

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the matter of the Petition of:	DOCKET UW-240615
Kalama Water, LLC	ORDER 01
Petitioner	INITIAL ORDER GRANTING DECLARATORY RELIEF

**BACKGROUND**

- 1 On August 12, 2024, Kalama Water LLC (Kalama or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for a Declaratory Order (Petition). Kalama seeks a determination, pursuant to Washington Administrative Code (WAC) 480-110-305 and WAC 480-07-930, on whether the Company should have access to the View Estates 1 water system to which Kalama asserts it has been denied effective access.<sup>1</sup>
- 2 On August 26, 2024, pursuant to Revised Code of Washington (RCW) 34.05.240 and WAC 480-07-930, the Commission gave Notice of Kalama’s Petition to all persons required by law and such other persons as deemed appropriate.
- 3 On September 12, 2024, the presiding officer issued a Notice pursuant to WAC 480-07-930, notifying the parties that a declaratory order would be issued in this matter after the close of the response period of twenty days following issuance of the Notice of Kalama’s Petition dated August 26, 2024.
- 4 On September 16, 2024, Michael and Deana Rouse (Rouses) submitted a Response to the Petition (Response), asserting that Kalama’s Petition involves a broader dispute between Kalama, a related Company – Kalama View Properties, LLC, and the Rouses. The Rouses assert that when they purchased the property on which the well and pump house Kalama uses to provide service, the property was conveyed without reservation and that the pump house and well are part of the Rouse’s real property.<sup>2</sup>

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<sup>1</sup> *In the matter of the Petition of Kalama Water, LLC.*, Docket 240615, Petition for a Declaratory Order (Petition), filed August 12, 2024.

<sup>2</sup> Response, at 3:1-8.

- 5 On September 16, 2024, neighboring property owners, Vladislav and Irina Tretnikov, submitted comments sharing concerns over Kalama’s inability to access the well and pump house and what it might mean for the safety of their water and ability to receive water service.
- 6 On September 26, 2024, following receipt of the Response and comments, the Commission issued a Notice of Brief Adjudicative Proceeding, setting the matter for hearing before Administrative Law Judge Connor A. Thompson, on October 11, 2024, at 1:30 p.m.
- 7 On October 4, 2024, the Company, the Rouses, and Staff submitted exhibits in the docket for use at the hearing. On October 11, 2024, Public Counsel filed a letter in the docket indicating it would observe the hearing but would not be taking any position in the matter.
- 8 On October 11, 2024, the Commission convened a brief adjudicative proceeding before Administrative Law Judge Connor Thompson.
- 9 **PARTY REPRESENTATIVES.** Michael Howard, of Williams, Kastner & Gibbs PLLC, represents Kalama. Jeff Lindberg, of Landerholm, P.S., represents the Rouses. Colin O’Brien, Assistant Attorney General, Olympia, Washington, represents Commission staff (Staff).<sup>3</sup> Jessica Johanson-Kubin, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Attorney General’s Office (Public Counsel).<sup>4</sup> Vladislav and Irina Tretnikov appeared *pro se*, as interested customers of Kalama.<sup>5</sup>
- 10 During the proceeding, Robert Tershel, owner of Kalama, testified to a number of issues, some of which are relevant to the Petition before the Commission and others that were not directly raised in the Petition.

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<sup>3</sup> In formal proceedings such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

<sup>4</sup> Public Counsel did not take a position in this matter and attended the hearing to observe the proceedings.

<sup>5</sup> Vladislav and Irina Tretnikov appeared to observe the hearing and to ensure the Commission received and would consider their comments submitted on September 16, 2024. The presiding officer noted on the record the Commission received their comments and would give them due consideration.

- 11 Tershel specifically noted that after work was done to the system to accommodate a new resident moving into the development, which occurred in 2023, the Rouses became upset with the situation and the fact that air was being introduced into their home water system.
- 12 Tershel also indicated that he tried his best to avoid impacts to the Rouses, but because of the way the system is built and the location of the Rouses' home, air in the system is inevitable when doing repairs or maintenance.
- 13 Tershel testified that sometime in July of 2024, he attempted to access the pump house and found the door had been changed, the locks replaced, and that the Company no longer could access the pump house.
- 14 Deana Rouse, during cross examination, testified that the Rouses did change the door and locks but had done so because they believed the door needed to be replaced, and Kalama was not going to replace it.
- 15 The Rouses also introduced evidence, which was admitted into the record, that they had sent an email to Kalama, dated March 8, 2024, that the Rouses planned to have the door replaced due to concerns of gaps and dry-rot.<sup>6</sup>
- 16 Staff argued that Kalama and its predecessor Green Mountain H2O were and remain Commission regulated public utilities. Staff also submitted that the transfer of assets from Green Mountain H2O to Kalama was approved by the Commission.<sup>7</sup> Further, Staff provided Kalama's tariff, which is also approved by the Commission.<sup>8</sup>
- 17 Staff points to this evidence to show that the Commission recognizes Kalama as a regulated public utility and that regardless of the underlying property dispute, the Commission should recognize Kalama's right to access utility property under WAC 480-110-305. To do otherwise, Staff argues would open the door to innumerable disputes between utilities and property owners.
- 18 At the heart of the dispute, as presented in evidence and through testimony at the brief adjudicative proceeding, is a property dispute over ownership and access to the pump house, well, and associated equipment.

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<sup>6</sup> Exh. DR-3.

<sup>7</sup> Exh. SS-4.

<sup>8</sup> Exh. SS-1.

19 As the Rouses contend, the “well, pump house, and associated equipment” are completely on the Rouses property.<sup>9</sup> The fact that the well and associated infrastructure exists on the Rouse’s lot is shown in or described in almost every exhibit in the record.<sup>10</sup>

20 The existence of the well on Lot 6 was shown before the subdivision was officially dedicated and long before the Rouse’s home was built by a prior owner on Lot 6.<sup>11</sup> However, the Rouse’s contend that no evidence shows a covenant or easement was retained by the developer for access to the well on Lot 6 and that no covenant or easement was ever granted.

21 However, the parties do not ask this Commission to settle the property dispute at the heart of Kalama’s Petition. Instead, the parties agreed during the brief adjudicative proceeding that the Commission should limit its decision to the issue of Company access raised in Kalama’s Petition.

22 Staff specifically agreed and recommended the Commission issue an Order on the limited issue under WAC 480-110-305.

23 On October 30, 2024, following the evidentiary hearing, the Rouses submitted a Motion to Reopen the Evidentiary Record (Motion), submitting a declaration that the pump house had been unlocked, a key was inside for the Company, and payment had been made for water bills during 2024 to Kalama. The Motion also purports to make Kalama’s Petition moot on the point that the Company is unable to access the pump house.

24 On November 5, 2024, counsel for Kalama filed a Response to the Motion asking the Commission to deny the Motion as irrelevant or in the alternative to find that the evidence does not moot the Petition.

## DISCUSSION

### *Rouse’s Motion to Reopen the Evidentiary Record*

25 The Rouse’s Motion asserts that on October 15, 2024, following the brief adjudicative proceeding, the Rouses sent an email to Kalama indicating access to the pump house was now available to Kalama and that the Rouses were submitting payment for water bills unpaid through 2024.

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<sup>9</sup> Exh. DR-1, at 1:19-20. (Decl. of Deana Rouse)

<sup>10</sup> See, e.g., Exh. DR-1, RT-1 -

<sup>11</sup> See, Exh. RT-3 at 2.

- 26 The Rouses contend that their Motion satisfies WAC 480-07-830 because the evidence was not available or reasonably discoverable during the October 11, 2024, proceeding and that the evidence “effectively moots” Kalama’s Petition.<sup>12</sup>
- 27 In response, Kalama asks the Commission to deny the Motion as irrelevant or find that the matter is not moot and issue an order on the merits based on Supreme Court precedent.<sup>13</sup> The precedent Kalama cites indicates voluntary cessation of conduct giving rise to a disputed issue only moots that issue if it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.”<sup>14</sup>
- 28 WAC 480-07-830(3) allows the Commission to reopen “the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause.”
- 29 The Rouse’s argument to reopen the record is granted. The evidence presented is new to the Commission, was not readily available at the time of the hearing, and is directly relevant to the issue of Kalama’s access to the well, pump house, and associated equipment.<sup>15</sup>
- 30 However, the evidence does not moot the issues raised by Kalama for two reasons. First, as Kalama points out in its Response, there is no evidence that can reasonably be relied on to show that an occurrence such as this will not occur again. The actions taken in this case were unilateral, without regard for laws governing the relationship between public utilities and customers and rose to unreasonable conduct in the demands placed on the utility to regain access to the facilities. Second, WAC 480-110-305 is alleged to have already been violated.

*Kalama’s Petition*

- 31 In its Petition, Kalama seeks declaratory relief and requests the Commission issue an Order allowing or clarifying Kalama’s right to access the property as provided for in WAC 480-110-305 and Rule 9 of Kalama’s Tariff, as approved in Docket UW-151792.
- 32 WAC 480-07-930(1) provides that any person can petition the Commission “for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240.”

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<sup>12</sup> Motion to Reopen Evidentiary Record, at 2:14-21 (Oct. 30, 2024).

<sup>13</sup> Kalama’s Response to Motion, at 2:12 – 3:9 (Nov. 5, 2024)

<sup>14</sup> *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000).

<sup>15</sup> *See*, WAC 480-07-830(3).

33 Here, Kalama has presented a Petition meeting the requirements of RCW 34.05.240. An uncertainty exists necessitating resolution, of which the Commission is not convinced has been resolved by late submission of evidence, and that an actual controversy remains. On that point, a controversy exists which clearly has had adverse impacts to Kalama and its other customers outside of the Rouses. The adverse effect of uncertainty on Kalama outweighs adverse effects on others, and the Petition complies with Commission rules.<sup>16</sup>

34 Consistent with WAC 480-07-930 and 480-110-305, the Commission finds that Kalama's Petition should be granted and enters this Order declaring that pursuant to WAC 480-110-305, Kalama and the Company's authorized personnel "have the right to enter [the Rouse's] property during reasonable hours to perform meter reading, maintenance, testing, installation or removal of the company's property."<sup>17</sup>

35 The Commission concludes WAC 480-110-305 applies in this instance, even when, such as here, a customer might dispute ownership of or the right to access utility property. To do otherwise, could put customers at risk from unsafe and unsanitary drinking water.<sup>18</sup>

36 Further, such conduct is generally prohibited under all Commission approved tariffs for water, electric, gas, and other utilities. To allow customers to interfere with, tamper with, or block access to utility property because of a perceived property dispute could cause significant harm to the public. There are miles and miles of pipe and wire, and likely millions of individual meters, poles, pump houses, substations, compressors and other utility infrastructure existing throughout the state. It is highly probable that others might have claims like the Rouses. Further, recognizing such property rights would lead to regulatory uncertainty.

37 However, the remedy in such cases, as here, is not to take action to block the utility from providing service or accessing its property, to stop paying bills, or to otherwise take matters into a customer's own hands. Rather, customers with such concerns may bring a complaint before the appropriate forum, whether that be the Commission, the County, or the Courts. The remedy simply cannot be to do what was done here.

## FINDINGS AND CONCLUSIONS

38 (1) The Commission is an agency of the state of Washington vested by statute

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<sup>16</sup> See, RCW 34.05.240(1).

<sup>17</sup> WAC 480-110-305.

<sup>18</sup> Any construction of property rights that allowed (or required, as suggested by the Rouses) such a risk would be anomalous. *C.f.* RCW 64.65.120 (describing inapplicability of Uniform Easement Relocation Act to "public utility easement" or to any easement which "would interfere with the use or enjoyment of a public utility easement. . .").

with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including water companies.

- 39 (2) Kalama is a water company and a public service company subject to Commission jurisdiction.
- 40 (3) Kalama filed a Petition for Declaratory Order on August 12, 2024.
- 41 (4) The Rouses timely responded to Kalama's Petition on September 16, 2024.
- 42 (5) This matter came before the presiding officer, Connor A. Thompson, during an evidentiary hearing on October 11, 2024.
- 43 (6) On October 30, 2024, the Rouse's filed a Motion to Reopen the Evidentiary Record.
- 44 (7) After giving due consideration to the Motion and Kalama's response and the evidence and arguments presented therein, the Commission finds that the Motion should be granted.
- 45 (8) After reviewing Kalama's Petition, and giving due consideration to all relevant evidence and argument presented, the Commission finds that Kalama's Petition should be granted and declaratory judgment clarifying Kalama's right to access utility property under WAC 480-110-305 applies in this circumstance and should be granted.
- 46 (9) Kalama should be authorized to access utility property as consistent with this Order and WAC 480-110-305.

### ORDER

#### THE COMMISSION ORDERS:

- 47 (1) The Motion filed by Michael and Deana Rouse on October 30, 2024, to Reopen the Evidentiary Record to submit Exhibit DR-4 is granted.
- 48 (2) The Petition filed by Kalama Water LLC on August 12, 2024, is granted and the Commission declares that, consistent with WAC 480-110-305, Kalama Water LLC and their authorized personnel have the right to enter customer property during reasonable hours to perform meter reading, maintenance, testing, installation or removal of the company's property.

DATED at Lacey, Washington, and effective November 8, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Connor Thompson  
CONNOR THOMPSON  
Administrative Law Judge

### NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).