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## **I. INTRODUCTION**

The Department of Labor and Industries (Department) issued three citations to Marysville Taping Company (MTC), for three violations of the Electricians and Electrical Installation Law, Chapter 19.28 (electrical law). The Electrical Board (Board) and the Snohomish County Superior Court each affirmed the Department's citations.

MTC appeals, primarily contending that RCW 19.28.261, which provides a limited exemption for householders, shields it from a finding that it violated the electrical law. However, the Board and the superior court properly concluded that the exemption found at RCW 19.28.261(6) does not apply under the facts of this case, and this Court should affirm.

## **II. COUNTERSTATEMENT OF THE ISSUES**

1. Did MTC violate RCW 19.28.041, which requires that a contractor who performs electrical work must be licensed as an electrical contractor, when MTC was not licensed as an electrical contractor when it performed the work?

2. Did MTC violate RCW 19.28.010, which requires that all electrical work be done in strict conformity with the electrical law in Washington and be in conformity with approved methods of construction for safety to life and property, when the owner of MTC installed electrical wiring in a manner that did not strictly conform with the electrical law and

was not in conformity with approved methods of construction for safety to life and property?

3. Did MTC violate RCW 19.28.271, which provides that a company may only employ certified electricians or properly supervised electrical trainees to perform electrical work, when the owner of MTC installed electrical wires into a heater when he was neither a certified electrician nor an electrical trainee, at the time that he performed that work?

4. Under RCW 19.28.261(6), which provides that RCW 19.28.161 through RCW 19.28.271 shall not be construed as preventing a householder from performing his or her own electrical work nor from receiving help from a friend, relative, neighbor, or other person, was MTC exempt from complying with RCW 19.28.041, RCW 19.28.010, and RCW 19.28.271, when MTC performed electrical work at the request of a general contractor who owned the property but who did not live upon it?

5. Has MTC demonstrated a “manifest constitutional error” that would allow it to raise a new legal argument regarding an alleged violation of a constitutional right for the first time on appeal, when MTC has failed to cite relevant legal authority that supports its contention that the Washington Constitution shields it from compliance with the electrical law?

6. Assuming MTC did not waive the right to raise it, does article I, section 7 of the Washington Constitution preclude a finding that MTC violated the electrical law, when there has been no showing that Washington has historically recognized that subcontractors have the right to perform electrical work for general contractors without complying with the electrical law, when MTC has not shown that it has either a fundamental liberty interest at issue or that it was subjected to an unauthorized search or seizure, and when the statutes whose constitutionality MTC questions are ones that directly further the legitimate public interest of furthering public safety and health by ensuring that electrical work is performed in a proper manner by qualified persons?

7. Did the Department act in an arbitrary and capricious manner when it issued citations to MTC for violations of the electrical law, when no statute exempted MTC from compliance with the electrical law, and when the record shows that the owner of MTC performed electrical work that was not in strict compliance with the electrical law, that the owner of MTC was not a certified electrician, and that MTC was not a licensed electrical contractor?

### **III. STATEMENT OF THE CASE**

MTC is not a licensed electrical contractor. CP 78, 144. Mr. Ron Moen is the owner of MTC. CP 74. Mr. Moen is neither a certified

electrician nor is he an electrical trainee with an electrical trainee certificate issue by the Department. CP 77, 144. MTC is a firm that typically performs drywall services. CP 74, 78, 149, 150.

As of July 2009, MTC was a sub-contractor who performed drywall services at a construction site located at 21805 Colt Road in Leavenworth, Washington, where a new single-family house was being built. CP 75-6, 123-24, 145. The general contractor for that project was Gilbertson Construction, which is owned by Mr. Brooks Gilbertson. CP 79, 123. Ron Moen, at the request of the general contractor, connected a space heater to a power source with a cable that conveyed electrical current. CP 77-82, 124-29, 142-43.

Mr. Rod Mutch is an electrical inspector employed by the Department. CP 121. Mr. Mutch went to the construction site in Leavenworth in order to inspect electrical work which had been done by the licensed electrical contractor on the project, G.H. Electric, Inc. CP 123. When he arrived, Mr. Mutch observed what he considered to be an unsafe wiring installation running across the yard, over the driveway, and into the garage. CP 123. Mr. Mutch examined this wiring, and found a space heater which had been attached to the cable he had seen upon arrival at the worksite. CP 124. Mr. Mutch found that the plug that would normally be found at the end of an electrical cord attached to an appliance

had been removed from the electrical cord which was attached to the space heater, leaving exposed wires. CP 124. Mr. Mutch also found that the exposed wires had been stripped, and that these wires had been connected to the wires at one end of the cable, while the wires at the other end of the cable had been connected directly into two circuit breakers in an electrical panel on a temporary electrical service pole. CP 72-73. The cable connecting the space heater to the circuit breakers in the electrical panel conveyed electrical current. CP 126. Mr. Mutch concluded that the work performed did not comply with the electrical law, and that this work posed a risk of electrical shock or fire. CP 124-29. This work was done by Mr. Moen, and this fact is not contested by MTC. *See App. Br. at 9.*

Based on Mr. Mutch's inspection, the Department issued three non-compliance citations to MTC: EMUTR0055, for violation of RCW 19.28.041, which requires a company that installs cables that convey electrical current to have a valid electrical contractor license; EMUTR00587, for violation of RCW 19.28.010, for failure of the electrical installer to ensure that the installation of wires that convey electrical current are in strict conformity with the electrical laws of Washington; and EMUTR00556, for violation of RCW 19.28.271, for employing an individual to perform electrical work while not possessing a

valid certificate of competency or a training certificate to perform electrical work. CP 79-81, 82-84, 85-87.

MTC appealed the three citations, and the appeal was assigned to the Office of Administrative Hearings. CP 79-89. After a hearing, the administrative law judge (ALJ) issued a proposed decision and order that dismissed all three citations. CP 104-109. The ALJ found that Mr. Moen was not a certified electrician, that MTC was not a licensed electrical contractor, and, in finding of fact number 12, that MTC had connected the heater to the heat source, and energized the heater, in a manner that “created a very hazardous situation, which could have resulted in injury through electrical shock or sparks leading to fire.” CP 104-05. Nonetheless, the ALJ concluded that, as a matter of law, MTC had not violated any statute found in the electrical law. CP 107.

The Department appealed to the Board, which reversed the decision of the ALJ. CP 49-53, 96-102. The Board adopted the ALJ’s findings of fact, but it concluded that MTC had violated RCW 19.28.041, 19.28.271, and 19.28.010, and it affirmed the Department’s citations. CP 49-53. The Board expressly concluded that RCW 19.28.261 did not exempt MTC from any of the three citations issued by the Department. CP 51.

#### IV. SUMMARY OF THE ARGUMENT

Under RCW 19.28.010, all electrical work must be done in strict conformity with RCW 19.28 and the rules adopted by the Department under that statute, and it must also be done in conformity with approved methods of construction for safety to life and property. The electrical law provides that installation, repair, or maintenance of electrical wires and equipment that convey electrical current is considered to be electrical work. Furthermore, only a company that has an electrical contractor license issued by the Department may lawfully perform or agree to undertake electrical work, and only a certified electrician or a properly supervised electrical trainee may lawfully perform electrical work.

MTC does not dispute that it is not a licensed electrical contractor, nor does it claim that its owner, Mr. Moen, is a certified electrician or an electrical trainee. MTC also does not claim that Mr. Moen performed the electrical work in strict compliance with the requirements of the electrical law nor does it claim that his work was in conformity with the approved standards of construction in the industry. MTC nonetheless contends that all three of the citations against it should be vacated, relying primarily on the exemption found in RCW 19.28.261. MTC is mistaken.

Through its enactment of RCW 19.28.261, the legislature has recognized a limited exemption from the requirement that all individuals

who perform electrical work be a certified electrician or an electrical trainee.

RCW 19.28.261(6) provides that “[n]othing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.” However, RCW 19.28.261 does not purport to shield a householder, or a person who is assisting one, from RCW 19.28.010, which requires that the electrical work that is done be performed in strict compliance with the electrical law.

Moreover, the exemption MTC relies upon applies only to householders and to those who assist householders and it plainly does not apply to MTC, as MTC was performing electrical work at the request of a general contractor who owned the property but who was not a “householder.” Furthermore, the owner of MTC did not simply assist a householder in performing electrical work on his or her personal residence, but, rather, he performed the work himself. Finally, the owner of MTC was not a person like a “friend, relative, or neighbor,” rather he had a commercial and professional relationship with the general contractor.

MTC also argues, for the first time on appeal, that it has a constitutional right to perform electrical work at the general contractor's request under article I, section 7. However, newly contended constitutional arguments are considered only when a party has demonstrated a manifest constitutional error, and, here, MTC has not done so. Indeed, MTC fails to provide a citation to relevant authority that supports its claim that the Department's citations against it violated either MTC's or Mr. Moen's constitutional rights. In any event, even assuming it did not waive it, MTC's constitutionally based argument lacks merit.

Finally, MTC argues that the Department behaved in an arbitrary and capricious fashion when it issued the three citations against MTC, and that the Board acted arbitrarily and capriciously when it affirmed those citations. However, MTC fails to support its claim that the Department or the Board behaved arbitrarily and capriciously.

The Department, the Board, and the superior court each properly determined that MTC committed three violations of the electrical law. As MTC offers no valid basis for concluding otherwise, this Court should affirm.

## **V. STANDARD OF REVIEW**

This case is subject to the Administrative Procedure Act. *See* RCW 19.28.131; RCW 19.28.271(2) (providing that appeals from

citations are governed by RCW 34.05). Under the APA, the “burden of demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a). On appeal, this Court reviews the decision of the “*highest* forum that exercised factfinding authority,” and it reviews those findings in the light most favorable to the prevailing party. *See Johnson v. Dep’t of Health*, 133 Wn. App. 403, 411, 136 P.3d 760 (2006) (emphasis added). Here, the Board was the *highest* agency forum that exercised factfinding authority in this appeal, and, therefore, this Court reviews the decision of the Board. *See id.* The Board had the authority to enter findings of fact, and thus was the highest forum exercising authority as a factfinder. *See* RCW 34.05.464(4); RCW 19.28.131; *Tapper v. State Emp’t Sec. Dep’t*, 122 Wn.2d 397, 405-06, 858 P.2d 494 (1993). Furthermore, as the Department prevailed before the Board, the record is viewed in the light most favorable to the Department. *See Johnson*, 133 Wn. App. at 411.

MTC suggests that this Court reviews the decision of the ALJ (who issued a proposed decision and order that was favorable to MTC) rather than the Board (who issued a decision favorable to the Department), and that, therefore, the record should be viewed in a light favorable to MTC. *See* App. Br. at 9. MTC is incorrect. As noted, this Court reviews the decision of the Board, not the ALJ, and, as the Department prevailed

before the Board, this Court views the record in the light most favorable to the Department. *See Tapper*, 122 Wn.2d at 406; *Johnson*, 133 Wn. App. at 411.

MTC does not raise any issue with regard to any fact that is relevant to this appeal, and it raises only questions of law, which this Court considers de novo. *Macey v. Dep't of Emp't Sec.*, 110 Wn.2d 308, 313, 752 P.2d 372 (1988). However, while this Court is not bound by the Department or Board's interpretation of the electrical law, the court accords deference to their interpretations of it, as they are agencies that have expertise in enforcing and interpreting those laws. *See id.* at 313.

MTC asserts it is entitled to relief based on RCW 34.05.570(3)(a) which allows the court to grant relief from an agency action if the agency action is unconstitutional. App. Br. at 31. Properly raised assertions that an agency action is unconstitutional are questions of law that are reviewed by the court de novo. *In re Welfare of C.B.*, 134 Wn. App. 336, 342, 139 P.3d 1119 (2006). However, where a party failed to raise a constitutional issue below, a court considers a newly contended constitutional argument only if the party raising it has demonstrated a "manifest error" affecting a constitutional right. *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). A "manifest error" is shown only if the error is "obvious" and only if that error had "practical and identifiable consequences" on the

appeal. *Gordon*, 172 Wn.2d at 676, n.2; *id.* at 676 (internal quotations omitted).

MTC also asserts that the Department and the Board acted arbitrarily and capriciously, as defined by RCW 34.05.570(3)(i). App. Br. at 32-34. MTC carries the burden of proving that the agency action was arbitrary and capricious. RCW 34.05.570(1)(a). Arbitrary and capricious agency action means willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46-47, 959 P.2d 1091 (1998). “Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.” *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997).

## VI. ARGUMENT

### A. **MTC Violated RCW 19.28.010, RCW 19.28.041, And RCW 19.28.271 When The Owner Of MTC Performed Electrical Work That Did Not Comply With The Electrical Law And When He Did That Work Despite The Fact That MTC Was Not Licensed As An Electrical Contractor And He Was Not A Certified Electrician**

#### 1. **MTC violated RCW 19.28.010, RCW 19.28.041, and RCW 19.28.271**

MTC violated RCW 19.28.010, RCW 19.28.041, and RCW 19.28.271 when Mr. Moen, the owner of MTC, performed an

electrical installation in a manner that did not strictly comply with the electrical law, and when Mr. Moen did this work despite the fact that MTC was not licensed as an electrical contractor and Mr. Moen was not a certified electrician.

RCW 19.28.010 (1) states:

(1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures . . . shall be in *strict conformity* with this chapter, the statutes of the state of Washington, and the rules issued by the department, and *shall be in conformity with approved methods of construction for safety to life and property*.

RCW 19.28.010(1) (emphasis added).

RCW 19.28.041 states:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter.

RCW 19.28.041(1)

RCW 19.28.271(1) states:

It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to

engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271 . . . .

When Mr. Moen, the owner of MTC, installed wires to provide electric current to the space heater, he performed an electrical installation, which is electrical work subject to the electrical law. Under RCW 19.28.010, RCW 19.28.041, and RCW 19.28.271, such electrical work must be performed in strict conformance with the electrical law, can only be performed by a certified electrician or properly supervised electrical trainee, and can only be performed by a licensed electrical contractor. The record establishes that MTC violated each of the above statutes, as Mr. Moen did not perform the electrical work in strict compliance with the electrical law (CP 123, 125, 126, 130, 131), MTC was not a licensed electrical contractor at the time (CP 7, 8, 144), and Mr. Moen was not a certified electrician. CP 77, 144.

**2. MTC performed “electrical work” that made it subject to compliance with the electrical law**

MTC does not contend that it is a licensed electrical contractor, that Mr. Moen is a certified electrician, or that Mr. Moen performed the electrical work in strict compliance with the electrical law. *See App. Br.*

at 4-5, 7, 9. Rather, MTC's primary contention is that the exemption at RCW 19.28.261(6) shields it from compliance with the electrical law.

MTC also suggests that it did not perform "electrical work" within the meaning of the electrical law because Mr. Moen connected the electrical wiring to a power source but did not install the power source itself. *See App. Br. at 27-28.* MTC suggests that either WAC 296-46B-100 or WAC 296-46B-925 support the proposition that MTC cannot be considered to have performed electrical work unless it not only connected the wire to the power source but also installed the power source itself. *See App. Br. at 27-28.* This argument fails.

RCW 19.28.010 provides that "[a]ll wires and equipment, and the installations thereof, that convey electric current" must be performed in strict conformity with the electrical law. Thus, by its plain terms, the statute governs both the installation of "equipment" and the installation of "wires." It is undisputed that MTC installed "wires . . . that convey electric current," and, therefore, the work Mr. Moen performed was electrical work.

Furthermore, neither WAC 296-46B-100 nor WAC 296-46B-925 supports MTC's suggestion that an individual who installs electrical wire but who does not install the equipment itself has not performed electrical work. WAC 296-46B-100 defines several terms found in the electrical

law, including “installation.” It defines an “installation” as “the act of *installing*, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, *or wire*, except as exempted by WAC 296-46B-925.” WAC 296-46B-100(37) (emphasis added). Thus, under the plain language of WAC 296-46B-100, the installation of wire is “electrical work” unless the work is exempted by WAC 296-46B-925.

WAC 296-46B-925 exempts certain forms of electrical installation from the requirements of the electrical law, but none of the exemptions found in that regulation apply to MTC. WAC 296-46B-925(8) exempts “low-voltage” electrical work for “(a) Built-in residential vacuum systems; (b) Underground landscape sprinkler systems; (c) Underground landscape lighting; and (d) Residential garage doors.” These types of electrical installations are exempt because they do “not inherently or functionally compromise safety to life or property.” WAC 296-46B-925(8). WAC 296-46B-925(9) exempts firms who “replace lamps in luminaires.” WAC 296-46B-925(10)<sup>1</sup> exempts the installation of “plug and cord” equipment.

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<sup>1</sup> WAC 296-46B-925 contains other exemptions that are also plainly inapplicable to MTC. Nothing within WAC 296-46B-925 provides that the installation of wires does not constitute electrical work unless a firm also installs the equipment.

Mr. Moen did not perform electrical work on a residential vacuum system, underground sprinkler system, landscape lighting, or a residential garage door, nor did he replace a lamp in a luminaire, nor did he install “plug and cord” equipment. *See* CP 50. Therefore, the work he performed was electrical work under the plain language of WAC 296-46B-100 and WAC 296-46B-925.

**3. MTC acted as an electrical contractor and thus violated RCW 19.28.041**

MTC also suggests, through a citation to a conclusion of law made by the ALJ, that MTC did not violate RCW 19.28.041 because MTC did not hold itself out as being engaged in the electrical trade. *See* App. Br. at 27. In conclusion of law eight, the ALJ suggested that RCW 19.28.006(8) requires that a firm hold itself out as an electrical contractor or offer to provide electrical contracting services in order to meet the definition of an “electrical contractor.” CP 107. However, the plain language of RCW 19.28.006(8) does not support the ALJ’s interpretation of it and, to the extent that MTC is relying on the ALJ’s interpretation of RCW 19.28.006(8), MTC is incorrect.

RCW 19.28.006(8) provides that “[e]lectrical contractor’ means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or

maintaining wires or equipment that convey electrical current.” Under the plain language of that statute, a firm that “undertakes” electrical work or that “does the work of installing or maintaining wires . . . that convey electrical current” is an electrical contractor and is thus subject to the electrical law. RCW 19.28.006(8) does not require that a firm hold itself out as being engaged in the electrical trade in order for it to be subject to a citation if it performs electrical work without being licensed as an electrical contractor. Rather, under RCW 19.28.006(8), a firm that actually performs electrical work is an electrical contractor for the purposes of the electrical law, and, therefore, it must, among other things, be licensed as an electrical contractor with the Department, or it has violated RCW 19.28.041.

Here, it is undisputed that Mr. Moen, the owner of MTC, installed wires that convey electrical current. Since MTC is not licensed as an electrical contractor, MTC violated RCW 19.28.041 when it performed this electrical work.

**B. RCW 19.28.261(6) Did Not Excuse MTC From Complying With The Electrical Law, As MTC Did Not Merely Assist A Householder In Performing Electrical Work On His Or Her Private Residence; Rather, It Performed Electrical Work As A Subcontractor In Response To A Request From A General Contractor**

MTC argues that it was exempt from complying with the electrical law under RCW 19.28.261. App. Br. at 10-30. This Court should reject that argument, as it is contrary to the plain meaning of the language of that statute.<sup>2</sup>

### **1. Overview of RCW 19.28.261**

The meaning of a statute is “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.” *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.2d 1020 (2007); *Dep’t of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of the legislature’s intent. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). However, if, after engaging in “plain meaning” analysis, the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory

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<sup>2</sup> MTC argues that the exemption within RCW 19.28.261 is “relevant”, noting, among other things, that the Department presented evidence at the hearing that related to the issue of whether the householder exemption applied. App. Br. at 16-19. However, MTC has conflated the issue of whether the householder exemption is “relevant,” in the sense of it relieving MTC of responsibility of complying with the electrical law, with the issue of whether evidence regarding whether or not the exemption applies is relevant, in the sense of it being admissible evidence. The issue raised by MTC in this appeal is whether the exemption actually applies to MTC, not whether any evidence regarding that exemption was admissible.

construction tools for assistance in discerning legislative intent. *Udall*, 159 Wn.2d at 909.

RCW 19.28.261(1), (5), and (6) each provide for a narrow and limited exception to compliance with certain aspects of the electrical law.

RCW 19.28.261(1) provides:

Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that *a person* obtain a license or a certified electrician in order to do electrical work at *his or her residence or farm or place of business or on other property owned by him* or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units.

(Emphasis added.)

RCW 19.28.261(5) provides:

The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their *own* property or to *regularly employed employees* working on the premises of their employer, unless the electrical work is

on the construction of a new building intended for rent, sale, or lease;

(b) *Employees of an employer* while the employer is performing *utility type work* of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(Emphasis added.)

RCW 19.28.261(6) provides:

Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any *householder* to assist or receive assistance from a *friend, neighbor, relative or other person* when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

RCW 19.28.261(6) (emphasis added).

**2. The plain language of RCW 19.28.261 establishes that it does not apply to MTC**

Here, neither RCW 19.28.261(1), nor RCW 19.28.261(5), nor RCW 19.28.261(6) exempted MTC from complying with the electrical law.

**a. RCW 19.28.261(1) plainly does not apply to MTC**

RCW 19.28.261(1) is plainly inapplicable to MTC because it only applies to persons who perform electrical work on their *own* property, and it does not apply to those who “assist” a property owner. Here, Mr. Moen

does not contend that he was performing electrical work on property that *he* owned. Therefore, RCW 19.28.261(1) does not apply.

**b. RCW 19.28.261(5) plainly does not apply to MTC**

RCW 19.28.261(5) is also plainly inapplicable here, as that section of the statute only applies to persons who perform electrical work on their own property or who have a regularly employed employee perform such work. Here, as noted, Mr. Moen did not own the property on which the electrical work was performed, and Mr. Moen was not the general contractor's "employee." Nor can Mr. Moen claim that he is an employer who regularly performs "utility type work" or the employee of such an employer.

**c. RCW 19.28.261(6) plainly does not apply to MTC**

**(1) MTC did not perform work at the request of a "householder"**

Finally, RCW 19.28.261(6) does not apply to MTC. That section of the statute allows a "householder" to assist or receive assistance from a "friend, relative, neighbor or other person." The term "householder" is not defined by the statute. Therefore, it is given its usual and ordinary meaning. *See Burton v. Lehman*, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005).

When an undefined term is not a technical one, a court may refer to a dictionary to establish its meaning. *Burton*, 153 Wn.2d at 423. Webster's dictionary defines "householder" as "a person who *occupies* a house or tenement *alone or as the head of a household*." Merriam-Webster Online: *Dictionary & Thesaurus*, <http://www.merriam-webster.com/dictionary/householder> (emphasis added). "Household", in turn, is defined as "those who  *dwell* under the same roof and compose a family; also, a social unit composed of those living together in the same dwelling." Merriam-Webster, <http://www.merriam-webster.com/dictionary/householder> (emphasis added). Under the definitions provided in Webster's, a general contractor cannot be considered the "householder" of the property unless he lived at that property as his personal residence. Here, a construction company owned the property on which Mr. Moen performed electrical work, but the owner of the construction company, the general contractor, did not live at that property and he had not made it his personal residence. Therefore, the owner of the construction company was not the "householder" of the property within the meaning of RCW 19.28.261(6), and the assisting a householder exemption contained within that section of the statute does not apply to Mr. Moen.

MTC suggests that the house under construction *was* the personal residence of the general contractor, stating that the general contractor “was building his own home.” App. Br. at 4. However, MTC does not cite to the record to support this statement. *See* App. Br. at 4. Furthermore, the record does not support the conclusion that Mr. Gilbertson, the general contractor, either lived upon or intended to live upon that property. Indeed, Mr. Moen’s own testimony indicates that Mr. Gilbertson’s personal residence is somewhere other than the building being constructed at 21805 Colt Road. Mr. Moen testified at the hearing in regard to the circumstances of his working at this particular new, single-family house construction site at 21805 Colt Road in Leavenworth: “[MTC] work[s] basically here in Snohomish County, as [sic] where Mr. Gilbertson lives, but this particular job he’s been—he’s built himself a place over there at Leavenworth and he’s been doing some work over there and he had us come over to do that one drywall job for him.” CP 145.

Furthermore, the record indicates that the house was an asset of the general contractor’s company, Gilbertson Construction, rather than a property that was owned personally by Mr. Gilbertson, which further undermines the suggestion that Mr. Gilbertson was the “householder” of that property. CP 75, 76, 130, 145.

The general contractor had hired an electrical contractor, G.H. Electric, Inc., which was to perform all electrical work for the construction of the new house at 21805 Colt Road in Leavenworth, except for the installation of the space heater, which was performed by MTC. CP 75, 123, 146. G.H. Electric, Inc., had purchased an electrical work permit from the Department for the project in Leavenworth. CP 75.

In an electrical work permit application, there are spaces for the name and address of the permit purchaser, and there are spaces for the name of the “site owner” of the location where the electrical work is to be done, as well as for the address of the location where the work is to be done. CP 75, 76. When G.H. Electric, Inc., filled out the space for the “site owner” of the location where the work was to be done, it put: “Gilbertson Construction.” CP 75.

Mr. Gilbertson, the owner of Gilbertson Construction, also submitted an electrical work permit for the property at 21805 Colt Road in Leavenworth to the Department. CP 76. This permit was for the installation of the temporary electric service power pole for the jobsite. CP 76. Notably, on this permit, Mr. Gilbertson, as the purchaser, listed his personal address as being in a different city than Leavenworth, which is the city where the house was under construction. CP 76. Additionally, the electrical inspector testified that he had telephoned Mr. Gilbertson while

the inspector was at the construction site in Leavenworth, and at that time, Mr. Gilbertson “was at another job site nearby . . . .” CP 126, 130. The testimony of the inspector, that the inspector understood that Mr. Gilbertson “was at another job site nearby,” supports the conclusion that the property at Leavenworth was not the personal residence of Mr. Gilbertson, but rather one of other job sites. CP 130.

**(2) MTC did not simply “assist” a householder in performing electrical work**

RCW 19.28.261(6) also does not apply to MTC because that section of the statute provides only that a householder may “assist or receive assistance” from a person who is not a certified electrician, but it does not broadly authorize persons who are not electricians to perform any electrical work of any kind at a householder’s request. The statute contemplates a situation in which an acquaintance of a householder *assists* the householder in *performing work on his or her own property*, rather than a situation, like the one here, where a subcontractor performs the electrical work in its entirety.

**(3) MTC’s Mr. Moen’s professional relationship with the general contractor was not analogous to a friend’s, a neighbor’s, or a relative’s relationship with a householder**

RCW 19.28.261(6) is not ambiguous as to its requirements. But even assuming that RCW 19.28.261(6) is ambiguous, MTC's interpretation of RCW 19.28.261(6) should be rejected because it is inconsistent with the canon of statutory construction that when a statute contains a list of items, an undefined term is generally understood to embody only things that are similar to the included items. *See City of Seattle v. Dep't of Labor & Indus.*, 136 Wn.2d 693, 699, 965 P.2d 619 (1998). As *City of Seattle* explains, "[t]he *ejusdem generis* rule requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that *the general terms suggest items similar to those designated by the specific terms.*" *City of Seattle*, 136 Wn.2d at 699 (emphasis added).

Here, RCW 19.28.261(6) states that it applies to a "friend, neighbor, relative or other person." Although the term "other person" is not defined, it can be reasonably inferred that the type of "other person" the legislature had in mind was a person who had a relationship to the householder that is analogous to the relationship that a householder would have with a friend, neighbor, or relative. *See City of Seattle*, 136 Wn.2d at 699.

With regard to the specific terms in the statute—"friend", "neighbor", and "relative"—it is readily apparent that they share a

common theme: each refers to a person who has a *personal relationship* with the householder rather than a *professional or commercial* one. As the relationship between a general contractor and a subcontractor is not even remotely analogous to the relationship between a householder and a friend, relative, or neighbor, it is not reasonable to construe RCW 19.28.261(6)'s reference to an "other person" as extending to a subcontractor who performs electrical work at the request of a general contractor. Therefore, MTC's expansive interpretation of RCW 19.28.261 should be rejected.

**(4) MTC's reading of RCW 19.28.261(6) is inconsistent with the context of the electrical law as a whole**

When RCW 19.28.261(6) is read in conjunction with related provisions in the electrical law, as it must be, it becomes even more apparent that it does not apply to MTC. *See State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (observing that the plain meaning of a provision within a statute is determined based on "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole."). Chapter 19.28 RCW provides that all electrical work must be performed in a safe manner that strictly conforms to the electrical law, that it must be performed by individuals who are competent to perform it, and that it must be performed by contractors

licensed with the Department as electrical contractors. RCW 19.28.010; RCW 19.28.271; RCW 19.28.041. These generally applicable rules are subject only to narrow exemptions provided in RCW 19.28.261.<sup>3</sup> If RCW 19.28.261(6) is interpreted as shielding both a general contractor and all of its subcontractors from complying with any aspect of the electrical law whenever the general contractor happens to own the property on which the work is being performed, then a wedge will have been driven into the statute that renders the electrical law virtually meaningless in the context of the industry devoted to the construction of new homes.

Nothing in RCW 19.28.261 evidences a legislative intent to make the electrical law inapplicable in the context of the industry of new home construction. On the contrary, RCW 19.28.261(1) and (5) expressly provide that those respective exemptions do not apply to new construction that was built with the intention of renting, selling, or leasing it, while RCW 19.28.261(6) provides an exemption only for “householders” and for those who aid them, a term that, under a natural reading, would *not* apply to a general contractor who happens to own the property on which the house is being built.

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<sup>3</sup> RCW 19.28.091 provides for some narrow exemptions to RCW 19.28.041, but MTC has not made any argument with regard to RCW 19.28.091, and, in any event, none of the exemptions in RCW 19.28.091 are applicable here.

In *National Electrical Contractor's Association, Cascade Chapter v. Riveland*, 138 Wn.2d 9, 17-18, 978 P.2d 481 (1999), the Supreme Court rejected an argument that, like the one MTC makes here, depended upon an expansive interpretation of the exemption contained in RCW 19.28.261.<sup>4</sup> In that case, the Department of Corrections (DOC) contended that under RCW 19.28.261, it was permissible for it to use inmates to perform electrical work on DOC's prisons. *Id.* DOC claimed that although RCW 19.28.261 did not expressly allow the DOC to use inmates to perform electrical work, the statute broadly evidenced a legislative intent to allow property owners to use "agents" of their choosing to perform electrical work on their premises. *Riveland*, 138 Wn.2d at 17. The Supreme Court rejected that argument, concluding that RCW 19.28.261 contains only a narrow set of exemptions, and that any electrical work not falling under one of RCW 19.28.261's express exemptions violated the electrical law. *Riveland*, 138 Wn.2d at 17-18.

Although MTC's specific argument is different than the one made in *Riveland*, MTC's argument is analogous in that it involves an expansive interpretation of the narrow exemptions in RCW 19.28.261. *See Riveland*, 138 Wn.2d at 17-18. Therefore, MTC's argument, which rests on the

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<sup>4</sup> In *Riveland*, the court discussed the exemption statute, which was then found at RCW 19.28.610. For purposes of this brief, the Department will reference the current exemption statute of RCW 19.28.261 when discussing *Riveland*.

unreasonable characterization of a general contractor who owns a piece of property as the householder of that property, should be rejected. *Cf. Riveland*, 138 Wn.2d at 17-18.

**3. Assuming RCW 19.28.261 applies to MTC at all, it would not shield MTC from complying with RCW 19.28.010**

Lastly, it should also be noted that RCW 19.28.261, does not, as MTC suggests, broadly exempt a person who falls within its terms from complying with any aspect of the electrical law. Rather, by their plain terms, the exemptions found in RCW 19.28.261(1), (5) and (6) do not excuse a householder, or a friend, neighbor, relative or other person who assists a householder, from complying with RCW 19.28.010, which provides that all electrical work must be performed in strict conformance with the electrical law. Therefore, even assuming RCW 19.28.261 applied to MTC at all (it does not), it would not shield or exempt MTC from a citation for violating RCW 19.28.010.

It is not hard to understand why the legislature drafted RCW 19.28.261 to only exempt householders from compliance with certain aspects of the electrical laws.

RCW 19.28.010 provides that all electrical wiring must be done in strict compliance with the electrical law, in order to ensure that it is not done in a way that poses an electrical hazard. As the Supreme Court noted

in *Riveland*, electrical work is inherently dangerous and implicates the public interest in health and safety. *See Riveland*, 138 Wn.2d at 22 (citing *City of Seattle*, 136 Wn.2d 693). Even when a householder is performing electrical work on his or her own property, the public's interest in safety is implicated, as improperly performed electrical work in a private home poses a hazard not only to the householder who occupies that home, but to the general public.

Indeed, here, when Mr. Moen connected the stripped wires at the end of the cord attached to the space heater to one end of a cable, and then connected the other end of the cable directly into two separate circuit breakers in the electrical panel of the temporary electrical service power pole, he violated the electrical law by performing the electrical work in an unsafe manner that posed numerous threats to public health and safety. Mr. Mutch identified several problems with Mr. Moen's work: the cable was not properly protected, the breaker sizes were not the correct sizes, the splices were not properly boxed, and the equipment grounding conductor was not properly installed. CP 138. Furthermore, unsafe wiring ran out of the house under construction, down the driveway, and into the circuit breakers. CP 123. Finally, the circuit breakers on the electrical panel were not properly concealed by the appropriate front cover, and were exposed to anyone who might pass by. CP 125. In short, the entire

installation was unsafe, and it could have resulted in an injury to any person who happened to be near it. CP 126-30, 138. The fact that Mr. Moen's improper electrical work posed numerous threats to public safety and health underscores the impropriety of concluding that RCW 19.28.261 excused him from the requirements of RCW 19.28.010.

The legislature did not create an exemption from the requirement that all electrical work be in strict conformity with the electrical law, and be in conformity with approved methods of construction for safety to life and property. RCW 19.28.010. Because RCW 19.28.010 has no exemption, MTC's argument that it is exempt from RCW 19.28.010 fails, even assuming this Court concludes that RCW 19.28.261 applies to MTC at all.

**C. The Department Did Not Violate Article I, Section 7 Of The Washington Constitution When It Issued Citations To MTC**

- 1. This Court should decline to consider MTC's newly raised constitutional argument, because MTC has failed to establish a manifest error affecting a constitutional right**

MTC asserts, for the first time on appeal, that its constitutional rights under article I, section 7 of the Washington Constitution were violated when the Board affirmed the citations issued by the Department to MTC. App. Br. at 31-32.

Appellate courts generally decline to consider new arguments that are raised for the first time on appeal. *Davis v. Sill*, 55 Wn.2d 477, 481, 348 P.2d 215 (1960). However, under RAP 2.5(a), an appellate court may consider a newly-raised argument if the appellant has shown there was a “manifest error affecting a constitutional right.” *Gordon*, 172 Wn.2d at 676. A constitutional error is manifest if the error is “obvious” and it resulted in “practical and identifiable consequences in the trial of the case.” *Id.* at 676, n.2; *id.* at 676 (internal quotations omitted).

Here, MTC has not attempted to demonstrate that a “manifest error affecting a constitutional right” has occurred, and it has not pointed to any “obvious” constitutional error. App. Br. at 31-32. Instead, it argues in conclusory fashion that since article I, section 7 of the Washington Constitution generally provides for a right against governmental intrusion in one’s “private affairs”, it had the right to perform electrical work at the general contractor’s request, and that any attempt by the Department to regulate or restrict a general contractor’s ability to have work performed by subcontractors would be an unwarranted governmental intrusion into the “private affairs” of the general contractor and the subcontractor. App. Br. at 31-32. In support, MTC offers citations to case law establishing, as a general matter, that article I, section 7 of the Washington Constitution provides protection that is broader in scope than the

protections provided by the Fourth Amendment of the United States Constitution. App. Br. at 31-32. MTC does not, however, cite to any authority supporting the specific proposition that article I, section 7 precluded the Department from issuing citations against MTC based on its failure to comply with the electrical law. *See* App. Br. at 31-32.

“Naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” *U.S. v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970), *quoted in State v. Blilie*, 132 Wn.2d 484, 493 n.2, 939 P.2d 691 (1997). MTC offers just such naked castings here, and, therefore, this Court should decline to consider them, particularly given MTC’s failure to raise a constitutional issue in any of the prior proceedings.

**2. Assuming this Court considers MTC’s newly raised constitutional argument, the Court should reject it, as the argument lacks merit**

In the alternative, in the event that this Court elects to consider MTC’s constitutional argument, the Court should reject it. First, it must be noted that while it is settled that article I, section 7 of the Washington Constitution affords a greater amount of protection than the Fourth Amendment to the federal constitution in *some* contexts, it does not provide for greater protection in all contexts. *Am. Legion Post No. 149 v. Dep’t of Health*, 164 Wn.2d 570, 597-98, 192 P.3d 306 (2008). Therefore,

a person claiming a violation of article I, section 7 bears the burden of proving that that provision provides for greater protection “as applied to the alleged right *in a particular context.*” *Am. Legion*, 164 Wn.2d at 597 (emphasis added).

Because article I, section 7 provides for a right against unlawful intrusion into one’s “private affairs,” a court considering an argument regarding that provision of the constitution must decide whether, in any given case, a constitutionally impermissible intrusion into a “private affair” has occurred. A court uses a two-step analysis to decide if such an intrusion has occurred: “(1) what privacy interests citizens have historically held and (2) whether the expectation of privacy is one that citizens should be entitled to hold.” *Am. Legion*, 164 Wn.2d at 597-98.

In *American Legion*, the court considered whether a law that banned smoking in public places violated article I, section 7 as applied to the American Legion, a fraternal organization that had historically allowed its patrons to smoke on a private club that it operated. *Id.* American Legion argued that private clubs had historically been granted a historical right to be free from governmental interference in their private affairs. *Id.* The Supreme Court rejected this argument, observing that it “‘is a universally sustained principle that persons within a state . . . hold their property and are entitled to enjoy and use it *subject to a reasonable*

*exercise of the police power . . . even though it affects adversely the property rights of some individuals.”* *Am. Legion*, 164 Wn.2d at 598 (quoting *Ford v. Bellingham-Whatcom Cnty. Dist. Bd. of Health*, 16 Wn. App. 709, 712, 558 P.2d 821 (1977) (alterations by *American Legion Court*) (emphasis added)). Furthermore, the court noted that governmental regulation of smoking and tobacco products was not a recent phenomenon, and, therefore, there was no traditional expectation of privacy in that context. *Id.*

Here, similarly, MTC appears to contend that since homeowners have traditionally had the right to use their property free of governmental intrusion, it would be unconstitutional for the state to intrude on that right by preventing a subcontractor from performing work at the request of a general contractor who owns the property. *See App. Br.* at 31-32. However, such a contention fails, as property owners have never had an absolute right to use their property for any purpose that is not subject to any limitations, but, rather, have the right to use and enjoy their property subject to reasonable exercises of the police power, and MTC has failed to show that the electrical law is not a reasonable exercise of the police power. Furthermore, as with the regulation of smoking, the regulation of electrical work is not a recent phenomenon, and, therefore, MTC cannot be heard to argue that it had a reasonable expectation of privacy that was

disturbed when the Department cited it for performing electrical work at a general contractor's request in violation of the electrical law.

In *American Legion*, the court went on to state that where article I, section 7 does *not* afford greater protection than the Fourth Amendment, the governmental regulation must then be analyzed under the federal constitution's implicit grant of a right to privacy. *Am. Legion*, 164 Wn.2d at 599-600. *American Legion* observed that the federal constitution provides for two types of rights to privacy: first, the right to engage in autonomous decision-making in such matters as marriage, procreation, family relationships, child rearing, and education, and, second, the right to confidentiality or nondisclosure of personal information. *Am. Legion*, 164 Wn.2d at 599-600. The court concluded that a fraternal club does not have a fundamental liberty interest in allowing its members to smoke that is comparable to the fundamental liberty interest that citizens hold in matters of marriage, procreation, and child rearing, and, furthermore, it concluded that no violation of the American Legion's right to confidentiality had occurred. *Id.* at 600-01.

Here, similarly, the right to have electrical work performed on one's property free of any governmental regulation is not a fundamental liberty interest of the same magnitude as the right to marry, procreate, and rear children. Nor has MTC complained of an improper acquisition or

disclosure of “confidential” information. Thus, MTC cannot be held to have had the right to perform electrical work at the request of a general contractor based on the implicit right to privacy recognized by the federal constitution.

Finally, *American Legion* stated that where there is a constitutional challenge to a statute, but that statute does not implicate a fundamental liberty interest, it is subject only to rational basis review. *Am. Legion*, 164 Wn.2d at 604. Under rational basis review, a law is constitutional so long as it is rationally related to furthering a legitimate public interest. *Id. American Legion* held that the law banning smoking in public places served a legitimate public interest and that it did so in a rational way and, therefore, it upheld the law as constitutional. *Id.* at 604-05.

Here, the electrical law serves the legitimate public interest of furthering public safety and health. Indeed, in *Riveland*, the Supreme Court recognized, albeit in a different context, that the electrical law serves the legitimate public interest of safeguarding public health. *Riveland*, 138 Wn.2d at 21-22. Furthermore, the electrical law furthers that legitimate interest in a rational way, by requiring that electrical work be performed by persons who are qualified to do it and by requiring that the work be done in a proper manner.

Perhaps more to the point, MTC cannot plausibly argue that there is no rational relationship between the electrical law's requirements and the legitimate public interest that it furthers in the specific context that is present here, namely, that of a subcontractor who performs electrical work at the request of a general contractor, on a piece of property that happens to be owned by the general contractor. Indeed, there is no apparent reason why, in that particular context, the public's legitimate interest in safety would not be served through a law that requires that electrical work be performed in an appropriate manner by competent persons. Therefore, the electrical laws are constitutional, both in general and as applied to MTC in this case, and MTC's constitutionally based argument must be rejected.

**D. The Department Did Not Act Arbitrarily Or Capriciously**

Finally, MTC argues that the Department's decision to issue citations against it, as well as the Board's decision to affirm those citations, was arbitrary or capricious, and that, therefore, the citations should be vacated. App. Br. at 32-34. The Department did not act arbitrarily or capriciously when the Department issued citations for violations of the electrical law when the undisputed facts show MTC performed electrical work without being licensed as an electrical contractor, employed an uncertified individual to perform electrical work,

and the electrical work was not done in strict conformity with the electrical law.

Aside from broadly contending that the Department's and the Board's decisions were incorrect, MTC fails to explain how, in particular, either the Department's original decision to issue those citations, or the Board's decision to affirm them, was arbitrary and capricious. *See* App. Br. at 32-34. In any event, MTC has failed to establish that either the Board or the Department acted arbitrarily or capriciously, and, therefore, its argument in that regard should be rejected.

The burden associated with demonstrating that an agency behaved in an arbitrary and capricious fashion is a heavy one: it must be shown that the agency action complained of was willful and unreasoning, and taken in plain disregard of the factual circumstances. *City of Redmond*, 136 Wn.2d at 46-47. Furthermore, where there is room for two opinions, agency action taken after due consideration of the facts is not arbitrary and capricious, even if a reviewing court would have taken different action based on that information. *Hillis*, 131 Wn.2d at 383. MTC has not met that standard.

MTC appears to contend that the exemption contained within RCW 19.28.261 plainly applies to it, and that the Department and the Board willfully refused to apply that exemption to MTC because each of

them did not “like” that law. App. Br. at 33, 34. This suggestion fails. First, as the Department explained above, RCW 19.28.261 plainly does *not* apply to MTC, and, therefore, it was not error, let alone an arbitrary and capricious abuse of discretion, for the Department and the Board to conclude that it did not apply. Second, MTC fails to support its assertion that the Department or the Board declined to apply RCW 19.28.261 to it out of hostility towards that law. On the contrary, the record shows only that the Department and the Board concluded, correctly, that the statute did not apply to MTC.

MTC also appears to suggest that the Department abused its discretion by charging *MTC* with a violation of the electrical laws, rather than taking action against the *general contractor*, contending that since general contractors have a “non-delegable duty” to ensure that inherently dangerous work is performed safely, the Department should have cited the general contractor rather than MTC for MTC’s performance of electrical work in violation of the electrical law. *See* App. Br. at 14-18. This argument fails.

First, the cases MTC cites stand for the proposition that an owner who contracts to have work performed on his or her property that is inherently dangerous to third persons cannot, through a contract with the subcontractor, escape tort liability for injuries occurring to third parties.

*See, e.g., Epperly v. City of Seattle*, 65 Wn.2d 777, 783, 399 P.2d 591 (1965). Here, the issue is not one of tort liability to third parties, but one of compliance with the electrical law. Furthermore, none of the cases cited by MTC stand for the proposition that an independent contractor is not *also* responsible for any injuries resulting from the independent contractor's negligence in the course of performing inherently dangerous work. Thus, assuming they are applicable to the current appeal at all, the cases relied on by MTC would, at most, support the conclusion that *both* MTC *and* the general contractor could properly be cited for MTC's performance of electrical work in violation of the electrical law at the general contractor's request. There would, therefore, be no error in citing MTC for its violations of the electrical law.

Second, the Department has considerable latitude in deciding "when, who and how to inspect, and whether to issue citations." *Riveland*, 138 Wn.2d at 31-32; *see generally Longview Fibre Co. v. Dep't of Ecology*, 89 Wn. App. 627, 636-37, 949 P.2d 851 (1998) (agency not estopped from enforcing a regulation based on position in another case). Here, the Department reasonably charged MTC with a violation of the electrical law because it was MTC that actually performed electrical work in violation of the electrical law. The fact that someone else may have also been subject to a citation is immaterial to the issue of whether it was

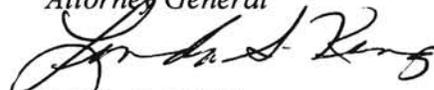
correct to cite MTC for its violation of the electrical laws. As MTC fails to articulate any sound basis as to why this was an arbitrary and capricious decision, the Court should reject that argument.

## VII. CONCLUSION

For the reasons stated above, the Department respectfully requests this Court affirm the order of the Board.

RESPECTFULLY SUBMITTED this 16 day of August, 2013.

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NO. 69735-8-I

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

MARYSVILLE TAPING CO.,

Appellant,

v.

WASHINGTON STATE  
DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

**DECLARATION OF  
SERVICE**

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I mailed the Department's Brief of Respondent and this Declaration of Service to all parties on record as follows:

**Via First Class U.S. Mail, Postage Prepaid, to:**

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DATED this 16 day of August, 2013, at Tumwater, WA.

  
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AUG 16 2013  
10:08 AM  
TUMWATER WA