

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending, Adopting and)	DOCKET NO. UW-980082
Repealing sections in 480-110 WAC and)	
Adopting WAC 480-09-337)	GENERAL ORDER NO. R-467
)	
RELATING TO INVESTOR-OWNED)	ORDER REPEALING AND
WATER COMPANIES)	ADOPTING RULES PERMANENTLY
)	
.....)	

STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission takes this action under Notice WSR #99-12-112, filed with the Code Reviser on June 2, 1998. The Commission brings this proceeding pursuant to RCW 80.01.040 .

STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

DATE OF ADOPTION: The Commission adopted this rule on August 11, 1999.

CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: The rule revisions implement the requirements of Executive Order 97-02, requiring agencies to review rules for clarity, intent and statutory authority, need, effectiveness and efficiency, coordination, cost and fairness. The new rules also incorporate and formalize policies, add requirements for customer notice for rate increase filings, and eliminate rules that are obsolete.

This rulemaking repeals the existing chapter, revises and reorganizes the existing provisions for clarity, and complies with other requirements of the executive order by making changes from prior provisions. In the following discussion, descriptions use the number of the new section. Amendments discussed are not changes in the language of that section, but are revisions of prior provisions in sections numbered differently.

Section WAC 480-110-245 updates the glossary of terms by removing words or terms that are not needed or no longer used and adding words or terms to provide clarification of their usage in the revised chapter.

New section WAC 480-110-255 increases the threshold for regulatory jurisdiction over water companies to reflect the effects of inflation pursuant to specific statutory authority in RCW 80.04.010. It also codifies commission interpretive statement UW-930006 regarding the calculation of revenue for jurisdictional purposes.

New section WAC 480-110-275 increases the revenue thresholds that are used to classify water companies. The change follows the classifications used by National Association of Regulatory Utility Commissioners (NARUC).

Section WAC 480-110-285 clarifies language regarding transfers of property, affiliated interest arrangements, and securities issuances by regulated water companies, and conforms the language to recent changes in law.

New section WAC 480-110-295 addresses adopted and initial tariffs. The proposed rule clarifies Commission requirements when adopting the tariff of an acquired company and when filing an initial tariff of a newly regulated company.

WAC 480-110-305, access to premises, modifies the prior WAC 480-110-091 only to clarify the language.

WAC 480-110-315, availability of information, modifies prior requirements to allow regulated companies to maintain an "Electronic Office" rather than a physical office. The section is also revised for clarity.

Section WAC 480-110-325, Applications for service, is a revision of the prior rule to create greater clarity. It also adds to the information that water companies must provide to applicants for service when they apply and when the company denies an application for service.

Section WAC 480-110-335, establishment of credit and deposits: this section is revised for clarity and also eliminates an alternative to deposit that was available under the prior rule.

Section WAC 480-110-345 carries forward the topic of prior WAC 480-110-056, Refusal of Service. It is revised for clarity and to allow a company to refuse to serve a location that it is outside the company's service area.

WAC 480-110-355, the rule governing discontinuance of service, removes telephone calls as options for advising a customer of pending disconnection and adds a process by which a customer may ask to postpone disconnection if a medical emergency exists.

WAC 480-110-365, Service responsibilities, is amended to coordinate water company responsibilities to the Commission with statutes and regulations governing the Department of Health.

WAC 480-110-375, Form of bills, is amended to require companies to provide additional information to consumers on water bills to insure consumer awareness and understanding of their water charges. The rule also mandates proration for metered service.

WAC 480-110-385 provides revisions to clarify water company responsibility for complaints and disputes.

WAC 480-110-395, water quality refunds, follows RCW 80.04.110(5) and defines when the Commission may order refunds when a company delivers substandard water.

WAC 480-110-405, meter accuracy and water pressure, combines four prior sections WAC 480-110-111, WAC 480-110-141, Accuracy of meters; Refund for inaccurate metering; WAC 480-110-146, Dispute as to accuracy of meters; and WAC 480-110-151, Complaint meter test; into one section and revises provisions for clarity. An amendment also adds water pressure testing requirements.

WAC 480-110-415, Meters, clarifies the prior WAC 480-110-121, defining water company rights and responsibilities and customer rights and responsibilities relative to water meters.

WAC 480-110-425, Customer notice requirements, codifies requirements for notifying customers of proposed rate increases, new charges, changes in terms or conditions of service, and changes in ownership or company control.

WAC 480-110-435, Extension contracts, imposes applicable contract provisions of WAC 480-80-335 on extension contracts in addition to revising the section for clarity.

WAC 480-110-445, Service connections, clarifies what a service connection is, when a company may impose a service connection charge and when it may not.

WAC 480-110-455, Water company funding mechanisms, clearly identifies non-traditional methods of financing, specifies when they may be used, and directs the related regulatory methodologies.

WAC 480-110-465, Political information and political education activities, clarifies that expenses of funding political information and education are not allowable for ratemaking purposes.

WAC 480-110-475, Reports of accidents, revises the prior WAC 480-110-171 for clarity.

WAC 480-110-485, Retention and preservation of records and reports, updates and clarifies the former WAC 480-110-176.

WAC 480-110-495, Maps, removes the requirement that a company must include a map of its current service area in its filed tariff. The company now must maintain a current map of each of its water systems, and provide it to the Commission within five days of a Commission request.

New WAC 480-09-337 lists information that a company must file when it seeks a general rate increase.

REFERENCE TO AFFECTED RULES: The Commission repeals and adopts the following sections of the Washington Administrative Code:

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-011	Application of rules	480-110-205	---
480-110-016	Savings clause	480-110-225	---
480-110-018	Definition of control	480-110-235	---
480-110-021	Glossary	480-110-245	---
480-110-023	Average customer revenue jurisdictional threshold	480-110-255 Jurisdiction	---
480-110-026	Tariffs	480-110-265 Tariffs	480-110-495 Maps

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-028	Fire flow requirements	Repealed	---
480-110-031	Accounting	480-110-275 Accounting and reporting requirements, and regulatory fees	---
480-110-032	Accounting - Political information and political education activities	480-110-465	---
480-110-036	Finance - Securities, affiliated interests, transfer of property	480-110-285 Securities, affiliated interests, transfer of property	---
480-110-041	Availability of information	480-110-315	---
480-110-046	Application for service	480-110-325	---
480-110-051	Deposits	480-110-335 Establishment of credit and deposits	---
480-110-056	Refusal of service	480-110-345	---
480-110-061	Contract for service	Repealed	---
480-110-066	Distribution extensions - service installations - service connections	480-110-435 Extension contracts	480-110-445 Service connections and customer service lines

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-071	Discontinuance of service	480-110-355	---
480-110-076	Service responsibilities	480-110-365	---
480-110-081	Service connections	480-110-445 Service connections and customer service lines	
480-110-086	Meter Location	480-110-445 Service connections and customer service lines	---
480-110-091	Access to premises	480-110-305	---
480-110-096	Complaints and disputes	480-110-385 Water company responsibility for complaints and disputes	---
480-110-101	Form of bills	480-110-375	---
480-110-111	Refund for inaccurate metering	480-110-405 Meter accuracy and water pressure complaints	---
480-110-116	Responsibility for delinquent accounts	480-110-345 Refusal of service	---
480-110-121	Meter charges and installation	480-110-415 Meters	---
480-110-126	Meter readings	480-110-415 Meters	---

Prior Section (repealed)	Subject	Now codified in (new section)	And in
480-110-131	Identification of meters	Repealed	---
480-110-136	Initial accuracy of meters	Repealed	---
480-110-141	Accuracy of meters	480-110-405 Meter accuracy and water pressure complaints	---
480-110-146	Dispute as to accuracy of meters	480-110-405 Meter accuracy and water pressure complaints	---
480-110-151	Complaint meter test	480-110-405 Meter accuracy and water pressure complaints	---
480-110-156	Statement of test procedures	Repealed	---
480-110-161	Frequency of periodic tests	Repealed	---
480-110-166	Meter history records	Repealed	---
480-110-171	Reports of accidents	480-110-475	---
480-110-176	Filing of records and reports and the preservation of records	480-110-485	---

New Section (adopted)	Subject
480-110-215	Exemption from rules

New Section (adopted)	Subject
480-110-295	Adopted and initial tariffs
480-110-395	Water quality refunds
480-110-425	Water company customer notice
480-110-455	Water company funding mechanisms
480-09-337	Filing requirements – General rate increases water companies

PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on February 13, 1998, at WSR # 98-05-056.

ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking to review all provisions required for water regulation, especially (but not limited to) the provisions of chapter 480-110 WAC. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by providing notice to all Commission regulated water utilities, public utility attorneys, state granges, legislators, and consumers who had previously shown interest in water matters.

The Commission held stakeholder meetings on April 16 and June 30, 1998. It convened stakeholder meetings on September 15 and October 6, 1998 and on April 21, 1999 to address discussion drafts of proposed rules. The Commission also convened meetings to address the definition of service area, water quality refunds, and service connections.

NOTICE OF PROPOSED RULEMAKING: The Commission filed a notice of Proposed Rulemaking (CR-102) on December 11, 1998 at WSR #98-24 -123. The Commission scheduled this matter for oral comment and adoption on Wednesday, January 27, 1999.

At the time and place set in the notice, the Commission convened the rule adoption hearing and continued it on the record until March 10, 1999. During the

March 10, 1999 hearing session, the Commission determined not to adopt the proposed rules but to sponsor further discussion and to prepare a Small Business Economic Impact Statement before proceeding further.

The Commission filed a supplemental notice of Proposed Rulemaking (CR-102) on June 2, 1999 at WSR #99-12 -112. The Commission scheduled the rulemaking for hearing on Wednesday, July 28, 1999. The Notice provided interested persons the opportunity to submit written comments to the Commission by July 14, 1999.

MEETINGS OR WORKSHOPS; COMMENTS: The Commission received oral and written comments after the issuances of the original and supplemental CR-102 from the following:

- Five individual consumers
- Washington Department of Health
- American Water Resources
- Harbor Water Co.
- H&R Waterworks, Inc.
- Meadows Water System
- Oak Park Water Company
- Rainier View Water Company
- South Sound Water Co.
- Sunshine Acres Water System
- Washington Water Supply
- Investor Owned Water Utilities Association of Washington
- Sunshine Acres Property Owners Association
- George Andre Fields, Esq., for Conrad Hunt and Kum Ho et. al.
- Richard A. Finnigan, Esq., for Rainier View Water Company

Based on comments received, the Commission in several instances adopted clarifying language that did not change the intention or ultimate effect of the proposed rules. The Commission received comments from some consumers regarding proposed WAC 480-110-255(1)(c)(vii), which addresses Commission jurisdiction over mobile-home parks, apartments, and office complexes that use master meters and rebill their tenants for water use. These commenters were all opposed to the proposed rule and requested the Commission assert jurisdiction over any landlord rebilling for water usage. In response to these comments, the Commission will issue a new CR-102, under the current CR-101 in this rulemaking, addressing the issue of the rebilling of master meters to tenants.

The Staff prepared two charts summarizing all comments submitted to the original and supplemental CR-102, and staff's response to those comments. Many of the comments received after the original CR-102 but before the supplemental CR-102 were more general in nature and allowed the staff and commenters the opportunity to

resolve many of the issues discussed. The Commission adopts the Staff summaries as its own and deems them to be elements of its Concise Explanatory Statement.

RULEMAKING HEARING: The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on July 28, 1999 before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from Danny Kermode and Gene Eckhardt representing Commission Staff; Richard A. Finnigan representing Rainer Water Company; and Drew Noble representing Oak Park Water Co.

Industry commenters indicated general support for the proposed rules, however Mr. Finnigan and Mr. Noble stated concerns regarding draft WAC 480-110-445, service connections and customer service lines. In addition, Mr. Finnigan restated concerns that were provided in his written comments. The Commission continued the hearing on the record until August 11, 1999 to allow industry and Staff time to discuss the language of the service connections rule.

The Commission reconvened the continued rulemaking hearing on August 11, 1999. Commissioner Richard Hemstad, and Commissioner William R. Gillis heard oral comments from Danny Kermode and Gene Eckhardt representing Commission Staff. Mr. John R. Poppe representing Washington Water Supply, Inc. offered comments regarding his concerns about the rulemaking process but in general supported the proposed rules. Mr. Noble again addressed the Commission only to clarify the need for WAC 480-110-445. No other persons testified.

**SUGGESTIONS FOR CHANGE THAT HAVE NOT BEEN
INCORPORATED INTO THE ADOPTED RULES:**

The Commission believes the adopted rules represent a good balance between consumer protection and regulatory requirements and appreciates all participants' efforts toward consensus. However, in some areas the Commission considered participants suggestions, but rejected them. Those were the following:

- **WAC 480-110-295 Adopted and Initial Tariffs - Statutory Authority Issues**

Rainer View Water Co. commented that the rule's application of tariff requirements to the acquisition of non-regulated systems is inconsistent with statute. The Commission disagrees. The Commission has held that it is within the Commission's power to direct an acquiring company to file a tariff that reflects rates charged by the acquired company prior to acquisition. See the Fifth Supplemental

Order dated November 24, 1998 in Docket UW-980076, WUTC vs. American Water Resources, Inc., at pages 39-41.

- **WAC 480-110-295 Adopted and Initial Tariffs - Other Issues**

Mr. Finnigan discussed the wording in Section 480-110-295(3)(a) that states that an initial tariff must be filed in a standard format that the Commission will provide upon request. He acknowledges that there may be a standard tariff format, but is concerned that companies should not be told that they must use only the sample tariff. The Commission has no intention of prescribing tariff language. The rule mandates only format, companies may use any language they deem appropriate subject to Commission review at the time of filing.

Mr. Finnigan discussed the requirement of WAC 480-110-295(3)(d), which requires companies filing new or revised tariffs to supply supporting financial data justifying the proposed rates. Mr. Finnigan contended that the burden imposed by this rule on very small water companies is unduly onerous, and he suggested that WAC 480-110-295(3)(d) be deleted. The Commission rejects the suggestion. The rule merely requires the company to support proposed rates that they wish to charge their customers. Basic financial information is essential to determining the propriety of proposed rates and it is uniquely and exclusively in the possession of the company. Requiring its production is not "unduly onerous."

Mr. Finnigan also asserts that this section is contrary to the statutory scheme of the State of Washington by requiring cost support to be filed with any initial tariff. The Commission rejects this position. The statute does not define initial tariff nor does the statute prohibit the requirement for financial data to be filed with any initial tariff. The filing of financial data is necessary to insure rates being charged are fair, just, and reasonable.

- **WAC 480-110-365 Service Responsibilities - New Facilities Costs**

Mr. Finnigan voiced concern that WAC 480-110-365(1) would allow customers to force the company to bear an unreasonable share of the costs of upgrades that are required to serve new customers. The Commission believes that the provisions of WAC 480-110-365(1)(b) protect the company since any sharing of costs must be provided in tariff or approved contract.

- **WAC 480-110-365 Service Responsibilities - Interruptions of Service**

The Washington State Department of Health (DOH) had three comments regarding WAC 480-110-365(8). First, DOH asked that the rules clarify the meanings

of the term "all reasonable efforts" and "minimum of delay." The Commission feels that no further clarification is needed, and that the terms are to be understood as they are in common usage. The DOH also recommended that the rule "specifically indicate what steps a company might take in advance to avoid interruptions." The Commission feels that it would be beyond the purpose of this rule to cite steps to avoid interruptions. Finally, DOH recommended that the rule include provisions for standby power. The question of standby power relates to the company's requirement to provide "adequate service" and in general should be addressed at the company level and not by rule.

- **WAC 480-110-365 Service Responsibilities - Litigation Disclaimer**

Mr. Finnigan suggested that WAC 480-110-365 be amended to include the following paragraph:

(10) Limitation - The standards and obligations for water companies established in this rule are not intended to establish a standard of care or duty for purposes of tort or other litigation.

The courts establish a duty of care based on evidence and arguments presented to them. The determination of judicial standards is beyond the Commission's jurisdiction. It would be no more proper to disavow setting a judicial standard than it would to purport to establish such a standard. Any rule attempting to set a judicial standard would likely be held non-controlling. In addition, the Commission believes that the suggested wording would weaken the rule as a whole. The Commission therefore rejects the suggestion.

- **WAC 480-110-405 Meter accuracy and water pressure complaints.**

American Water Resources voiced the concern that WAC 480-110-690's requirement that meter tests be performed within ten days of the complaint may at certain times be "impossible." The company suggests that the Commission include a variance provision to allow for "permissible variances from [the] 10 day requirement. The Commission believes the requirement is reasonable and also notes that WAC 480-110-215(2) provides for waivers. Therefore, a provision for variance of this rule is not needed.

- **WAC 480-110-415 Meters - Installation of Consumer Requested Meters**

WAC 480-110-415(2)(c) allows water customers who pay a flat rate to obtain the installation of a meter, if the company has tariffed metered rates. Mr. Finnigan commented that there may be instances in which a customer's request for a meter would be prohibitively expensive. He suggested that the wording in the rule be modified so that the company must only honor a customer's request "Where it is reasonable to install such a meter."

The rule WAC 480-110-215 already provides that the company may be excused from the obligation to install a meter when it demonstrates that the installation is not consistent with the public interest -- that is, if the financing and resources needed to comply with the request would be detrimental to the normal operations of the company. The suggested language would have the effect of shifting the burden of demonstrating reasonableness to the customer. Economic hardship is a possible means to demonstrate eligibility for an exemption. The Company, however, possesses nearly all of the information essential to demonstrating that a particular installation is inconsistent with the rule's purpose. Shifting the burden of demonstration to others is not consistent with the public interest. The Commission therefore declines to adopt the suggested language.

- **WAC 480-110-425 Customer Notice Requirements - Potential Customers**

Some commenters felt that the requirement to inform all customers, as defined in WAC 480-110-245, of proposed tariff changes is burdensome and would cause "a nightmare of record keeping." Under the current rules, companies must only notify current customers of proposed rate changes. The Commission believes that notification of all customers is essential to consumer protection. All customers includes both current customers and consumers who have been given a letter from the water company agreeing to provide service. The rule requires no record keeping of the water company beyond keeping a list of consumers to whom it has committed to provide service. Such consumers have nearly the same interest as current customers in proposed tariffs. The benefits of notice thus outweigh the small associated costs.

- **WAC 480-110-435 Extension Contracts**

The Department of Health (DOH) suggested adding the requirement that extension contracts be consistent with the company's water system plan (WSP). The Commission's focus in this rule is the economic aspect of a proposed extension. To expand it to include a company's WSP would expand the rule outside of its intended scope. The DOH already has the power to deny approval of any extension not in

compliance with the company's WSP through the DOH normal review process. The rule is not intended to affect DOH regulation at all.

COMMISSION ACTION: After considering all of the information regarding this proposal, the Commission adopts and repeals the attached provisions in chapter 480-110 WAC governing investor owned water companies, and adopts WAC 480-09-337 governing procedure for seeking a general increase in water rates.

CHANGES FROM PROPOSAL: The Commission adopted the proposal with the following changes (other than minor, non-substantive changes) from the text noticed at WSR #99-12-112.

- **WAC 480-110-245 Glossary.**
In the definition of "Standby charge," the Commission added the further explanation, not changing the substance of the definition, that the term is equivalent to a "system-readiness fee" charged by unregulated companies and that such a charge is not authorized for regulated water companies.
- **WAC 480-110-255 Jurisdiction.**
In response to comments received from consumers, the Commission removed subsection (1)(c)(vii) from the rules to be adopted. The provision would have excluded mobile-home parks, apartments, and office complexes that provide master meters and rebill tenants for water use under certain conditions. The comments STET the Commission that additional study is required to show that such a provision would operate in the public interest.
- **WAC 480-110-285 Securities, affiliated interests, transfer of property.** In subsection (3), language is added to make the section's meaning very clear.
- **WAC 480-110-325 Application for service.** In subsection (1), language is added to make it very clear that a company must receive a written application before it may provide initial service to a location.
- **WAC 480-110-365 (9) Notice of service interruptions** - Adds a new section (e) requiring a company to notify the Washington Department of Health of service interruptions, to assure sufficient monitoring of health conditions.
- **WAC 480-110-425(4) Water company customer notice requirements.**
Deletes the proposed requirement that a company notice disclose the percentage of a proposed increase, since percentage figures may, at times, be misleading depending on the base number used. For example, sometimes large dollar increases will show only a small percentage increase because the charge

is already high. Modifies the language in the required company notification, for ease in customer understanding and to help assure that consumer responses are properly identified.

- **WAC 480-110-445 Service connections and customer service lines.** In subsection (1), revises the language of provisions relating to service connections for increased clarity and public understanding.
- **WAC 480-110-455 Water company funding mechanisms.** Revised language clarifies the uses to which surcharge funding may be put and adds the Department of Ecology as an agency whose directives may be met through surcharges.

The effect of the rules remains essentially unchanged from the language originally noticed in the CR-102 published on June 4, 1999 at WSR 99-12-112.

STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the Commission determines that WAC 480-110-011 through 480-110-176 are repealed and WAC 480-110-205 through 495 and WAC 480-09-337 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

THE COMMISSION ORDERS:

1. WAC 480-110-205 through 495 and WAC 480-09-337 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).
2. This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.
3. The Commission adopts the Commission Staff memoranda, presented when the Commission considered filing a Preproposal Statement of Inquiry, when it considered filing the formal notice of proposed rulemaking, and when it considered adoption of this proposal, in conjunction with the text of this order, as its

Concise Explanatory Statement of the reasons for adoption and for rejection of proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington, this day of November, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chair

WILLIAM R. GILLIS, Commissioner