

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UW-120246
)	
MACKAYE HARBOR WATER)	
COMPANY, INC.,)	ORDER 01
)	
To Initiate a Rulemaking, Pursuant to)	
WAC 480-07-240, to Increase the)	ORDER GRANTING PETITION
Average Annual Revenue Per)	TO INITIATE A RULEMAKING
Customer, Which Relates to)	
Commission Jurisdiction of Water)	
Companies)	
.....)	

BACKGROUND

- 1 On November 11, 2011, MacKaye Harbor Water Company, Inc. (MacKaye), filed with the Washington Utilities and Transportation Commission (Commission) a petition requesting the Commission initiate a rulemaking to amend WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction, to increase the maximum average annual revenue per customer used to determine Commission jurisdiction over water companies.
- 2 The Commission currently regulates investor-owned water companies that serve 100 or more customers, or have average annual revenue of more than \$471 dollars per customer.
- 3 On April 26, 2012, MacKaye filed a revised petition requesting to increase from \$471 to \$557 the maximum average annual revenue per customer a water company can generate before becoming subject to Commission jurisdiction (Revised Petition). MacKaye is finding it difficult to keep revenues below the current revenue threshold and still have the ability to set aside sufficient financial reserves to maintain its 25-year-old water system. MacKaye notes that the \$471 average annual revenue per customer has been in effect since 2004 and thus has not kept pace with rising costs. MacKaye serves 55 water connections on the south end of Lopez Island in San Juan County and the Commission does not currently regulate MacKaye.

- 4 RCW 80.04.010 establishes the jurisdictional average annual revenue threshold for investor-owned water companies at \$300 per customer. The statute also allows the Commission, by rule annually, to increase that amount to reflect the rate of inflation as determined by the implicit price deflator of the U. S. Department of Commerce.
- 5 Commission Staff (Staff) has reviewed the implicit price deflator of the U. S. Department of Commerce to reflect the rate of inflation and concludes that it is appropriate to increase the average annual revenue per customer for non-regulated water companies to \$557.
- 6 Governor Christine Gregoire issued Executive Order 10-06 and Executive Order 11-03 suspending non-critical rule development and adoption through December 31, 2012 (Executive Orders). The Governor’s Executive Policy Office issued implementation guidelines (Guidelines), which state in part that non-critical rules do not include rules that are “beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects.”
- 7 Staff concludes that the requested rulemaking is beneficial to, or requested or supported by, the small businesses that it affects and thus is consistent with the Executive Orders and Guidelines. MacKaye is a small water company (less than 100 customers in the aggregate) and its request for rulemaking is representative of the interests of other similarly situated water companies. Such companies should not be subject to Commission jurisdiction unless their size or average annual revenues justify regulation. The revenue figure in the existing rule no longer reflects an appropriate jurisdictional threshold, and revising that amount would be beneficial to the small water companies that the Commission currently does not regulate.
- 8 Staff recommends granting MacKaye’s request to initiate a rulemaking to increase the average annual revenue per customer, which relates to Commission jurisdiction of water companies to \$557.

DISCUSSION

- 9 The Commission finds that a rulemaking to revise WAC 480-110-205 and WAC 480-110-255 to increase to \$557 the maximum average annual revenue per customer a water company may generate before being subject to Commission jurisdiction is in the public interest. An increase in this revenue figure to reflect the rate of inflation is consistent with the purposes underlying the regulation and applicable statutes and is not precluded by the Executive Orders. The Revised Petition should be granted.

ORDER

THE COMMISSION ORDERS:

- 10 (1) The petition filed by MacKaye Harbor Water Company, Inc., pursuant to WAC 480-07-240, to initiate a rulemaking to increase from \$471 to \$557 the maximum average annual revenue per customer a water company may generate without becoming subject to Commission jurisdiction is granted.
- 11 (2) The Commissioners, having determined this Order to be consistent with the public interest, directs the Executive Director and Secretary to file a Notice of Proposed Rulemaking (CR-102), pursuant to RCW 34.05.330(1)(b), with the Office of the Code Reviser proposing changes to WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction, which relate to Commission jurisdiction over water companies.

DATED at Olympia, Washington, and effective May 17, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner