Findings of
6 Fact or Conclusions of Law contained in paragraph 5.0 of the Complaint.

7 5.1 Respondent denies that Complainant is entitled to any award of monetary
8 damages, including the categories and amounts enumerated in paragraph 5.1 of the Complaint.

9 5.2 RCW 80.28.030 speaks for itself and requires no answer. To the extent paragraph
10 5.2 requires an answer, Respondent denies the allegations contained in paragraph 5.2 of the
11 Complaint.

12 5.3 RCW 80.28.040 speaks for itself and requires no answer. To the extent paragraph
13 5.3 requires an answer, Respondent denies the allegations contained in paragraph 5.3 of the
14 Complaint.

15 5.4 Paragraph 5.4 contains no allegations requiring an answer. To the extent
16 paragraph 5.4 requires an answer, Respondent denies the allegations contained in paragraph 5.4
17 of the Complaint.

18 5.5 Respondent denies that Complainant is entitled to the relief requested in
19 paragraph 5.5 of the Complaint.

20 5.6 Respondent denies that Complainant is entitled to the relief requested in
21 paragraph 5.6 of the Complaint.

22 5.7 Respondent denies that Complainant is entitled to the relief requested in
23 paragraph 5.7 of the Complaint.

24 5.8 Respondent denies that Complainant is entitled to the relief requested in
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1 paragraph 5.8 of the Complaint.

2 5.9 Respondent denies that Complainant is entitled to the relief requested in
3 paragraph 5.9 of the Complaint.

4 5.10 Respondent denies that Complainant is entitled to the relief requested in
5 paragraph 5.10 of the Complaint.

6 **VI. AFFIRMATIVE DEFENSES**

7 1. Any unsafe condition causing Complainant damages was open and obvious.

8 2. Complainant failed to avoid or protect herself from avoidable consequences.

9 3. Complainant failed to mitigate, or reasonably attempt to mitigate damages, if any,
10 as a matter of law.

11 4. Any damages sustained by Complainant was the result, in whole or in part, of
12 Complainant's own fault, conduct, and/or third parties over which Respondent had no control and
13 for which Respondent is not liable.

14 5. Complainant has suffered no damages.

15 6. Some or all of Complainants claims and/or requested relief are moot.

16 7. Some or all Complainant's requested relief is contrary to Washington law and
17 therefore barred.

18 8. Some or all of Complainant's requested relief is barred by RVWC's tariff, which
19 operates with the force and effect of law.

20 9. Respondent had no notice of Complainant's claims.

21 10. Respondent had a good faith basis for its lawful actions.

22 11. Respondent complied with all applicable statutes, regulations, and Commission
23 rules.

24 12. Some or all of Complainant's claims are barred by the doctrines of waiver,
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1 estoppel, bad faith, and unclean hands.

2 13. Some or all of Complainant's claims are frivolous and advanced without
3 reasonable cause.

4 **VII. RELIEF REQUESTED**

5 Respondent requests the following relief be granted:

6 7.1 That judgment be entered in favor of Respondent.

7 7.2 That Complainant be awarded nothing.

8 7.3 That the following findings of fact and conclusions of law be entered:

9 7.3.1 Exceedances of Secondary MCLs described in WAC 246-290-310 do not
10 give rise to strict liability.

11 7.3.2 Water is not "impure" as a matter of law as a result of Secondary MCL
12 exceedances.

13 7.3.3 Water exceeding the Secondary MCL for Manganese is not unsafe as a
14 matter of law.

15 7.3.4 Water exceeding the Secondary MCL for Manganese is not unfit for human
16 consumption as a matter of law.

17 7.3.5 Water exceeding the Secondary MCL for Manganese is not unfit for normal
18 household use.

19 7.3.6 Water containing manganese levels six times the Secondary MCL is safe
20 and fit for human consumption and for normal household use.

21 7.3.7 Water containing manganese exceeding the Secondary MCL does not
22 permanently diminish property values.

23 7.3.8 Respondent did not proximately cause any reduction in Complainant's
24 property values, if any such reduction exists.
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1 7.3.9 The water provided Complainant meets State safe drinking water
2 requirements.

3 7.3.10 Respondent's tariff is valid and operates with the force and effect of law.

4 7.3.11 Complainant's claims arise from the provision of water utility service by
5 Rainier View Water Company.

6 7.3.12 Respondent's tariff bars recovery of consequential or incidental damages.

7 7.3.13 Complainant's requested damages, including for permanent diminution in
8 property value, cost of initial home water cooler equipment, cost of replacement water cooler, cost
9 of replacement bottled water, cost to replace pressure relief valve, cost of indoor water filters, cost
10 of private water testing, and cost of indoor plumbing inspection are consequential or incidental
11 damages.

12 7.3.14 Respondent's tariff precludes recovery from Respondent except for
13 Respondent's gross negligence, willful misconduct, or violations of Chapter 19.122 RCW.

14 7.3.15 Respondent was not grossly negligent.

15 7.3.16 Respondent did not engage in willful misconduct.

16 7.3.17 Complainant alleges no violations of Chapter 19.122 RCW.

17 7.3.18 Complainant is barred from recovery under Respondent's tariff.

18 7.3.19 Respondent's tariff expressly disclaims all warranties except those
19 warranties set forth in the tariff.

20 7.3.20 Respondent engaged in no illegal conduct.

21 7.3.21 Respondent engaged in no unfair or deceptive acts.

22 7.3.22 Respondent complied with all statutory reporting requirements related to
23 water testing.

24 7.3.23 Respondent complied with all DOH reporting requirements.
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1 7.3.24 Respondent complied with all Commission orders related to water testing.

2 7.3.25 Respondent complied with all statutory requirements for notifying
3 customers of UTC hearings.

4 7.3.26 Respondent complied with all statutory requirements prescribing what
5 information must be given to customers regarding complaint procedures.

6 7.3.27 Respondent complied with all complaint-handling statutes, rules, and
7 regulations.

8 7.3.28 The requirements of the DOH Water System Design Manual cited in
9 paragraph 4.33 of the Complaint are not applicable to this matter.

10 7.3.29 Respondent has already taken reasonable and satisfactory steps to comply
11 with DOH requirements as to water quality.

12 7.3.29 The filtration system Respondent implemented is effective in reducing
13 manganese levels substantially below Washington's Secondary MCLs.

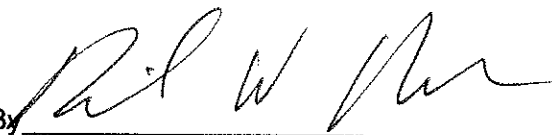
14 7.3.30 Additional remedial action by Respondent is unnecessary.

15 7.3.31 Further remedial treatment of the water is unnecessary.

16 7.3.32 Any further remedial treatment of the water would impose costs
17 disproportionate to the benefits.

18 DATED this 26 day of January, 2018.

19 PREG O'DONNELL & GILLETT PLLC

20
21 

22 By _____
23 Eric P. Gillett, WSBA #23691
24 Daniel W. Rankin, WSBA #49673
25 Attorneys for Respondent, Rainier View Water
Company, Inc.