

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

Northwest Laborers Apprenticeship
Committee No. 71

No. 2025-009-APP

**DIRECTOR'S FINAL ORDER
AFTER REMAND ON
RECONSIDERATION**

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the petition for reconsideration to the Director's Order After Remand dated April 1, 2025, that affirmed the Order on Remand of the Washington State Apprenticeship and Training Council ("Council") dated December 13, 2024, and having considered the briefing and record, issues this Director's Final Order After Remand on Reconsideration. This decision supersedes the April 1, 2025 Director's Order After Remand.

The Director enters the following Findings of Fact, Conclusions of Law, and Final Order.

I. FINDINGS OF FACT

1. On June 7, 2023, sponsor Northwest Labor Employers Training Trust (also "Laborers") submitted proposed amendments to the program standards of the Northwest Laborers Apprenticeship Committee, No. 71 for consideration by the Council. One reason was "to incorporate new technologies and techniques in the construction trade that were not available or commonplace when its existing apprenticeship program standards were approved in 2014." Laborers' Response to Appeal 1-2 (April 29, 2024).

DIRECTOR'S FINAL ORDER AFTER
REMAND ON RECONSIDERATION

1

OFFICE OF THE DIRECTOR
DEPARTMENT OF LABOR & INDUSTRIES
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2. Competitors may object to proposed amendments, and if so, the competitor must object 20 calendar days before the next regular quarterly Council meeting to obtain mandatory review. Objections were due by June 30, 2023. WAC 296-05-011(2)(a).
3. The Council's next quarterly meeting was scheduled for July 20, 2023, but was postponed until August 7, 2023. The postponement did not change the initial 20-day deadline of June 30, 2023, for filing objections. WAC 296-05-008(1)(e)(iii), -011(2)(a).
4. The Greater Western Washington Pipe Trades ("Pipefitters") timely objected.
5. Several "Electrical Programs" (collectively International Brotherhood of Electrical Workers Local 76, Washington State Association of Electrical Workers, Southwest Washington Electrical Joint Apprenticeship Training Council, Inland Empire Electrical Training Trust, Puget Sound Electrical Joint Apprenticeship Training Council, and International Brotherhood of Electrical Workers Local 112-NECA Electrical JATC) raised objections to the proposal.
6. The Electrical Programs did not timely object to the Laborers' proposed amendments to the standards filed in June 2023.
7. At the October 2023 meeting, because the matter had not been resolved, the Council appointed Councilmember Ed Kommers to mediate regarding timely and non-timely objections.
8. The Laborers revised their proposed amendments. The Pipefitters resolved their issue about the standards when the Laborers revised them, satisfying the Pipefitters' concerns, and the Pipefitters withdrew their objection.
9. With no timely objection, the Council did not hold an adjudicative proceeding based on the Electrical Programs' objection to create an evidentiary record.
10. Two days before the January 18, 2024 Council meeting, the Electrical Program's counsel wrote a letter raising safety concerns, including those about racking. Electrical Programs' Ltr. from SaNni Lemonidis, Counsel for Electrical Programs, to Peter Guzman, Apprenticeship Program Manager (Jan. 16, 2024).
11. At the January 2024 meeting, the Electrical Programs raised objections, about which the Council allowed their representative time to provide "minor commentary." Council's Tr. 177 (Jan. 18, 2024). Because the Council was not in a "litigative" posture, it did not consider these comments as part of an "adjudicative procedure." *Id.* at 177-78.
12. The Council approved the revised proposal for the amended standards at the January 2024 Council meeting.

13. The Electrical Programs appealed to the Director.
14. During this first round of appeal at the Director of which the Laborers were a party, the January 16, 2024 Lemonidis letter was contained in the Council record and was attached to pleadings presented to the Director. *See* Electrical Programs' Decl. of Lemonidis Ex. A (July 19, 2024).
15. On July 9, 2024, the Director issued a Director's order.
16. On July 19, 2024, the Electrical Programs moved for reconsideration.
17. On September 10, 2024, the Director decided that the Director had the authority to order the Council to address electrical safety issues when considering a request to amend program standards. The Director issued a Final Order on Reconsideration, remanding the case to the Council. The decision was remanded to the Council to ascertain whether Laborer apprentices were protected from electrical safety hazards related to racking.

18. The Director concluded:

It is unclear whether the Council considered any safety issues to the apprentices related to racking or considered whether the proposed amended program standards adequately addressed their safety with respect to racking. If the Council indicates it already considered the racking safety issue, then the decision to approve the amended standards stands. If the Council has not yet exercised its discretion whether to grant an adjudicative proceeding because of safety concerns, it should exercise its discretion. If appropriate, it may take information from the Electrical Programs and the Laborers as offers of proof. Upon exercising its discretion, the Council may keep the racking provision, rescind it, modify it to protect the safety of the apprentices, or conduct an adjudicative proceeding to resolve any outstanding issues related to the safety of racking.

Final Director Order on Recons. 8 (Sept. 10, 2024).

19. The Director's order was served on the Laborers' representative Training Director Brandon Jordan and the Laborers' counsel.
20. The Director's order informed the Laborers that the Council would be considering safety issues and the racking matter on remand, including notice that the Council would consider whether to grant an adjudicative proceeding.

21. On September 20, 2024, the Laborers moved for reconsideration, noting that adjudicative proceedings were the only option for considering evidentiary matters. They stated that there is only “a right to an adjudicative hearing if [the objection] is timely.” Objector NWLETT’S Mot. for Recons. 4 (Sep’t 20, 2024). They also stated that “the Council may consider any information it deems relevant to its evaluation and approval of a pending proposal.” *Id.* (emphasis omitted). They acknowledged receipt of the January 16, 2024 Lemonidis letter.
22. On September 24, 2024, the Director denied the motion for reconsideration by the Laborers. This order was served on Laborers representative Jordan and on Laborers counsel.
23. The Laborers did not petition for judicial review of the September 10, 2024 Director’s order, rendering it final. *See* RCW 49.04.065(3).
24. The Council placed the Laborers’ matter on its agenda for the October 17, 2024 Quarterly Meeting, publishing the notice. Laborers representative Jordan appeared and participated in meeting agenda items related to the Laborers.
25. In addition to previously submitted materials, the Electrical Programs submitted a letter on September 16, 2024, urging the Council to conduct an adjudication regarding the issue of racking. The letter stated that the “racking” language within the Laborers’ revised standards was an “apparent reference to the installation of [photovoltaic] modules, which present a significant safety hazard during the installation process.”
26. At the October 2024 meeting, Councilmember Kommers indicated he had considered this information as well as the January 16, 2024 Lemonidis letter from the Electrical Programs. He said that he didn’t “think we need an adjudicative proceeding because there is enough information already.” Council’s Tr. 192 (Oct. 17, 2024).
27. Echoing the safety concerns of the Director, Councilmember Kommers signaled that he would move to modify the racking provision to exclude photovoltaic modules from the amended program standards. He invited the Laborer representative to place objections on the record: “Do you want to - you know, you’re welcome to go on the record to say that you don’t like that or you do want to do that or you’re neutral on it or whatever.” *Id.* at 195. The Laborer representative said he was “blindsided” by this potential motion. *Id.* He asked for a continuance, which was denied: “given the notice that the order was coming and that was on our Agenda today, I’m going to go ahead with the motion.” *Id.* at 195-96.
28. After denial of the continuance, the Laborer representative did not submit an offer of proof regarding the safety of installing photovoltaic modules, did not object to Councilmember Kommer’s consideration of the Electrical Programs’ letters, did not request to present the Laborers’ own evidence, did not move for an adjudicative proceeding after the continuance

was denied, and did not object to the modification. The Council voted to disapprove the proposed amended standards regarding photovoltaic modules.

29. On December 13, 2024, the Council confirmed amendments to the program standards. The Council's order stated:

As it explained at the October 2024 meeting, the Council finds an adjudication unnecessary to decide this issue. The Council agrees that installation of photovoltaic modules presents a significant safety hazard and that licensed electricians must supervise and conduct this work. While the language relating to racking in the Laborers' standards does not specifically reference photovoltaic modules, the Council chooses to exercise its discretion to eliminate any ambiguity. Accordingly, the Council modifies this language to include the word, "non-photovoltaic," before the word, "racking," in the Laborers' apprenticeship standards.

Council's Order on Remand (Dec. 13, 2024).

30. On January 13, 2025, the Laborers timely petitioned for administrative review.
31. On April 1, 2025, the Director affirmed the decision of the Council.
32. On April 11, 2025, the Laborers timely petitioned for reconsideration.
33. Based on the Electrical Program's unobjected to offer of proof and previous correspondence regarding concerns with installation of photovoltaic modules, the Council's denial of coverage of photovoltaic modules best protects the safety and well-being of laborer apprentices. Despite the opportunity to do so, the Laborers placed no countervailing offer of proof in the record at the Council on this point.

II. CONCLUSIONS OF LAW

1. The Director has the authority to consider this matter under RCW 49.04.065(1). Because all Council decisions are for federal and state purposes, WAC 296-05-001(1)(a)-(b), a party can appeal a Council decision to the Director. RCW 49.04.065. Upon the timely request for reconsideration, the Director has the authority to consider this matter. RCW 34.05.470.
2. The Director engages in de novo review of Council orders. RCW 34.05.464(4); RCW 49.04.065. The Director has "all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing." RCW 34.05.464(4).

3. The Director reviews the Council record, WAC 296-05-008(7)(b), but does not take evidence. *Towle v. Dep't of Fish & Wildlife*, 94 Wn. App. 196, 205, 971 P.2d 591 (1999); RCW 34.05.464. The Laborers have attached newly submitted declarations to their Notice of Appeal. The Director cannot consider these declarations because they offer new information not submitted to the Council, so they are not admitted. The record here is from Director Matters Nos. 2024-004-APP and 2025-009-APP (except evidence not submitted at the Council).
4. Apprenticeship builds a skilled workforce, and apprenticeship expansion is a favored policy of the state of Washington. Promoting the safety, wellbeing, and best interests of apprentices are important goals in Washington. Wash. Const. art. II, § 35; RCW 49.04.030; WAC 296-127-001. The Legislature passed RCW 49.04 in 1941 to provide apprenticeship programs. Laws of 1941, ch. 231, § 1. "The legislature intends to encourage and foster new apprenticeship opportunities through programs sponsored by public and private entities." Laws of 2022, ch. 156, § 1. And the Legislature has sought to reduce delays in approving apprenticeship programs: "It is the intent of the legislature that apprenticeship programs seeking state registration receive prompt consideration with minimum delay." *Id.* The intent of the apprenticeship laws is to protect the welfare of the apprentices. WAC 296-05-001. The safety of apprentices is of fundamental concern. *See* Wash. Const. art. II, § 35; *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 520, 475 P.3d 164 (2020) (worker safety fundamental right).
5. In establishing apprenticeship programs, the Legislature created the Council. RCW 49.04.010(1). The Council is an expert body, comprised of representatives from employer and employee organizations. *Id.* The Council develops standards for apprenticeship agreements, evaluates proposed program standards and amendments, confers with the Director about necessary rules and regulations to carry out legislative intent, conducts adjudicative proceedings, and performs other duties as required. *Id.*
6. A sponsor may seek to amend its program standards by sending a request to the Department's apprenticeship supervisor at least 45 days before the next quarterly meeting. WAC 296-05-008(3)(c). The Council then reviews proposed amendments to decide whether those standards comply with applicable statutes and regulations, and the Director and Council's interpretations of those laws. The Council is tasked with the duty to evaluate and approve program standards and amendments by considering relevant considerations about the "the welfare of apprentices." RCW 49.04.010(2), .050, .065; WAC 296-05-001(1). The Council addresses actions, including approval or disapproval of amendments to apprenticeship programs, during regular meetings in January, April, July, and October. WAC 296-05-008(1), (3); WAC 296-05-011(1).
7. This case involves the meaning of RCW 49.04.010(2). The fundamental objective in interpreting a statute is to give effect to the Legislature's intent. *State v. Larson*, 184 Wn.2d

843, 848, 365 P.3d 740 (2015). In discerning intent, courts look to the text of the statutes in question, their context, related provisions, and the statutory scheme. *Matter of Frazier*, 4 Wn.3d 1, 12, 558 P.3d 451 (2024).

8. RCW 49.04.010(2) provides that the “apprenticeship council is authorized to approve apprenticeship programs.” The Laborers argue that the Council does not have the authority to modify the Laborers’ proposed amended apprenticeship standards. They argue that that “[t]he governing statute and regulations only permit the Council to unilaterally act to either approve or deny a Sponsor’s proposed apprenticeship standards.” Laborers’ Pet. for Recons. 4 (April 11, 2025). The Council disproving elements of proposed amendments is part of the implied authority granted by RCW 49.04.010. “Agencies have implied authority to carry out their legislatively mandated purposes.” *Tuerk v. Dep’t of Licensing*, 123 Wn.2d 120, 125, 864 P.2d 1382 (1994). “When a power is granted to an agency, ‘everything lawful and necessary to the effectual execution of the power’ is also granted by implication of law.” *Id.* (quoting *State ex rel. Puget Sound Nav. Co. v. Dep’t of Transp.*, 33 Wn.2d 448, 481, 206 P.2d 456 (1949)). In *Tuerk*, the Court rejected an argument that the agency could not place conditions on obtaining a license, holding that the ability to place conditions was part of the agency’s implied authority. *Id.* at 125-26. A similar situation arises here.
9. Inherent in the power to approve an apprenticeship program is the power to deny elements of the program. RCW 49.04.010. The Council disapproved part of the proposed standards for racking by denying photovoltaic racking from inclusions in the standards. That disapproval of an aspect of a proposed amendment has the effect of modifying a proposal does not affect the validity of the Council’s action. Such power is of “everything lawful and necessary to the effectual execution of [the agency’s] power.” *Puget Sound Nav.*, 33 Wn.2d at 481. Allowing this approach carries out the legislative intent to further the best interests of the apprentices by facilitating an effective program. This approach furthers the constitutional mandate to provide for worker safety. *See* Wash. Const. art. II, § 35; *Martinez-Cuevas*, 196 Wn.2d at 520. It also allows the Council to logistically manage requests for program standards and amendments; this facilitation of Council procedures results in encouraging apprenticeship programs and reducing delay. If the Council only had the authority to approve all the standards or disprove all the standards, this approach would reduce the effectiveness of Council actions inconsistent with legislative intent. The result here would be that all the Laborers’ proposed amendments would need to be denied to protect worker safety.
10. The Laborers argue that they should have received an adjudicative proceeding about the change to their proposal. At the October 2024 Council meeting, Councilmember Kommers raised the adjudicative proceeding issue, indicating there would not be one, and gave the Laborers’ representative an opportunity to object. Their representative merely said that he was “blindsided” by the Councilmember Kommer’s proposed motion to only allow non-photovoltaic systems and sought a continuance. Council’s Tr. 195 (Oct. 17, 2024). When the continuance was denied, it was incumbent on the Laborer representative, at the very

minimum, to object to the modification, object to the lack of an adjudicative proceeding, and request the ability to present the Laborers' own evidence. Based on the Laborers' motion for reconsideration of the September 10, 2024 Director's order, the Laborers knew of the importance of adjudicative proceedings.

11. To excuse these failures, the Laborers argue that there was insufficient notice. There was adequate notice. The Director's order was issued on September 10, 2024, well before the October 17, 2024 Council meeting. The Laborers received the Director's order, moved for reconsideration, and were put on notice by the Director's order that safety concerns about racking would be addressed by the Council with the order saying that an adjudicative proceeding was one of the options available. The Laborers' proposed standards were timely placed on the Council's agenda as an item—giving notice to interested parties. When a matter is duly on the Council's agenda, the Council has the authority to act. A party would have notice that the status quo could be changed by virtue of the agenda item. The Council has authority to consider any relevant factor about the approval of program standards and their amendments. RCW 49.04.010, .050; WAC 296-05-001, -008, -011.
12. If the Laborers thought they had insufficient notice about an option for an adjudicative proceeding, it was incumbent upon them to object at the Council meeting when issue was discussed. *See State v. Robinson*, 120 Wn. App. 294, 299, 85 P.3d 376 (2004) (because party did not object to lack of notice, issue waived). The Laborer representative merely stated that he was blindsided by the proposal to not allow photovoltaic work, not that the Council did not publish notice about consideration of the Laborer's program.¹
13. Key here is that the Laborers participated in the meeting and did not request an adjudicative proceeding. An adjudicative proceeding is not a self-executing right; a party must request one. RCW 34.05.413(2) provides "[w]hen required by law . . . and *upon the timely application of any person*, an agency shall commence an adjudicative proceeding." (emphasis added). So, even if an adjudicative proceeding were required by law, in the absence of a request, the Council was not required to provide an adjudicative proceeding. Even the Laborers admit that there is only "a right to an adjudicative hearing if [the objection] is timely." Objecter NWLETT'S Mot. for Recons. 4.
14. Because procedural requirements about adjudicative proceedings provisions are not jurisdictional, the requirements related to them can be waived. Subject matter jurisdiction refers to a tribunal's ability to entertain a type of case: "A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to

¹ In any event, if there was a procedural imperfection with notice, the Director's order and the agenda substantially complied with any notice requirement. The doctrine of substantial compliance allows a court to find compliance with a statute even though there are procedural imperfections if the actual aim of the statute is complied with. *Cont'l Sports Corp. v. Dep't of Lab. & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996).

adjudicate.” *Marley v. Dep’t of Lab. & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). A lack of subject matter jurisdiction “implies that [the tribunal] has no authority to decide the claim at all, let alone order a particular kind of relief.” *Id.* “If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.” *Id.* (quoting Robert J. Martineau, *Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse*, 1988 B.Y.U.L.Rev. 1, 28).

15. Because the Council and the Director have the authority to decide apprenticeship matters, RCW 49.04.010, .065; RCW 34.05.030(5), .464, they have the subject matter to decide the type of controversy of considering amendments to program standards. And any alleged error related to adjudicative proceedings for such proceedings goes to an error other than a jurisdictional one, so RCW 34.05.413 and .422’s requirements are not jurisdictional.
16. The lack of a jurisdictional requirement means that any provisions related to an adjudicative proceeding, assuming any apply, may be waived. It is the Laborers’ burden of proof to show eligibility for its license. *See Black Ball Freight Serv., Inc. v. Wash. Util. & Transp. Comm’n*, 74 Wn.2d 871, 875, 447 P.2d 597 (1968). The Laborers did not object to the decision to not have an adjudicative proceeding at the Council meeting and have waived the ability to do so. *See Otis Hous. Ass’n, Inc. v. Ha*, 165 Wn.2d 582, 588, 201 P.3d 309 (2009) (mandated procedure may be waived); *State v. Mollich*, 132 Wn.2d 80, 89, 936 P.2d 408 (1997) (procedure about hearing non-jurisdictional so may be waived); *Matthias v. Lehn & Fink Prods. Corp.*, 70 Wn.2d 541, 550, 424 P.2d 284 (1967) (when objections not made, consideration of issue waived).
17. The Laborers argue that the Director cannot consider the Electrical Programs’ offer of proof, correspondence, and information they had about the safety issue considered by the Council because it was provided ex parte.² Offers of proof are part of the record. RCW 34.05.476(1)(f). The Laborers have conceded that “the Council may consider any information it deems relevant to its evaluation and approval of a pending proposal.” Objector NWLETT’S Mot. for Recons. 4 (emphasis omitted). In any event, the Laborers did not object to consideration of the material at the Council meeting, so this argument is waived. *See Matthias*, 70 Wn.2d at 550. Related to this issue, having received the Director’s order inviting information about the safety of racking, like the Electrical Programs, the Laborers could have presented their own offer of proof to give information to the Council about the need for an adjudicative proceeding.

² It is unclear from the transcript whether Councilmember Kommers did his own research on the photovoltaic issue. In any event, if the Laborers disagreed with this possible approach, it was incumbent on the Laborers to object.

18. The Laborers argue that the Council did not follow the terms of the Director's order on remand. In the September 10, 2024 order, the Director gave the Council discretion to resolve the issue of safety of racking. The Council acted substantially within the ambit of this discretion. Although it considered safety issues previously, it was within its discretion to adopt a clarification of the standards to provide for the safety of laborer apprentices. At all times, the Council acted to further the welfare of the apprentices. *See* WAC 296-05-001(1). The Director rules the Council could modify the standards to disallow racking involving photovoltaic systems because acting to further the safety and welfare of the apprentice is the fundamental consideration. *See* Wash. Const. art. II, § 35; RCW 49.04.030; WAC 296-05-001(1). The Council offered the Laborers the chance to object to its decision, which the Laborers did not avail themselves of, waiving any concern. Thus, the Council appropriately acted within the ambit of its discretion to fashion the program standards that acted in the best interests of the apprentices by providing for a safe program.
19. The Laborers argue that the April 1, 2025 Director's Order on Remand should not have changed course from the September 10, 2024 Director's Order on Reconsideration. Given the posture of the Laborers' waiver and the importance of the Council to act to protect apprentices, the Director has the authority to issue a written determination reflecting the procedural and substantive posture of the case. *See* RCW 49.04.065(2). The Director also has the authority to "exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing." RCW 34.05.464(4). This statute allows the Director to affirm the Council's action as if it were the Director's in the first place.
20. The Director affirms the Council's modification to the program standards:

VIII. WORK PROCESSES:

A. Laborer

Approximate Hours

1. Core Competencies.....4000

a. Site/Project Preparation and Maintenance

...

- Transportation, dismantling, and stockpiling of scaffolding and work platforms and various *non-photovoltaic* racking systems including, but not limited to, frame and brace scaffold, systems scaffold (cuplock scaffolding, Kwikstage scaffolding, staircase scaffolding, Haki scaffold), tube and clamp scaffold, suspended/swing-stage scaffold, mast climbing (hydromobile) scaffold, shoring scaffold.

2. Areas of Concentration.....2000

...

c. Heavy/Highway and Utility Construction

...

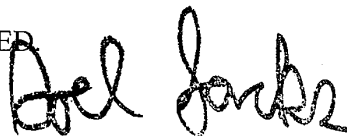
- Installation, removal and maintenance of racking methods on *non-photovoltaic* systems installed by construction craft laborers. Placement and setting of attachments on *non-photovoltaic* racking systems installed by construction craft laborers.

21. The Laborers can request a modification of the newly amended racking standard in a new proceeding, and it may request an adjudicative hearing. WAC 296-05-008(3)(c).

22. The Director denies the Laborers' request for a stay. RCW 34.05.467.³

III. ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Director affirms the Council's modification to the Laborers' revised apprenticeship standards to include the word "non-photovoltaic" as described above. It is so ORDERED.



JOEL SACKS
Director

SERVICE

This Order was entered and served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542; RCW 49.04.065(2). "Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal." RCW 49.04.065(3). Proceedings for judicial review may be instituted by petitioning in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. Orders that are not appealed within the period specified in RCW 49.04 and RCW 34.05 are final and binding and not subject to further appeal. RCW 49.04.065(3).

³ The Director has no authority to address the Laborers' constitutional arguments. *See Bare v. Gorton*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).

DECLARATION OF MAILING

I, Lisa Deck, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S FINAL ORDER AFTER REMAND ON RECONSIDERATION was e-mailed and mailed on the date listed below via U.S. Mail, postage prepaid, to the following:

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DATED this 10 day of June 2025, at Tumwater, Washington.



LISA DECK

DIRECTOR'S FINAL ORDER AFTER
REMAND ON RECONSIDERATION

13

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