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WATER LAW - WASHINGTON

West Terrace Golf LLC v. City of Spokane

Court of Appeals of Washington, Division 3 - February 6, 2024 - P.3d - 2024 WL 440584

Water users, who resided outside city and purchased water from city, brought action against city for, among other things, declaratory ruling that city's higher water rates for nonresident users violated statutes in title governing water companies.

City brought separate action for declaratory ruling that statute governing municipal utilities applied to a municipality's setting of its water rates.

The Superior Court, Spokane County entered order in city's favor, holding that statute governing municipal utilities and city's municipal code, not title governing water companies, governed city's authority to establish water rates at issue, and certified its order for interlocutory review. Water users sought direct review in Supreme Court, which denied direct review and transferred consolidated action to Court of Appeals, which accepted discretionary review.

The Court of Appeals held that:

- As a matter of apparent first impression, when classifying customers and service for rate-setting purposes, a municipal water supplier may only consider reasonable grounds for distinction;
- Statute requiring water rates to be "just, fair, reasonable and sufficient" was not repealed by implication as applied to municipal water suppliers; and
- As a matter of apparent first impression, a municipal water supplier must charge a uniform, just, fair, reasonable, and sufficient rate for a given class of customers or service.

The statute listing factors that a municipal water "may in its discretion consider" in "classifying customers served or service furnished" for rate-setting purposes, in which the last enumerated factor is "any other matters which present a reasonable difference as a ground for distinction," only allows cities and towns to base a rate classification on a factor, including the enumerated factor of the "location of the various customers within and without the city or town," if the factor is in fact a reasonable ground for distinction; the last factor, an omnibus clause, marks the common attribute that connects the specific items listed, and this interpretation is consistent with other statutes prohibiting unreasonable rate preferences and rate discrimination.

Because the statute authorizing cities and towns to construct water works and classify services and water users for rate-setting purposes concerns only rate classifications, it does not preclude the statute requiring gas, electricity, and water rates in general to be "just, fair, reasonable and sufficient" from applying to particular rates set by municipal water suppliers.

Legislature's repeal of statutory language requiring rates set by a municipal water supplier to be "just and reasonable" did not repeal by implication the earlier statute requiring water rates set by utilities in general to be "just, fair, reasonable and sufficient" to the extent such statute applied to municipal water suppliers; statute governing municipal water suppliers did not, by itself, cover entire field of municipal water rates, legislature did not signal intent to recede from "just, fair,

reasonable and sufficient" standard for municipal water suppliers but not for other classes of public or private utilities, and requirement of reasonableness in utility rates was longstanding.

Under the statute authorizing municipal water works, a municipal water supplier must charge a uniform rate for a given, statutorily permissible classification of customers or service, and under the statute governing water rates set by utilities in general, the rate must be just, fair, reasonable, and sufficient.

A municipal water supplier has reasonable discretion to fix rates, its rates are presumptively reasonable, and those challenging the rates bear the burden of proof to show the rates are excessive and disproportionate to the service rendered.

The inquiry into whether the rates charged by a municipal water supplier are excessive and disproportionate to the service rendered is governed by two controlling considerations: the value of the services to the public and fair compensation for the supplier.

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