No. 38792-5

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

WEST TERRACE GOLF L.L.C., a Washington limited liability company, and JOHN E. DURGAN, individually and as class representative for all others similarly situated; TAWNDI L. SARGENT, individually and as class representative for all others similarly situated; and KRISTOPHER J. KALLEM, individually and as class representative for all others similarly situated,

Appellants,

v.

CITY OF SPOKANE, a municipal corporation in and for the State of Washington,

Respondents.

APPELLANTS' BRIEF

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I. INTRODUCTION

From at least 2002 to the present, Spokane has unlawfully overcharged the class of water customers located outside the City's limits in violation of Washington law. The undisputed facts are that the Defendant City has required Spokane County residents and businesses located outside the City's limits, many just mere feet outside, to pay significantly higher water service rates (1.5x to 2x) than those water users located inside the City's arbitrary boundary limits. It is further undisputed that the City has set these Outside City water rates with absolutely no cost-based or other analytical data to support the disparate rates being charged to outside City water users.

In an effort to distract the Court and to avoid liability for these clearly unreasonable, arbitrary, and capricious rates, the City has repeatedly advanced contrived arguments that the Washington Constitution and RCW 35.92, et seq., form the sole restrictions on their water rate-making authority. Defendant thus claims it has virtually unlimited authority to charge Outside City

water users whatever rates it chooses, including rates at 150% to 200% more than those charged to city residents, while doing so without any data to support the rate differential.

The City refuses to accept that Title 80 RCW also applies to require that the City's water rates be **reasonable**. See RCW 80.28.010(1) ("*All charges made, demanded or received by any… water company for… water, or for any service rendered or to be rendered in connection therewith,* ***shall be just, fair, reasonable and sufficient***.") (emphasis added); see also RCW 80.28.010(2) and (3); RCW 80.28.090 (no unreasonable preferences); RCW 80.28.100 (no rate discrimination).

Nonetheless, the City has admitted that irrespective of the applicable statutory framework, its Outside City water rates must be reasonable under the Washington Constitution. 12/13/19 RP 36-7. However, in light of the City's continued disingenuous arguments that the Washington Constitution and RCW 35.92, et seq., form the sole restraints on its assessing excessive water rates, Plaintiffs sought a declaratory ruling from the Trial Court,

asserting that the City's water rates and rate-setting activities are also subject to and governed by Title 80 RCW, including the reasonableness requirements imposed by RCW 80.28, et seq. Defendant City of Spokane likewise sought a declaratory ruling that its water rates are governed solely by RCW 35.92 and the Washington Constitution. The Trial Court erred in granting Defendant's motion, while denying Plaintiffs' motion, holding that RCW 35.92.010 solely governs the City's water rates and that Title 80 RCW, including RCW 80.28.010, .090, and .100, do not apply.

The Trial Court's ruling constitutes error, because the ruling runs afoul of the plain language of both the statutes. On their face, both statutes clearly confirm that municipal utilities, including Defendant City as a municipal water company under Title 80 RCW, are required to set reasonable, nondiscriminatory, and non-preferential rates. RCW 80.28.010, .090, and .100. The Trial Court further erred by refusing to read RCW 35.92.010 in

harmony with RCW 80.28, et seq., in contravention of well-settled principles of statutory construction.

Further, the Trial Court's Order ignores decades of precedent confirming that municipal utilities must comply with Title 80 RCW in setting rates, as well as our Supreme Court's ruling in Fisk v. City of Kirkland, 164 Wn.2d 891, 895 (2008) (holding that municipal water utilities are and remain subject to Title 80 RCW). Accordingly, the Trial Court's Order Granting Defendant's Motion for Declaratory Relief and Denying Plaintiff's Motion for Declaratory Relief requires reversal, and Plaintiff's Motion for Declaratory Relief should be granted.

II. ASSIGNMENTS OF ERROR

A. Assignments Of Error.

1. The Trial Court erred by granting Defendant City of Spokane's Motion for Declaratory Relief.

2. The Trial Court erred by denying Plaintiffs' Motion for Declaratory Relief (RCW 7.24, et seq.).

B. Issues Presented.

1. Whether Defendant City of Spokane, (admittedly a "water company" pursuant to RCW 80.04.010), is

required to ensure its water rates and rate-setting activities comply with: RCW 80.28.010(1)-(3) requiring that all charges are to be just, fair, reasonable and sufficient, RCW 80.28.090 prohibiting undue or unreasonable preferences, and RCW 80.28.100 prohibiting discriminatory rates.

2. Whether Title 80 RCW clearly applies to municipal water companies such as Defendant City of Spokane.

3. Whether there is no conflict between RCW 35.92.010 and the reasonableness requirements imposed by RCW 80.28.010, .090, and .100.

4. Whether it was error for the Trial Court to reply upon the inapplicable analysis and dicta of Geneva Water Corp. v. City of Bellingham, 12 Wn. App. 856 (1975), to find that RCW 80.28.010, et seq. does not apply to Defendant's setting of excessive outside water rates.

III. STATEMENT OF THE CASE

A. Background.

The City's Water Utility Department (WUD) is a separate department under the City Utility Division, operated as a separate business enterprise and is referred to as an "enterprise fund." SMC § 07.08.399. CP 2892. The (WUD) is supported entirely by the rates charged to its customers for water services. CP 2893.

Spokane Municipal Code requires that water rates be based upon "*reasonable differences, including cost of service; location of customers; cost of maintenance, operation, repair and replacement of the various parts of the system; character of service furnished; quantity and quality of service; time of use; and capital contributions made to the system by way of assessments or otherwise*." SMC § 08.02.010(A)(3).

B. The City Funnels Water Revenue Into Its General Fund.

The City imposes a tax on its own WUD, collecting 20% of all WUD revenues. CP 2894. Pursuant to SMC § 07.08.010A, tax revenues collected by the City are deposited into the City's general fund. Thus, the more money the City's WUD collects from all its users, the more tax revenue ends up in the City's general fund.

Over the years, water revenues have never gone down. CP 2933. Thus, the City has never had any incentive, motivation, or desire to ascertain whether Outside City user rates were either fair or reasonable. Just the opposite is true. It became

City Council 'policy' to arbitrarily set water rates for outside water users. CP 2936. Thus, the City, as policy, can set and raise Outside City water rates without basing rates on any analysis; and historically, that is exactly what the City has done. Id. Accordingly, the City's WUD is simply its 'cash cow.' To that end, the Defendant City utilizes a two-tier customer classification (inside/outside users) as a pretext to unlawfully impose wholly arbitrary and capricious higher rates (1½ to 2 times) on the class of "Outside City" water users.

C. No Cost-Based Analytics Support The Excessive Rates.

In particular, since 2002, the City has conveniently and solely relied on a purported "*intuitive or common sense approach*" to setting Outside City water rates. Thus, the patently arbitrary 1.5x to 2x multiplier applied to the water rates assessed to inside City residents and businesses. CP 2900-1.

The Blegen Memo. Former Water Department Director Bradley Blegen prepared a 3-page memo dated 3/27/02, entitled

"*City of Spokane Water Department Cost of Water Service Analysis*" (colloquially the "Blegen Analysis"). It confirmed:

> *"Rather than doing a very time consuming and costly rate study, a more intuitive approach has been used in adopting our present rate structure. This intuitive or common sense approach yields close enough results…."*

See Id.; see CP 1859-61.

Blegen testified that his memo was never intended to be a "*rate study*" much less a "*document of precision*." CP 2900; 2906-7. In fact, he admitted that "*really, I considered this is a study to look at multipliers for inside versus outside*." CP 2900. This further confirms that there is and never has been any Outside City water rate analytics; the City simply chose an arbitrary Outside City water multiplier that it thought it could get away with. As Blegen noted, he "*never became aware of any*" other cost of water service analysis that any predecessor City water director had created. CP 2896.

The City's punitive practice is not unique. The AWWA Manual of Water Supply Practices—M1 bluntly warns that

"*[f]or many years, some utilities have simply applied a multiplier to the retail rate schedule for inside customers to establish the rates applicable to outside customers (e.g., inside customer rate x 1.5 multiplier = outside customer rate).*" CP 2843; CP 2959 (referring to AWWA-MI as the rate-making "*Bible*"). "*By definition, the use of arbitrary multipliers to determine outside customer rates* ***does not conform to cost-based rate-making practices***." CP2843 (emphasis added). It was as if the AWWA Manual had the City of Spokane specifically in mind with its warning.

The HDR Report. In 2008, Spokane commissioned HDR Engineering ("HDR") to "*provide a comprehensive water… rate and general facility charge (GFC) study for the City of Spokane*." CP 2863. In August 2008, HDR expressly requested that Defendant "*[p]rovide a copy of the most recent water rate studies completed by the City*." CP 2868. However, the City failed to provide HDR the Blegen Analysis, correctly responding instead that "*[t]here is no record of a water rate study completed*

by the City," because there "*[h]as never been one completed*." CP 2869-70.

HDR's "*proposed first task*" in conducting a "*comprehensive"* rate study was to educate the City "*on the theory and methodology of establishing cost-based water… rates*." CP 2864. HDR expressly advised the City that "*[r]ates should be cost-based*" and "*equitable*." CP 2876 (Appendix A[1]). In addition, HDR identified the main objective of a cost-of-service study: "*Determine the cost to serve each class of service (Do cost differences exist?).*" CP 2877 (Appendix A). HDR also posed "*[t]he fundamental question: Do cost differences exist to serve the various customer classes?*" Id.

HDR explained that "*[f]inal proposed rates are designed to [be] Cost-based and equitable*." CP 2878. Yet, incredibly,

[1] Clean copies of CP 2876 and 2877 are also attached hereto, as previously filed with the Court of Appeals as part of Appendix D filed with Petitioner's Motion for Discretionary Review. The relevant portions of those pages in the Clerk's record are illegible due to the highlighting requirement imposed by Local Rule.

the City intentionally ignored HDR's consulting expertise. CP 3033. Instead, Defendant misinformed HDR that "*[t]he City has established outside City rate differentials*" and instructed HDR to "*assume that these outside rate differentials are 'historically based'*…." Id. Because HDR developed a detailed scope of services that met the specific goals and objectives of the City, HDR acknowledged that "***no analysis will be performed on the outside City rate differential***." Id. (emphasis added).

Thus, HDR confirmed that "*within the cost of service analysis,* ***no segregation of outside City customers will be provided***." Id. (emphasis added). Consequently, Defendant willfully continued its deceptive practice of ignoring any attempt to determine actual costs incurred to provide water service to Outside City customers.

As noted above, the City has been infusing the revenue from these inflated Outside City water rate charges into its "*general fund*." These revenues subsidize both the City's operating budget and the water utility services being provided to

residents located inside the City's limits. The actual cost of the City water services provided to most of the county users, in actuality and by all accounts, appears to be exactly the same as the cost of providing water services to adjacent City users. Thus, Defendant has continued to willfully charge more for water services to outside water users without any attempt to determine whether it actually costs more to do so. In fact, the City water services being used to provide to Outside City users in actuality are the exact same water facilities (wells, tanks, pressure and booster reducing stations, main lines) and pressure zones used to provide water services to adjacent Inside City users. As such, the City's outside water rates are unjustifiable and have been unreasonable, arbitrary, and capricious.

D. Relevant Procedural History.

On June 5, 2017, Plaintiff West Terrace Golf L.L.C. filed a Complaint for Declaratory and Injunctive Relief, and on June 29, 2017, Plaintiffs Durgan, Sargent, and Kallem commenced the class action litigation. Less than a month later, on July 24, 2017,

Plaintiffs filed a Motion to Certify Class. On May 25, 2018, the Court entered an Order formally certifying the following class:

> "*All current and former residents and businesses of Spokane County, Washington who (1) are or were at all times material hereto water utility customers of the Defendant City located outside the City's limits and within the City's Water Service Area, and (2) were charged by and required to pay to the City higher water services rates (i.e., "Outside City" water services rates) than water utility customers located within the City's limits were charged by and required to pay to the City.*"

On December 13, 2019, the Trial Court heard the parties' consolidated cross-motions for partial summary judgment. The Plaintiffs' motion asserted that without any analytics to support the disparate water rates charged, Defendant has violated applicable law, including the requirements imposed by RCW 80.28.010, et seq., thus warranting declaratory judgment in favor of the Plaintiff Class. Defendant's motion asserted that its water rates were reasonable as a matter of law, based in part on the argument that its water rates and rate-setting activities were governed instead solely by RCW 35.92.010 and the Washington Constitution.

Both parties sought discretionary review by the Court of Appeals, arguing their respective positions as to the applicable law regarding the reasonableness of Defendant's rates. Both motions were denied. Defendant subsequently moved to modify the Commissioner's ruling, and when that was likewise denied, the City sought discretionary review by this Court which again was denied. The case then proceeded before the Trial Court.

On 11/15/2021, the Trial Court heard the parties' cross-motions for declaratory relief, both of which specifically sought to establish the law applicable to the City's water rates. Plaintiffs contend that Defendant City, as a water company under Title 80 RCW, is required to comply with the reasonable rate and other requirements imposed by RCW 80.28.010, .090, and .100. By contrast, Defendant claims its water rates and rate-setting activities are governed solely by RCW 35.92.010 and the Washington Constitution, with no statutory requirement for reasonableness, and that RCW 80.28.010, .090, and .100 do not apply to its water rates.

Following oral arguments, the Trial Court denied Plaintiffs' Motion for Declaratory Relief and granted Defendant's Motion for Declaratory Relief. 11/15/21 RP 32-7. On 12/2/21, the Court entered the Order Granting Defendant City of Spokane's Motion for Declaratory Relief and Denying Plaintiffs' Motion for Declaratory Relief ("Order"), stating: "*RCW 35.92.010 and the Spokane Municipal Code, within the confines of the Washington State Constitution, are controlling and govern the City's authority to establish the municipal water rates at issue in these proceedings. Title 80 RCW, including but not limited to* RCW 80.28.010, .090, and .100*, do not apply*." CP 1631-3.

IV. ARGUMENT

The Trial Court's decision that Defendant's water rates are governed solely by RCW 35.92.010 and that Title 80 RCW, including RCW 80.28.010, .090, and/or .100 do not apply is in error. The Trial Court's decision ignored the plain language of Title 80 RCW, well-settled principles of statutory construction,

and decades of precedent requiring municipal utilities to comply with Title 80 RCW in setting rates.

Instead, the Trial Court improperly relied solely on the inapplicable analysis of a different statute and conflicting dicta contained in a single footnote in Geneva Water Corp. v. City of Bellingham, 12 Wn. App. 856 (1975). The Court did so, finding that RCW 80.28.010, et seq., do not apply to municipal water rates, but rather, it is RCW 35.92.010 that solely governs the City's rate setting in this case. More specifically, during its oral ruling, the Trial Court described the basis for its decision as follows:

> "*And the deciding factor for the Court is the Geneva case, and that is because it discusses, even though it's not exactly on point, but at least discusses these two statutes together, and it clearly states that there's no longer any statutory requirement that the rates be just and reasonable after that language was taken out of 35.92.*" 11/15/21 RP 35.

The Trial Court here went on to elaborate that it further relied on dicta in a footnote in which the Geneva court merely expressed doubt but did not actually reach the issue of whether

RCW 80.28.010 applied to municipal water companies. Id. at 36.

There is no dispute that, the plain language of the relevant statutes confirms that Defendant City of Spokane is a "water company" under Title 80 RCW and that RCW 80.28.010, .090, and .100 apply to require all water companies under Title 80 RCW to set just, fair, reasonable, nondiscriminatory, and non-preferential water rates. Further, RCW 35.92.010 and RCW 80.28.010, .090, and .100 are not in conflict. Therefore, they must be read together to require that *all* public utilities, including Defendant, charge reasonable rates pursuant to RCW 80.28.010, et seq. Thus, the Court erred by ignoring the plain language of RCW 80.28.010, et seq. Instead, it relied upon inapplicable legislative history and dicta to find municipal water companies are somehow exempt from the unambiguous reasonable rate requirements of Title 80 RCW.

Accordingly, the Trial Court's Order Granting Defendant's Motion for Declaratory Relief and Denying

Plaintiffs' Motion for Declaratory Relief requires reversal. Additionally, Plaintiff's request for declaratory relief should be granted, and judgment should be entered declaring that Defendant's water rates are and were required to comply with Title 80 RCW.

A. Standard Of Review.

Courts of record have the "*power to declare rights, status and other legal relations whether or not further relief is or could be claimed*." RCW 7.24.010. Accordingly, the Declaratory Judgment Act (the "Act") "*is to be liberally construed and administered*." RCW 7.24.120. A declaratory judgment is designed "*to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.*" RCW 7.24.120.

The Trial Court's order of summary judgment in a declaratory judgment action is reviewed de novo. McNabb v. Dep't of Corr., 163 Wn.2d 393, 397 (2008). "*Facts and reasonable inferences are considered in the light most favorable*

to the nonmoving party and questions of law are reviewed de novo." Id. Here, the question of whether Title 80 RCW applies to and governs the City of Spokane's rate-making activities is a pure question of law reviewed by this Court *de novo*.

B. The Trial Court Erred Because The Plain Language Title 80 RCW Confirms It Applies To The City's Outside Water Rates.

The Trial Court erred in this case by ignoring the plain language of Title 80 RCW, which by its terms clearly applies to municipal water companies such as Defendant City of Spokane. RCW 80.04.010(30)(a) specifically defines a "water company" under Title 80 RCW as including "***every city or town*** *owning, controlling, operating, or managing any water system for hire within this state.*" RCW 80.04.010(30)(a) (emphasis added).

Title 80 RCW is further unambiguous in what is required of water companies in setting rates: "*All charges made, demanded or received by any… water company for… water, or for any service rendered or to be rendered in connection therewith,* ***shall be just, fair, reasonable and sufficient.***"

RCW 80.28.010(1) (emphasis added); see also RCW 80.28.010(2) and (3); RCW 80.28.090 (no unreasonable preferences); RCW 80.28.100 (no rate discrimination). Notably, RCW 80.28.010(1)-(3) explicitly pertain to "*all*" charges imposed by "*any*" water company and pointedly requires that "*every*" water company's services be "*in all respects just and reasonable*." RCW 80.04.440 further imposes liability on "*any public service company*" for "*all*" damages it causes. Use of the word "*all*" confirms that these provisions govern each and every water company, including Defendant.[2]

"*The rule is universal that when the language of a statute is plain and free from ambiguity, it must be held to mean exactly what it says*." Shelton Hotel Co. v. Bates, 4 Wn.2d 498, 507 (1940). "*The first rule for judicial interpretation of a statute is that the court should assume that the legislature means exactly*

[2] See TracFone Wireless, Inc. v. Washington Dep't of Revenue, 170 Wn.2d 273, 283 (2010).

what it says. Plain words do not require construction." City of Snohomish v. Joslin, 9 Wn. App. 495, 498 (1973).

"*The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent*." Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10 (2002). Plain meaning "*is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole*." Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526 (2010).

"*This court has the ultimate authority to determine the meaning and purpose of a statute*." Bour v. Johnson, 122 Wn.2d 829, 835 (1993). In that regard, the Washington Supreme Court has stated that

> "***[a]ll of the provisions of the public utilities statutes must be construed together to accomplish the purpose of assuring the public of adequate***

> ***service at fair and reasonable rates***. *Statutes on the same subject matter must be read together to give each effect and to harmonize each with the other."* US W. Commc'ns, Inc. v. Washington Utilities & Transp. Comm'n, 134 Wn.2d 74, 118 (1997) (emphasis added).

"*If the statutory language is clear and unambiguous, we assume the legislature meant exactly what it said and determine the meaning of the statutes from their language alone*." City of Lakewood v. Pierce Cnty., 106 Wn. App. 63, 70 (2001).

Here, Defendant undisputedly owns, controls, operates, and/or manages a water system for hire within Washington. Defendant, without question, is thus a "water company" as defined by RCW 80.04.010(30)(a). As a water company under Title 80 RCW, Defendant is necessarily required to comply with RCW 80.28.010, .090, and .100, which, by their plain terms, apply to and require all water, gas, electrical, and wastewater companies to (1) ensure their rates are just, fair, and reasonable, (2) avoid unreasonable preferences, and (3) avoid discriminatory charges amongst customers under the same or substantially similar circumstances or conditions. Not a single one of these

statutes carves out any exception for municipal utilities falling under Title 80 RCW, much less an exception for municipal water companies.

1. RCW 80.04.500 And Supreme Court Precedent Confirm That The City Is Required To Comply With Title 80 RCW.

To the extent the Trial Court relied upon Defendant's misrepresentation that RCW 80.04.500 somehow exempts it from the reasonable rate provisions in RCW 80.28.010, et seq., this too was in error. RCW 80.04.500 provides that the Utilities and Transportation Commission may not "*make or enforce any order affecting rates… by any city or town*". However, RCW 80.04.500 does not state that municipal utilities are exempt from other *statutes* enacted by the legislature in Title 80 RCW requiring that rates be *reasonable*.

To the contrary, RCW 80.04.500 goes on to confirm that notwithstanding the exemption from *UTC* oversight, "***all other provisions enumerated herein apply to public utilities owned by any city or town***." RCW 80.04.500 (emphasis added). By its

very terms, the last clause of RCW 80.04.500 in fact *confirms* that Defendant City is required to comply with "all" provisions in Title 80 RCW in its actions as a water company. This necessarily includes the requirement to charge reasonable rates under RCW 80.28, et seq. RCW 80.04.500 thus merely exempts municipal utilities from the control and oversight of the *UTC*. It does not exempt them from the obligation to set reasonable rates pursuant to RCW 80.28.010, .090, and .100, and it certainly does not exempt them from the control and oversight of the *courts* when they fail to do so.

Indeed, Washington Supreme Court precedent confirms that RCW 80.04.500 does not exempt municipal utilities from other statutes in Title 80 RCW, including the reasonable rate requirements in RCW 80.28.010, et seq. For example, in Earle M. Jorgenson Co. v. City of Seattle, 99 Wn.2d 861, 869 (1983), our Supreme Court acknowledged that "*municipal utilities are exempted from the control of the Utilities and Transportation Commission*." Despite this, the Jorgenson court confirmed that

municipal electric utilities' rates nevertheless must "*be just and reasonable and nondiscriminatory under RCW 80.28.090, .100*." Id. at 870. The Jorgenson court further held that where they are not, "*[a]s with water rates, courts may set aside arbitrary or discriminatory electrical rates*." Id.

The continuing applicability of Title 80 RCW, including RCW 80.28.010, to municipal utilities and specifically municipal water companies, notwithstanding the exemption from UTC oversight in RCW 80.04.500, was also further confirmed by our State Supreme Court in Fisk v. Kirkland, 164 Wn.2d 891 (2008). The Fisk court unequivocally rejected the same strained interpretation of RCW 80.04.500 that has been repeatedly advanced by the Defendant City in this case:

> "*The city argues that it is not a 'water company' under RCW 80.04.010, because the statute does not regulate municipal corporations. It relies upon Silver Firs Townhomes, Inc. v. Silverlake Water Dist., 103 Wn. App. 411, 421, [] where the Court of Appeals concluded that a particular water district was 'a municipal corporation,' not a 'water company' and [] not subject to the [Washington Utilities and Transportation Commission]'s*

> *jurisdiction.* ***However, under RCW 80.04.010, a '[w]ater company' includes 'every city or town owning, controlling, operating, or managing any water system for hire within [Washington].'*** *We concede that the Silver Firs court was arguably imprecise. But* ***cities are plainly included in the statutory definition of water company.*** *The impression in Silver Firs may come from the fact that the Washington Utilities and Transportation Commission has limited control over municipal utilities. See RCW 80.04.010 (including cities); RCW 80.04.500 (limiting commission control). In Earle M. Jorgensen Co. v. City of Seattle, 99 Wn.2d. 861, 868 [] (1983), we put it more strongly,* ***'[m]unicipal utilities are exempted from the control of the Utilities and Transportation Commission.' But that does not lead to the conclusion that the water system operated by the City of Kirkland is not a water company under title 80 RCW. Under the plain language of the statute, it is.***" Id. at 894-5 (emphasis added).

Although the dispute in Fisk did not involve water rates, the Fisk court applied and analyzed the City of Kirkland's obligations under the very same chapter of Title 80 RCW. That analysis in fact was of one of the very same *statutes* at issue in this case – RCW 80.28.010. In doing so, the Fisk court clearly confirmed that Title 80 RCW, and specifically RCW 80.28.010 and RCW 80.04.440 – which imposes liability for

noncompliance with Title 80 RCW – applies to municipal water companies that are "*engaged in the marketplace with consumers*." Fisk, supra, at 895-96.[3]

In that regard, "*[t]he power to supply water beyond corporate limits is permissive, with supply being a matter of contract between the municipality and property owners*." Brookens v. City of Yakima, 15 Wn. App. 464, 465-66 (1976). "*In the absence of contract, express or implied, a municipality cannot be compelled to supply water outside its corporate limits*." Id. at 466. However, if as occurred in this case, a city elects to provide water services to anyone outside its corporate limits, "*it acts in a proprietary capacity, and the relationship entered into between a city as a supplier and such users is purely contractual.*" People for Preservation and Development of Five

[3] In a concurring opinion, Justice Madsen explained that "*RCW 80.04.440 authorizes a cause of action for damages arising from the activities of a municipal water system, but it does so only to the extent the activities of the water system are related to a proprietary function*." Id. at 898.

Mile Prairie v. City of Spokane, 51 Wn. App. 816, 821 (1988) (emphasis added); see also Okeson v. City of Seattle, 130 Wn. App. 814, 821 (2005) ("*A municipality's actions taken under RCW 35.92.050 serve a business, proprietary function, rather than a governmental function. When the Legislature authorizes a municipality to engage in a business, it may exercise its business powers very much in the same way as a private individual.")* (internal marks and citations omitted).

The Washington Supreme Court also recently reaffirmed that providing water services to ratepayers is a proprietary function. In Lakehaven Water & Sewer Dist. v. City of Fed. Way, 195 Wn.2d 742, 767 (2020), the court explained, "*[s]imply put, it is the* ***ratepayer structure*** *that makes the Districts' business activities, like any other utility billed directly to paying customers, proprietary*." Id. (emphasis in original). "*[P]roviding utility services 'cannot be a proprietary function for some purposes, but a governmental function for others.'*" Id. at 768.

Accordingly, the Defendant City here was and is performing a proprietary function and is "*engaged in the marketplace with consumers*" by providing water to Outside City water users and setting unreasonable rates for such water use. See Fisk, supra. Without question, Defendant City is a water company required to comply with Title 80 RCW in setting reasonable rates. If it fails to do so, as here, it is then subject to liability under RCW 80.04.440.

2. Case Law Confirms That Title 80 RCW Applies To And Governs The City's Excessive Outside City Water Rates.

In addition to erroneously ignoring Fisk, supra, and Jorgenson, supra, the Trial Court also erroneously disregarded other cases likewise confirming that municipal utilities are required to comply with RCW 80.28.010, .090, and .100 in setting rates. Just three years before Jorgenson, supra, Division I confirmed in Hearde v. City of Seattle, 26 Wn. App. 219, 221 (1980) that municipal electric utilities authorized to impose rates

under RCW 35.92.050 were required to ensure those rates were just, fair, reasonable, and sufficient under RCW 80.28.010.

Eight years after Jorgenson, supra, our State Supreme Court again confirmed in Employco Personnel Services, Inc. v. City of Seattle, 117 Wn.2d 606, 614 (1991) that municipal utilities are regulated by RCW 80.28 and subject to liability under RCW 80.04.440. In 2005, Division I in Okeson v. City of Seattle, 130 Wn. App. 814, 824 (2005) expressly stated: "*RCW 80.28.010, however, limits the charges imposed by electrical utilities on their ratepayers to amounts that are 'just, fair, reasonable and sufficient*.' RCW 80.28.010(1)." Id.

The Defendant City was brazenly dismissive of these cases, arguing counterintuitively to the Trial Court here that since they involve municipal *electric* companies instead of municipal *water* companies, they were inapplicable. The Trial Court seemingly adopted Defendant's spurious argument and ignored these cases, stating "*I don't have any cases that would lean me*

towards finding that Title 80 is going to apply as to water rates." 11/15/21 RP 36.

However, the fact that the above cases involve municipal 'electric' companies instead of municipal 'water' companies is entirely irrelevant for purposes of analyzing whether RCW 80.04.500 somehow exempts Defendant from the reasonable rates requirements in RCW 80.28.010, et seq. This is because RCW 80.04.500 plainly exempts both types of companies from UTC oversight and plainly requires both types of companies to nonetheless comply with "*all other provisions enumerated*" in Title 80 RCW.

The fact that the above cases involved municipal electric companies is equally irrelevant to analyzing whether RCW 80.28.010, .090, or .100 apply to the Defendant here in the first place. This is because, as stated above, the plain language of those statutes clearly confirms that all municipal utilities under Title 80 RCW, including Defendant, are required to set reasonable rates. As such, cases requiring municipal electric

utilities to set reasonable rates pursuant to RCW 80.28, et seq., are directly relevant here. They confirm that municipal water companies are likewise required to set reasonable rates under Title 80 RCW.

Accordingly, the Trial Court erred as a matter of law by ignoring these precedential cases, which confirm that Title 80 RCW, including RCW 80.28.010, .090, and .100, apply to Defendant's unlawful utilities conduct of setting excessive Outside City water rates.

C. The Trial Court Erred Because There Is No Conflict Between RCW 35.92.010 And RCW 80.28.010, .090, and .100.

To the extent the Trial Court seemingly concluded that a purported *conflict* exists between RCW 35.92.010 and the reasonableness requirements of RCW 80.28.010, et seq., this too was reversible error. Title 80 RCW is unambiguous in that a "water company" includes municipal water companies such as Defendant City of Spokane. See RCW 80.04.010(30)(a). Indeed, Defendant here openly *admits* it is a water company

pursuant to the definition of a "water company" contained in RCW 80.04.010(30)(a). 11/15/21 RP 14 ("*Spokane is clearly a municipal water provider. We're not contesting that*."). Defendant further admits that as such, certain provisions of Title 80 RCW apply to govern its conduct:

> "*…there's a number of sections of Title 80 that do apply to water companies, such as the water company of Spokane. The tort statutes that talk about when a company is liable for damages, both are applicable. Any provision of Title 80 that does not deal with the rate and classifications is without a specific exception going to be applicable to water providers, such as the City of Spokane.*" 11/15/21 RP 13-4.

Yet, despite this, the City has advanced a contrived argument contending that it is only RCW 35.92.010, as constrained by the Washington Constitution, that applies to its setting of water rates. More specifically, Defendant claimed and the Trial Court erroneously held that this statute somehow (1) replaces, (2) exempts the City from, and/or (3) preempts the more specific reasonableness requirements imposed by Title 80

RCW as to rates charged by public utilities. This strained proposition is simply untrue.

It is well established that "*statutes relating to the same subject are to be read together as constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes*." Waste Mgmt. of Seattle, Inc. v. U.T.C., 123 Wn.2d 621, 630 (1994). Courts "*read statutes as complementary, rather than in conflict with each other*." Id.; see also Employco, supra, at 614; City of Lakewood, supra, at 71 ("*The more pertinent question is whether the statutes conflict. Where two statutes are in apparent conflict, we reconcile them, if possible, so that each may be given effect. Statutes must be read together to achieve a 'harmonious total statutory scheme... which maintains the integrity of the respective statutes.'*").

"*The principle of reading statutes in pari materia applies where statutes relate to the same subject matter. Such statutes must be construed together*." Hallauer v. Spectrum Properties,

Inc., 143 Wn.2d 126, 146 (2001). As the Washington Supreme Court recently recognized, "*[a] more specific statute supersedes a general statute* ***only if the two statutes pertain to the same subject matter and conflict to the extent they cannot be harmonized***." State v. Numrich, 197 Wn.2d 1, 15 (2021) (emphasis added). The U.S. Supreme Court further explained that the argument that one statute supersedes and overrides another statute "*faces a stout uphill climb*." Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1624 (2018).

> "*When confronted with two Acts of Congress allegedly touching on the same topic,* ***this Court is not at 'liberty to pick and choose among congressional enactments' and must instead strive 'to give effect to both.' A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing 'a clearly expressed congressional intention' that such a result should follow****. The intention must be 'clear and manifest.' And in approaching a claimed conflict, we come armed with the 'stron[g] presum[ption]' that repeals by implication are 'disfavored' and that 'Congress will specifically address' preexisting law when it wishes to suspend its normal operations in a later statute*." Id. (internal marks and citations omitted) (emphasis added).

In this case, RCW 35.92.010 and Title 80 RCW – including RCW 80.28.010, .090, and .100 – clearly are not in conflict. RCW 35.92.010 authorizes cities to generally own and operate waterworks and create classes of water users amongst whom rates must be uniform. Here, Defendant Spokane has developed two water user classes: Inside City water users and Outside City water users.

However, neither the City's classifications, nor the City's right to make classifications generally, are challenged in this suit *per se*. There is no dispute that under Washington law, a city may classify customers and maintain and operate water works "*as an integral utility service incorporated within general rates… with full power to regulate and control use, distribution, and price thereof: PROVIDED, that the rates charged must be uniform for the same class of customers or service.*" RCW 35.92.010 (emphasis added).

However, RCW 35.92.010 is otherwise silent as to the specific duties owed by municipal water companies in setting

rates. On that point, it is the rates being charged that are at issue in this case. Significantly, RCW 35.92.010 does not address, govern, or provide any substantive criteria regarding the actual water rates charged to customers. In contrast, that has been left to RCW 80.28, et seq.!

RCW 80.28.010, titled "*duties as to rates, services, and facilities*" – does in fact specifically delineate and govern the rate-making activities of all public utilities, including water companies such as the Defendant here. Contrary to the City of Spokane's arguments, RCW 80.28.010 imposes upon all water companies – including cities – a mandatory, substantive statutory duty to establish rates that are "***just, fair, reasonable and sufficient***." RCW 80.28.090 and .100 further require that Defendant avoid unduly discriminatory charges and unreasonable preferences. Defendant has violated these statutory obligations at the expense of a class of county residents and businesses. RCW 80.28.010, .090, and .100.

It is undisputed that RCW 35.92.010 authorizes municipal utilities to operate water companies. It also sets forth the general criteria for *classifying* customers for purposes of rates. However, it is **Title 80 RCW** that controls and identifies the duties all public utilities, including "water companies," owe in actually setting those rates. It is apparent that these statutes can and must be read harmoniously together.

Notably, the Trial Court here did not actually indicate in its oral ruling or written Order that there was conflict, irreconcilable or otherwise, between the statutes to preclude application of RCW 80.28.010, et seq., to municipal water rates. On the contrary, the Trial Court properly recognized that there is no inherent conflict between these statutes and directed Defendant to explain why they can't be read together:

> "*I'm having a hard time understanding why these statutes can't be read in conjunction, because even when I look at 80.04.500, it does indicate that the City can establish rates. So I don't read RCW 80 to limit the city's ability to establish rates, so show me the conflict*." 11/15/21 RP 6.

In response, Defendant too was befuddled to identify any actual conflict between the language in the respective statutes. Instead, Defendant confusedly offered a non-answer, asserting that RCW 80.28.010 contains "*criteria [that] is not contained in RCW 35.92.010*." 11/15/21 RP 6. Defendant further attempted a response by stating "*80.28.010 imposes language not found within… 39.92.010* [sic]," and then implausibly restated "*there is a conflict between 35.92.010, in that it has language not contained within 35, and it imposes burdens that are not imposed by RCW 35.92.010….*" Id. at 7, 25.

Yet, the fact that RCW 80.28.010, .090, and .100 contain *additional* language requiring "*reasonable*" rates, does not even remotely create a *conflict* with RCW 35.92.010's requirement that rates be *uniform* amongst classes of customers. Despite the foregoing, Defendant's counsel admitted that the Washington Constitution itself requires water rates set under RCW 35.92.010 to be reasonable and nondiscriminatory. 12/13/19 RP 36-7 ("*Whether or not Title 80 applies I guess we're still using this*

same word 'reasonable', but we just don't feel its genesis should come from that statute."); see also Id. at 53 ("*RCW 35.92 applies, and the constitution supplements that by saying the rates are going to be reasonable*.").

As such, it is quite apparent that there is no conflict between the power granted to municipal water companies under RCW 35.92.010 to regulate and control the price of water and/or the requirement that rates be reasonable under and otherwise comply with RCW 80.28.010, .090, and .100. Indeed, this is underscored and confirmed by the cases referenced above requiring other municipal utilities (electric) to comply with RCW 80.28.010, .090, and .100 in setting rates. See Jorgenson, supra; Hearde, supra; Okeson, supra.

Municipal electric utilities are authorized to sell power and set rates under virtually identical language contained in the same title and chapter as municipal water companies. RCW 35.92.050. RCW 35.92.010 authorizes municipal *water* companies to furnish water "*with full power to regulate and*

control the use, distribution, and price thereof." Compare to RCW 35.92.050, which authorizes municipal *electric* utilities to furnish gas, electricity, and other means of power "*with full authority to regulate and control the use, distribution, and price thereof*." There is no meaningful distinction in this language that would render municipal *electric* companies subject to the reasonableness requirements imposed by RCW 80.28, et seq., while at the same time creating a conflict exempting municipal *water* companies from the same obligations.

The mere fact that RCW 35.92.010 *further* authorizes municipal water companies to classify customers amongst whom rates must be uniform is irrelevant. The language authorizing cities to classify customers for rates pursuant to RCW 35.92.010 does not even remotely conflict with the requirement that all such rates are to be reasonable, fair, non-preferential, and nondiscriminatory under RCW 80.28.010, .090, and .100.

In classifying customers, RCW 35.92.010 requires cities to consider various factors, including "*any other matters which*

present a ***reasonable difference*** *as a ground for distinction*." RCW 35.92.010 (emphasis added). Consistent with RCW 35.92.010's guidelines for classifying customers based on "*reasonable differences*," RCW 80.28.010 requires that rates be just, fair, and ***reasonable***. RCW 80.28.090 prohibits granting "***undue*** *or* ***unreasonable***" preferences or subjecting any person to "***undue*** *or* ***unreasonable***" prejudice or disadvantage. RCW 80.28.090. RCW 80.28.100 prohibits rate discrimination amongst customers "*for doing a like or contemporaneous service with respect thereto* ***under the same or substantially similar circumstances or conditions***." RCW 80.28.100 (emphasis added). None of these "additional" requirements run afoul of the City's authority to classify customers based on "reasonable differences."

Finally, the uniformity requirement under RCW 35.92.010 is likewise compatible with the reasonable rate requirements of Title 80 RCW. As noted above, Defendant acknowledges that the Washington Constitution inherently prohibits Defendant

from setting *unreasonable* or *discriminatory* rates. This necessarily confirms that RCW 35.92.010's requirement that rates be uniform amongst classes of customers cannot be read as somehow authorizing the City to set uniform but *unreasonable* or *discriminatory* rates for such classes. Thus, there is no conflict, and these statutes can and must be "*construed together to accomplish the purpose assuring the public of adequate service at fair and reasonable rates.*" US West, supra.

The Trial Court's oral ruling or Order did not specifically state that RCW 35.92.010 solely applies to Defendant's setting of water rates because Title 80 RCW somehow conflicts with that statute. However, if the Court's ruling is construed otherwise, it is error either way. If the Trial Court had found some conflict existed, that would constitute error because, as shown above, the statutes are entirely compatible and capable of being read together to require that all rates charged to Defendant's customers be *reasonable*, in addition to being uniform amongst classes. On the other hand, if the Court found no conflict

between the statutes, then the Court necessarily erred by ignoring the mandate to read the statutes harmoniously.

Irrespective, it was error to rule that the City's water rates are governed solely by RCW 35.92.010 and to conclude that the City is not required to set reasonable rates under, and otherwise comply with, RCW 80.28.010, et seq.

D. The Trial Court Erred By Relying On Inapplicable Dicta In *Geneva, Supra,* And *Jorgenson, Supra,* To Contradict The Plain Language Of Title 80 RCW.

It is clear that the Court erroneously ignored the lack of ambiguity in Title 80 RCW and the absence of any conflict between its reasonable rate requirements and RCW 35.92.010. At Defendant's urging, the Trial Court instead relied almost exclusively on the inapplicable analysis of a different statute and conflicting dicta contained in a footnote in Geneva, supra. Notably, that case was decided 46 years ago and decades before the Supreme Court's decision in Fisk, supra. See 11/15/21 R 35.

More specifically, Defendant misrepresented to the Trial Court that the Geneva court purportedly "*rejected the standard*

set forth in RCW 80.28 and unequivocally stated: '…there is no longer any statutory requirement that such [municipally established] water rates be just and reasonable. RCW 35.92.010.'" CP 3312. Unfortunately, based on the quoted language, the Trial Court relied upon and adopted Defendant's misstatements in granting Defendant's motion.

Indeed, the Trial Court confirmed that the "*deciding factor*" for the Court in determining that RCW 35.92.010 solely governs Defendant's water rates was the Geneva court's statement that "*there's no longer any statutory requirement that the rates be just and reasonable after that language was taken out of 35.92*." 11/15/21 RP 35. However, the Trial Court's reliance on this language and the Geneva decision to exempt Defendant from the reasonable rate requirements of Title 80 RCW was erroneous.

First, the Trial Court erred in relying on the Geneva opinion and its strained interpretation of legislative history to determine whether RCW 80.28.010, et seq., applied to municipal

water rates in the first place. "*Only if a statute remains ambiguous after a plain meaning analysis may the court resort to external sources or interpretive aids, such as canons of construction, case law, or legislative history*." Ellerbroek v. CHS Inc, 13 Wn. App.2d 278, 283 (2020), as amended (May 21, 2020).

As shown above and as explained in Fisk, supra, under the "plain language" of Title 80 RCW, the Defendant City here is clearly a municipal water utility subject to that title. As such, it is required to comply with the reasonable rate requirements imposed on all water companies by RCW 80.28.010, .090, and .100. Accordingly, it was unnecessary and improper to look to legislative history to determine whether the legislature intended for Title 80 RCW to apply to municipal water rates. The plain language of the statutes themselves confirm the legislature's intent that all public utilities falling under Title 80 RCW, including municipal water companies, set reasonable rates in accordance with RCW 80.28.010, .090, and .100.

Second, the Trial Court here erroneously relied upon Defendant's overly broad and blatant misstatement of what Division I actually held in Geneva. Contrary to Defendant's representations, the Geneva court's holding did not "*reject the standard set forth in RCW 80.28*" or hold that there was no statutory "*just and reasonable*" requirement applicable to municipal water rates under those statutes.

The language Defendant quoted, and which the Trial Court here relied upon, was not actually discussing RCW 80.28 *at all.* Rather, in stating that there was no longer a statutory "*just and reasonable*" requirement, the Geneva court was referring to ***RCW 35.92.010*** and its predecessor statute *RCW 80.40.010*. The Geneva court's holding thus extends only so far as stating that RCW 35.92.010 *itself* no longer contains a statutory requirement that rates be "*just and reasonable*" following the removal of those words from its predecessor statute – RCW 80.40.010 – in 1959. Geneva, supra, at 869.

Even if resorting to legislative history were proper here, which it is not, the removal of that language from the predecessor to *RCW 35.92.010* does not even remotely evidence a legislative intent to exempt municipal water companies from the reasonable rate requirements imposed by *different* statutes applicable to municipal water companies, including specifically RCW 80.28.010, et seq. See, e.g. State v. Mathers, 193 Wn. App. 913, 919-20 (2016) (explaining that while the legislature's use of different language within a provision may indicate a different intent, "*[t]he appropriate use of this interpretive tool is to compare the language* ***within the same provision, or between amended versions of the same statute, but not between entirely different statutes***.") (emphasis added).

The Trial Court here further erred when it quoted and relied upon the following dicta from footnote 8 of the Geneva case in its oral ruling: "*We note that RCW 80.28.010 was not deemed controlling by our State Supreme Court in the Fisk [sic] case, and that RCW 80.04.500 exempts municipally owned water*

systems from the control of rates by the Utilities and Transportation Commission." 11/15/21 RP 35-6[4].

Relying on this language, the Trial Court here stated "*it doesn't directly address this issue, but this Court is satisfied that it differentiates between Title 80 and 39.52* [sic]." Id. However, as the Trial Court acknowledged, and the Geneva court made clear, this language was by no means central to or even part of the Geneva court's holding. 11/15/21 RP 35; Geneva, supra, at fn 8. In fact, the Geneva court expressly *declined* to decide

[4] The reference to "Fisk" in the quoted language from the report of proceedings appears to be an error in the transcript. The case referred to in the Geneva footnote referenced by the court was actually Faxe v. Grandview, 48 Wn.2d 342, 294 P. 2d 402 (1956). Fisk, supra was not decided until much later. As to Faxe, supra, both the Geneva court and the Trial Court in this case overstate its holding in indicating that "*RCW 80.28.010 was not deemed controlling*" in Faxe. In reality, the Faxe court likewise did not address *whether* RCW 80.28.010 applied to municipal water rates at all. Instead, the Faxe court cited to RCW 80.28.010 as an aid in construing the municipal water company's obligations under RCW 80.40.010, the predecessor to RCW 35.92.010, which at that time itself still required that water be sold outside city limits at "*just and reasonable*" rates. The issue of whether RCW 80.28.010, et seq., also independently applied to those municipal water rates does not appear to have been before the court in Faxe at all.

whether municipal water rates are required to comply with the reasonableness requirements in RCW 80.28.010, et seq., stating it did not reach the merits of that issue.

Instead, in dicta contained in a single footnote, which has not been cited or relied upon by any appeals court since, the Geneva court merely expressed doubt that RCW 80.28.010, et seq., applied to municipal water rates. The Geneva court's dicta does not provide a basis for disregarding the plain language of Title 80 RCW, requiring water companies, including Defendant, to set reasonable rates.

Finally, the Trial Court here similarly and erroneously applied an overly broad reading of Jorgenson, supra, in stating that case somehow supports a finding that solely RCW 35.92.010 applies to municipal water rates. The Trial Court stated its ruling was somehow supported by Jorgenson because that case purportedly "*differentiates between electrical service and what's required for water rates, does not use the "just and reasonable" language in Jorgensen*." 11/15/21 RP 35-6.

Yet, the Jorgenson court merely noted, again in dicta, that municipal water rates must be uniform under RCW 35.92.010, and confirmed that municipal electric rates must be reasonable and comply with RCW 80.28.090, and .100. Jorgenson, supra, at 870. Both of those things are true. However, it does not follow that our Supreme Court intended that to mean that uniformity is the *only* requirement and that RCW 35.92.010 is the *only* statute applicable to municipal water rates. Rather, the Jorgenson court did not conduct any analysis whatsoever into whether municipal water rates must *also* be reasonable under RCW 80.28.010, et seq. This is presumably because the case dealt solely with electric rates. The reasonableness of and statutory requirements applicable to municipal water rates were simply not before the Jorgenson court.

As stated above, the Jorgenson court nonetheless *confirmed* that municipal electric utilities are still required to comply with Title 80 RCW in setting rates. Id. This is notwithstanding the similarly broad grant of power provided to

municipal electric utilities to regulate the price of power pursuant to virtually identical language in their enabling statute, RCW 35.92.050. See Id. at 868. There is no basis for Defendant's argument, and the Trial Court's ruling that the same is not also true of a municipal water company under Title 80 RCW.

To date, it appears that no case has squarely addressed and decided the issue of whether RCW 80.28.010, .090, and/or .100 apply to municipal water rates as they do to municipal electric rates. No case before or since it was tangentially mentioned in dicta in the Geneva footnote appears to have even specifically analyzed or discussed that issue. Whether municipal water companies are required to comply with the reasonable rate provisions in RCW 80.28.010, .090, and .100 certainly has not been discussed, analyzed, or decided by any court since the Fisk court confirmed in 2008 that municipal water companies remain subject to Title 80 RCW.

Yet, as noted above, five years after Geneva was decided, Division I did specifically apply RCW 80.28.010 to municipal utility rates when it confirmed that municipal electric utility rates "*must be just, fair, reasonable and sufficient*" under RCW 80.28.010. Hearde, supra, at 221. That has been reaffirmed multiple times in the decades since. Decisions by courts of appeals and the Washington Supreme Court have concluded that municipal electric utilities must comply with Title 80 RCW in setting rates. See e.g. Hearde, supra; Employco, supra; Okeson, supra. The same is true of Defendant City's water rates in this case.

Thus, the Trial Court erred when it ignored the plain, unambiguous language of Title 80 RCW, relying solely upon dicta and inapplicable analyses in Geneva and Jorgenson. It is error to find that municipal water companies are exempt from the obligation to set reasonable rates under RCW 80.28.010, .090, and .100.

V. RAP 18.1 MOTION FOR ATTORNEY FEES AND COSTS

Based on RAP 18.1 and RCW 80.04.440, Plaintiffs respectfully request an award of reasonable attorney fees and costs incurred below and on appeal.

VI. CONCLUSION

Based on the foregoing, Plaintiffs West Terrace Golf, L.L.C., a Washington limited liability company; and John E. Durgan, Tawndi L. Sargent, and Kristopher J. Kallem, individually and as class representatives for all others similarly situated, request that the Trial Court's Order granting Defendant's Motion and Denying Plaintiffs' Motion for Declaratory Relief be reversed and that Plaintiff's Motion for Declaratory Relief be granted, with judgment entered declaring that Defendant City of Spokane's water rates are and were required to comply with Title 80 RCW, including specifically RCW 80.28.010, .090, and .100 and that this matter be remanded back to the Trial Court for further proceedings.

This document contains 9,058 words, excluding parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 23rd day of November, 2022.

DUNN & BLACK, P.S.

/s/ ALEXANDRIA T. DRAKE
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Attorneys for Appellants

DECLARATION OF SERVICE

I, ALEXANDRIA T. DRAKE, make this declaration under penalty of perjury under the laws of the State of Washington:

1. That I am over the age of 18, am competent to testify to the matters herein and have personal knowledge of the same.

2. On this 23rd day of November, 2022, I caused to be served the foregoing on the individuals named below via the Washington appellate courts' portal.

Michael F. Connelly Megan C. Clark Etter, McMahon, Lamberson Van Wert & Oreskovich, P.C. 618 W. Riverside Ave., Suite 210 Spokane, WA 99201	Salvatore J. Faggiano Elizabeth L. Schoedel Assistant City Attorneys 808 W. Spokane Falls Blvd., 5th Floor Spokane, WA 99201

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

DATED this 23rd day of November, 2022, at Spokane, Washington.

/s/ ALEXANDRIA T. DRAKE

APPENDIX A

Overview of Utility Rate Making

Revenue Requirement — Compares the revenues of the utility to its expenses to determine the overall level of rate adjustment

Cost of Service — Equitably allocates the revenue requirements between the various customer classes of service

Rate Design — Design rates for each class of service to meet the revenue needs of the utility, along with any other rate design goals and objectives

HDR 10

Typical Goals and Objectives

- Rates should be cost-based, equitable and set at a level to meet the revenue requirements of the utility
- Rates should be easy to understand and administer
- Rates and the process of allocating costs should conform to "generally accepted" rate setting techniques
- Rates should be stable in meeting the utility's financial, operating and regulatory requirements
- Rate levels should be stable from year to year from the customer's perspective

HDR 11

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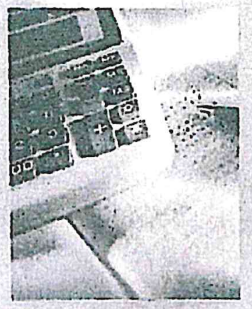
COS 300.000309

The Two Main Objectives of a Cost of Service Study

- Determine the cost to serve each class of service (Do cost differences exist?)
  - ✓ Usage Characteristics
  - ✓ Facility Requirements
- Derive average unit costs, which are useful for rate design purposes



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Why Cost of Service?

- The fundamental question: Do cost differences exist to serve the various customer classes of service?
- Costs of operating the utility are not accounted for on a customer class-by-class basis
  - ✓ e.g. – the water utility repairs a "main", not a "residential main"
- Many costs are incurred for the joint benefit of all customers, while other costs may benefit only certain specific customers
- Not all customers consume services (e.g. water) in the same manner (pattern) or require the same facilities to be served
- Legally defendable

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DUNN AND BLACK, P.S.

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