

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT
COMPANY,

Respondent.

DOCKET UW-121408

MOTION ON BEHALF OF
COMMISSION STAFF FOR
SUMMARY DETERMINATION
CLASSIFYING SANDY POINT
IMPROVEMENT COMPANY AS A
WATER COMPANY SUBJECT TO
COMMISSION REGULATION

I. INTRODUCTION

1 The Commission initiated this docket as a special proceeding under RCW 80.04.015, to determine whether the Respondent, Sandy Point Improvement Company (SPIC or Company) is a water company subject to Commission jurisdiction.¹ This docket also involves a Commission complaint against the Company's rates and charges, and for penalties.² However, the only issue for this phase of the case is the Company's jurisdictional status.³

2 Commission Staff moves for summary determination under WAC 480-07-380(2). The facts supporting this Motion are contained in Exhibits 1-17, attached. Because there are no genuine issues as to any material fact, the Commission should apply the law to the facts and enter an order determining that SPIC is conducting business as a water company subject to Commission jurisdiction under RCW 80.28, to the extent the Company serves its Class C shareholders/customers and its non-shareholder customers.

¹ Order 01, Order Initiating Special Proceeding Under RCW 80.04.015; Complaint Against Rates and Charges; and Complaint for Penalties (November 21, 2012) at 1, ¶ 1.

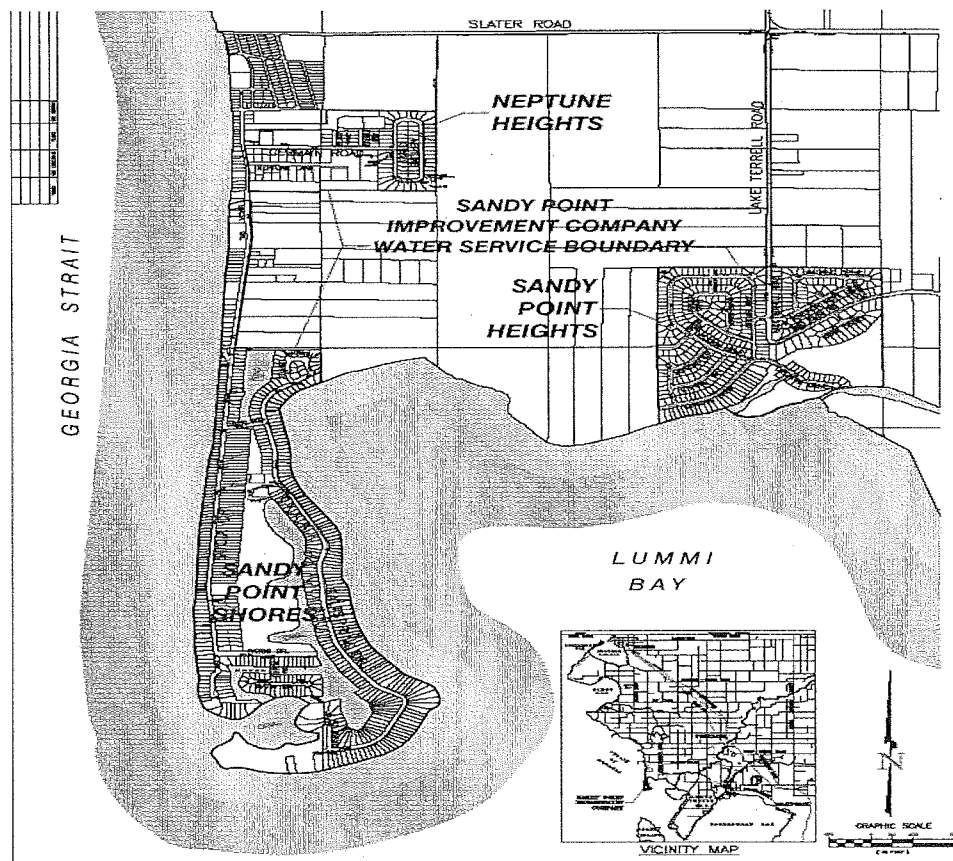
² *Id.*, at 3-5, ¶¶ 15-30.

³ Order 02, Prehearing Conference Order (January 15, 2013), at 2, ¶ 6.

II. STATEMENT OF FACTS

3 As explained in more detail in Paragraphs 15-19 below, SPIC's admissions in its Answer narrows the jurisdictional issue to two questions: (1) Does SPIC offer water service "for hire"; and, if so, (2) Does SPIC offer water service "to the public"? Nonetheless, we provide a broader factual description of the Company and its water business to provide the Commission a better context for its decision.

4 *The Company's Service Area.* As the map⁴ below shows, the Company's water service area is located near Ferndale in Whatcom County, Washington, and includes three distinct areas: Sandy Point Shores, Neptune Heights, and Sandy Point Heights.



⁴ This map is an excerpt from the Company's response to Commission Staff Data Request 2. A complete copy of that response is attached as Exhibit 1.

5

Customers, Rates and Revenues. As the table below⁵ shows, in 2011, the Company took in revenues of at least \$328,000 from its water business,⁶ and provided water service to 944 water customers, consisting of 779 SPIC Class A shareholders, 119 SPIC Class C shareholders, and 46 non-shareholders. The table also shows the Company’s average annual gross revenue per customer does not exceed \$557 for all customers, or for any subgroup of customers, such as Class C shareholders only, or non-shareholders only:

Average 2011 Service and Usage Billings By Shareholder Type			
	Revenue	Number of Shareholders	Average Revenue Per Shareholder
Class A	\$262,127.18	779	\$336.49
Class C	\$44,807.34	119	\$376.53
Non-Shareholder	\$20,779.77	46	\$451.73
Total Revenue	\$327,714.29	944	\$347.15

As the Company’s “Water Service Fees” schedule in Exhibit 3 (last two pages) shows, the Company publishes its rates for water usage, as well as charges for non-recurring services, such as emergency shut-offs and tampered meter repairs.⁷

6

How the Company Operates its Water Business. SPIC holds a water rights permit issued by the state Department of Ecology.⁸ The Company uses its water rights by appropriating water via one primary well; the Company has three other wells for emergency use only.⁹ The Company stores the water in two large tanks: one storage tank has 190,000 gallon capacity, and the other storage tank has 200,000 gallon capacity.¹⁰

⁵ This table is an excerpt from the Company’s response to Commission Staff Data Request 20. A complete copy of that response is attached as Exhibit 2.

⁶ We say “at least \$328,000”, because the table below calculates average annual gross revenues per customer using the formula in WAC 480-110-255. The Company earns additional revenues from assessments and other water-related charges that are not included in that formula.

⁷ Exhibit 3: SPIC’s response to the UTC’s “Water System Questionnaire” (April 13, 2012), last two pages.

⁸ Exhibit 4: Excerpts from Sandy Point Improvement Company “Water System Plan 2011” (July 11, 2011), at page 6-1, provided as part of the Company’s response to Commission Staff Data Request 10.

⁹ *Id.*, at pages 4-1 to 4-6.

¹⁰ *Id.*, at pages 4-5 to 4-6.

7 The Company uses transmission main pipes and distribution pipes to transport the water to its customers via gravity feed from these storage tanks.¹¹ The Company treats the water using a chlorination system.¹²

8 *The Company's Corporate Organization.* "SPIC is a for profit corporation. It was organized under the laws of the state of Washington in April of 1965. It is now and always has been a for profit corporation in good standing."¹³ More specifically, SPIC "is a Washington corporation organized under Title 23B RCW."¹⁴ The Secretary of State classifies SPIC as a "domestic profit corporation".¹⁵

9 SPIC has issued shares of stock in two classes: Class A and Class C.¹⁶ Each Class A and Class C share is appurtenant to the real property in the Sandy Point area that is owned by the shareholder. Each Class A and C shareholder gives the shareholder the right to water service from SPIC, and the Class A and C shares can be transferred only by selling the real property to which the share is appurtenant.¹⁷

10 Class C shares represent a limited interest. As the Company's then-President and Board Chairman succinctly put it: "The Class C shareholder has no ownership interest in

¹¹ *Id.*, at page 4-3.

¹² *Id.*, at page 5-5.

¹³ Exhibit 5: March 2010 letter to shareholders from Ronald T. Jepson, then Chairman of the Board of Directors and President of Sandy Point Improvement Company, first page, first ¶ under "Corporate Structure." Commission Staff obtained this document during its investigation, and produced it as part of Commission Staff's response to the Company's Data Request 2.

¹⁴ Exhibit 6: Respondent Sandy Point Improvement Company's Answer to Order Initiating Special Proceeding Under RCW 80.04.015; Complaint Against Rates and Charges; and Complaint for Penalties (December 7, 2012) (Answer) at 3, ¶ 6(2).

¹⁵ See Exhibit 7: SPIC's most recent registration with the Secretary of State's Office, first page, under "Your Fees." Commission Staff obtained this document from the Secretary of State's Office and provided it to the Company as part of Commission Staff's response to Company Data Request 10.

¹⁶ Exhibit 8: Sandy Point Improvement Company's Articles of Incorporation (dated February 10, 2012, and filed February 13, 2012)(produced in the Company's response to Commission Staff Data Request 12), at 2 and 3, Article V, Sections 1 and 3, respectively. The Articles also refer to Class B shares (Articles V, Section 2), but these shares are no longer outstanding; the Company redeemed these shares in September, 2012. See Exhibit 9: September 20, 2012, letter to SPIC from Roy Clumpner, Vice President of SPIC, showing the Company redeemed the Class B shares and they will be "permanently retired".

¹⁷ See Exhibit 10: Company response to Commission Staff Data Request 3, and Exhibit 11: Company response to Commission Staff Data Request 6.

SPIC or its assets”¹⁸ According to the Company’s Articles of Incorporation, a Class C share “shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant ...”¹⁹ Moreover, Class C shareholders:

May only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation.²⁰

11 By contrast, the Company’s Articles of Incorporation place no restrictions on the interest represented by Class A shares. Class A shareholders have the right to vote on “any matter presented to the shareholders”,²¹ and they also have the right to use various amenities owned, operated and managed by the Company, including a club house, pool, golf course, and marina.²² For these amenities, Class A shareholders pay a one-time charge, as well as an annual assessment and various other fees, each of which is separate from water service-related charges.²³

12 *SPIC’s Service Commitment.* According to SPIC’s Water System Plan approved by the state Department of Health (WSDOH), the Company will provide water service to any person in its service area if:

- (a) [Water] can be available in a timely and reasonable manner;
- (b) There are sufficient water rights to provide water service;

¹⁸ Exhibit 5: March 2010 letter to shareholders from Ronald T. Jepson, then Chairman of the Board of Directors and President of Sandy Point Improvement Company, at 1, 4th ¶ under “Corporate Structure”.

¹⁹ Exhibit 8: Company Articles of Incorporation, Article V, Section 3.

²⁰ *Id.*

²¹ *Id.*, Article V, Section 1.

²² Exhibit 12: Company response to Commission Staff Data Request 11. The Company prepares separate income statements for (1) Administration, (2) Clubhouse, Pool and Grounds, (3) Golf Course, (4) Marina, and (5) Water. See Exhibit 13: Company response to Commission Staff Data Request 19.

²³ Exhibit 14: Company response to Commission Staff Data Request 9.

- (c) There is sufficient capacity to serve the water in a safe and reliable manner as determined by WSDOH;
- (d) It is consistent with the requirements of local plans and regulations.²⁴

13 When the Company has additional water service connections available, anyone with property in the Company's service area may apply for service, and the Company uses a lottery to randomly select new customers.²⁵ The Company initiated the last lottery in 2006, after the WSDOH approved additional water service connections for the Company.²⁶ In that lottery, "[b]oth SPIC shareholders and non-shareholders were eligible and followed the same [lottery] guidelines."²⁷ In the end, SPIC had sufficient capacity to offer water service to all remaining entrants.²⁸

14 The other way to become a SPIC customer is to purchase property owned by one of the Company's existing water customers. Like the lottery, SPIC does not select particular individuals who may obtain water service from the Company via property purchase: SPIC "has no role in deciding who may purchase a home or lot located within the Company's water service area."²⁹

III. ARGUMENT

A. Framing the Issues

15 The UTC regulates water companies under RCW 80.28, with definitions supplied in RCW 80.04. As pertinent here, the statute defines "water company" to include "every corporation ... controlling, operating, or managing any water system for hire within this state." RCW 80.04.010(30)(a).

²⁴ Exhibit 4: Excerpts from Sandy Point Improvement Company "Water System Plan 2011", at 2-3 to 2-4, quoting WAC 246-290-106(1).

²⁵ Exhibit 11: Company response to Commission Staff Data Request 6 (including supplemental response).

²⁶ Exhibit 15: Company response to Commission Staff Data Request 29.

²⁷ *Id.*, at 1, "Response" section, 1st ¶.

²⁸ *Id.*, at 1, "Response" section, 2nd ¶.

²⁹ Exhibit 16: Company response to Commission Staff Data Request 30. As Exhibit 15 shows (third page, July 2006 notice, 3rd ¶), the Company charges each new customer a "base fee" of \$5000.

16 There are two exemptions or qualifications. First, RCW 80.04.010(30)(b) exempts any water company that meets both of the following conditions: 1) the company serves 99 or fewer customers; and 2) the company's average annual gross revenue per customer is \$557 or less.³⁰

17 The second exemption or qualification is based on judicial decisions that require a Commission-regulated water company to provide "service to the public". *E.g., Inland Empire Rural Electrification, Inc. v. Dep't of Pub. Serv.*, 199 Wash. 527, 92 P.2d 258 (1939)(*Inland Empire*); *W. Valley Land Co. Inc. v. Nob Hill Water Assoc.*, 107 Wn.2d 359, 729 P.2d 42 (1986)(*West Valley Land*).³¹

18 SPIC has admitted it is a "corporation" that "controls, operates, or manages a water system in the state of Washington,"³² and SPIC has average annual gross revenue per customer well below the \$557 per year statutory exemption maximum.³³ However, with nearly 1,000 customers,³⁴ the Company far exceeds the customer number exemption maximum of 99 customers in RCW 80.04.010(30)(b).

19 Consequently, SPIC qualifies as a water company subject to Commission regulation, unless it does not offer water service "for hire" or "to the public." This case boils down to two issues:

- 1) Does SPIC offer water service "for hire", as that term is used in the definition of "water company" in RCW 80.04.010(30)? If so,

³⁰ This \$557 figure is set by the Commission, as authorized by RCW 80.04.010(30)(b). The figure is codified in WAC 480-110-255(1)(b),

³¹ Consistent with this precedent, WAC 480-100-245 includes the term "to the public" in the definition of "water company".

³² Exhibit 6: Answer at 3, ¶ 6(2) and at 2, ¶ 5(1).

³³ *Supra*, at 3, ¶ 5, table, excerpted from Exhibit 2: Company response to Commission Staff Data Request 20.

³⁴ *Id.*

- 2) Does SPIC offer water “to the public”, as that term is used and interpreted by the court?

20 As we explain below, SPIC offers water service “for hire”, and it offers water service “to the public” to the extent it serves its Class C shareholders and its non-shareholder customers. SPIC is exempt from Commission regulation, however, with respect to its Class A shareholders/customers, because the Company does not satisfy the “service to the public” test as applied to that service.

B. SPIC meets the literal definition of “water company” in RCW 80.04.010(30), including the “for hire” element of that definition

21 SPIC satisfies the literal definition of “water company” in RCW 80.04.010(30) because the Company is a corporation that is controlling, operating, or managing a water system for hire in this state. As we just explained, the term “for hire” is the only element of the definition at issue.

22 The Commission should interpret “for hire” to mean “for compensation”. SPIC satisfies this meaning because the Company exacts compensation for the water services it provides, *i.e.*, SPIC charges for its water service and receives substantial money in return; at least \$328,000 in 2011.³⁵

23 The court applied this meaning of “for hire” in the *Inland Empire* case, *supra*, 199 Wash. 527 (1939), in the context of the definition of “electrical company” in RCW 80.04.010. The term “water company” is defined in the same section of the statute and contains the same term, “for hire”.

24 Notably, the court twice used italics to highlight the term “for hire” as an essential element of the definition, 199 Wash. at 534, and then went on to conclude that “[i]t is

³⁵ *Supra*, at 3, ¶ 5.

apparent that, upon a literal application of the definitions above set forth, [the company] would come within the scope of the [statutes], for [the company] is an ‘electrical company’ operating an ‘electric plant’ in this state, for hire, *in the sense that it exacts from its members compensation for its service*” 199 Wash. at 534-35 (emphasis added).³⁶

25 The court conducted the same analysis of “for hire” in its *West Valley Land* decision, *supra*, 107 Wn.2d 359, this time regarding the definition of “water company” in RCW 80.04.010. In all material respects, the same definition that applied in *West Valley Land* applies today, including the “for hire” element of that definition.³⁷

26 As in the *Inland Empire* decision, the court in *West Valley Land* found that “[u]nder the literal application of the definitions set forth in RCW 80.04.010,” Nob Hill Water Association would be a water company subject to Commission regulation. 107 Wn.2d at 364. This further confirms that a company charging for its services would meet the “for hire” element of the “water company” definition.³⁸

27 In conclusion, for purposes of the definition of “water company” in RCW 80.04.010(30), the term “for hire” means the company exacts compensation for its water services. Because SPIC exacts compensation for its water service, the Company satisfies all elements of the definition of “water company” in RCW 80.04.010(30).

³⁶ Even though *Inland Empire Rural Electrification, Inc.* met the statutory definition of “water company”, including the “for hire” element, the court concluded that the company was not subject to Commission regulation because it did not offer service to the public; among other things, the company “functions entirely on a cooperative basis”. 199 Wash. at 539-40. We discuss the “service to the public” test in the next section, Section III.C.

³⁷ At the time of the *West Valley Land* decision (1986), the statutory exemption had smaller maxima for dollars and number of customers.

³⁸ In the end, the court in *West Valley Land* ruled that the Nob Hill Water Association, as a cooperative, was exempt from Commission regulation because it did not satisfy the “service to the public” test. 107 Wn.2d at 367-69. We discuss the “service to the public” test in the next section, Section III.C.

C. The “service to the public” test

28 In *Inland Empire*, the court described the “serve to the public” test as follows:

A corporation becomes a public service corporation subject to regulation by [the UTC’s predecessor agency] only when, and to the extent that, its business is dedicated or devoted to public use. *The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular customers of its own selection.*

199 Wash. at 537 (citations omitted, emphasis added).

29 In applying this test in both *Inland Empire* and *West Valley Land*, however, the court focused primarily on the utility-customer relationship to determine whether customers have a “complete identity of interest” with the utility serving those customers. If they do, the court will exempt that company from regulation to that extent.

30 In Section III.C.1 below, we apply the literal wording of the “service to the public” test. In Section III.C.2 below, we focus on the relationship between SPIC and its customers. We demonstrate that SPIC provides service to the public to the extent of its ability, and it does not merely serve particular individuals of its own selection. An analysis of the utility-customer relationship shows that SPIC is subject to Commission regulation regarding service to Class C shareholders/customers and non-shareholders, but not regarding the Company’s service to Class A shareholders/customers.

1. SPIC serves the public to the extent of its ability to serve; the Company does not merely serve particular individuals of its own selection

31 As described above, there are two elements of the literal “service to the public” test; first, whether the company “holds itself out, expressly or impliedly, to supply its service ... for use either by the public as a class or that portion of the public that can be served by the utility;” or second, whether the company “merely offers to serve only particular individuals

of its own selection.” (Quotes are from *Inland Empire*, 199 Wash. at 537 (citations omitted)).

32 SPIC satisfies both elements. As we outlined earlier, the Company commits to serve any customer in its service area “in a timely and reasonable manner,” when there are “sufficient water rights to provide water service,” there is “sufficient capacity to serve the water in a safe and reliable manner as determined by WSDOH” and such service “is consistent with the requirements of local plans and regulations.”³⁹ Simply put, SPIC serves all persons in its service area to the extent of its ability to serve.

33 In fact, when additional water connections were made available to SPIC, the Company used a lottery procedure in which anyone residing in the Company’s service area, shareholders or non-shareholders, was equally eligible to apply for water service. If the Company randomly selected their name, they received water service. As it turned out, the Company had sufficient capacity to serve all who participated throughout the lottery process.⁴⁰

34 This lottery process also provides conclusive evidence that SPIC does not “merely offer to serve only particular individuals of its own selection,” because by the random nature of that process, the Company assures it does not select any “particular individual” whom it will serve. Similarly, SPIC does not select the particular individuals who become a SPIC water customer by purchasing the property of an existing SPIC water customer, because the

³⁹ *Supra*, at 5, ¶ 12, quoting SPIC statements describing the Company’s service commitment in Exhibit 4: Excerpts from Sandy Point Improvement Company “Water System Plan 2011” at 2-3 to 2-4.

⁴⁰ *Supra*, at 6, ¶ 13. In addition, as shown in Exhibit 3, which is the Company’s answers to Commission Staff’s “Water System Questionnaire” at 2, answer 6, the Company answered “No” to the question whether it “reserve[s] the right to serve particular individuals of its own choosing.” The Company qualified that No response, by referring to the lottery and to its Water System Plan, noting that the Company “prioritizes” service “based on current water shareholder agreements with Sandy Point.” As shown in Exhibit 17, Company response to Commission Staff Data Request 31, at 1-2, part (3), this simply means SPIC “prioritizes its commitments to serve existing customers over the possibility of potential new customers.”

Company “has no role in deciding who may purchase a home or lot located within the Company’s water service area.”⁴¹

35 In sum, the Company satisfies the court’s “service to the public” test because SPIC holds itself out to the public to provide service to any person in its service area to the extent of the Company’s ability to serve, and the Company does not merely offer to serve only particular individuals of its own selection.

2. Analysis of the SPIC-customer relationship confirms the Company is subject to Commission regulation regarding the Company’s service to Class C shareholders/customers and non-shareholders

36 As noted earlier, when implementing the “service to the public” test, the court also has focused on the utility-customer relationship in light of the organizational structure of the company and its operations. If the company and its customers have a “complete identity of interest”, the company is not subject to Commission regulation to that extent.

37 For example, in *Inland Empire*, while the corporation at issue met the literal definition of “electric company” in RCW 80.04.010, the court held that the company was exempt from Commission regulation. The company was a mutual corporation that provided electric service to its own shareholders exclusively. Because of the way the corporation was structured, the court concluded the corporation was not “engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns”, and thus its customers did not require protection of the public service laws. 199 Wash. at 539.

38 The court emphasized that the corporation served only its members, at cost, and any surplus funds were returned to those members ratably each year. 199 Wash. at 540. The court was able to conclude there was a “*complete identity of interest* between the corporate

⁴¹ *Supra*, at 6, ¶ 14, quoting Exhibit 16: Company response to Commission Staff Data Request 30.

agency supplying the service and the persons who are being served. It is a league of individuals associated together in corporate form for the sole purpose of producing and procuring for themselves a needed service at cost.” *Id.* (emphasis added).

39 Note also that the court qualified the application of the public service laws “to the extent” that the company at issue dedicated its property to public use. 199 Wash, at 537. In other words, had the corporation in *Inland Empire* served non-shareholders, it would be subject to Commission regulation, but only “to the extent” it served those non-members. This is consistent with the court’s underlying rationale that non-member customers need the protection of the public service laws.

40 The court applied a similar analysis in its *West Valley Land* decision. In that case, while the Nob Hill Water Association (Water Association) also met the literal definition of “water company” in RCW 80.04.010, the court held the Water Association exempt from Commission regulation because it “did not conduct its operations for gain to itself, or for the profit of investing stockholders, but functions entirely on a cooperative basis.” 107 Wn.2d at 367. Moreover, the Water Association served only its shareholder members, all of whom “have a ‘voice’ in the management of its affairs.” 107 Wn.2d at 368.

41 The court concluded that the Water Association was not subject to Commission regulation because it was not a corporation “engaged in business for itself at the expense of a consuming public which has no voice in the management of its affairs and no interest in its financial returns.” 107 Wn.2d at 368:

42 From these decisions, it is reasonable to conclude that a corporation such as SPIC, which meets the literal definition of “water company” in RCW 80.04.010, can nonetheless be exempt from Commission regulation to the extent it serves its shareholders (and up to 99

non-shareholder customers who have average annual gross revenue of \$557 or less), so long as each shareholder has a “complete identity of interest” with SPIC, *i.e.*, they:

- Have a “voice” in the management of water-related matters, and
- Have an “interest in the financial returns” of the Company

43 As discussed below, while SPIC’s Class A shareholders/customers have a “complete identity of interest” with the Company, the Company’s Class C shareholders/customers and non-shareholders/customers do not. Consequently, SPIC passes this aspect of the “service to the public” test regarding service to the Company’s Class C shareholder/customers, and thus SPIC is subject to Commission jurisdiction to that extent. Moreover, because these 119 customers place SPIC over the exemption maximum of 99 customers in RCW 80.04.010(30)(b), the Company is subject to Commission regulation regarding its non-shareholder customers as well.

- a. **SPIC’s Class A shareholders/customers have a “complete identity of interest” with the Company. Therefore, the Company is exempt from Commission regulation regarding that service**

44 The facts show that SPIC’s Class A shareholders/customers own the company⁴² and have voting rights “on any matter presented to the shareholders”.⁴³ Therefore, these shareholders/customers have both a “voice in the management of the corporation” and an “interest in the financial returns” of the Company. Consequently, per the *West Valley Land* and *Inland Empire* decisions, SPIC is not subject to Commission regulation to the extent it

⁴² Per RCW 23B.01.400 (*i.e.*, in the title under which SPIC is incorporated), “‘shares’ means the units into which the proprietary interests in a corporation are divided.” As the facts described, *supra*, at pages 4-5, ¶¶ 8-11, show, the Company’s Articles of Incorporation place no limitation on the proprietary interest of Class A shareholders in the corporation, but they provide for no (or virtually no) proprietary interest for the Class C shareholders.

⁴³ *Supra*, at 5, ¶ 11, quoting Exhibit 8: Company’s Articles of Incorporation at 2-3, Article V, Section 1.

serves its Class A shareholders/customers, because those shareholders/customers have a “complete identity of interest” with the Company.⁴⁴

b. SPIC’s Class C shareholders/customers and non-shareholder customers do not have a “complete identity of interest” with the Company; SPIC’s service to those customers is subject to Commission regulation

45 SPIC’s 119 Class C shareholders/customers are situated quite differently from the Class A shareholders/customers. While the Class C shareholders also “have a voice” in the Company’s management via a vote on Board elections and on water-related issues that are presented by the Board for a shareholder vote,⁴⁵ Class C shareholders have no interest in the financial returns of the Company.

46 In other words, as the Company’s then-President and Board Chairman stated: “The Class C shareholder has no ownership interest in SPIC or its assets”⁴⁶ This Company statement is firmly cemented by the Company’s Articles of Incorporation, which state that a Class C share “shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant ...”⁴⁷

47 In short, unlike the Class A shareholders/customers, the Class C shareholders/customers have “no ownership interest in SPIC or its assets”, and thus they have “no interest in the financial returns” of the Company. Consequently, the Class C

⁴⁴ Commission Staff notes that in both *Inland Empire* and *West Valley Land*, the court emphasized the fact that each of the entities at issue provided service at cost, and any revenue in excess of cost would be returned to the customers/owners of the corporation or cooperative, respectively. SPIC is under no such obligation. Nonetheless, Commission Staff believes that because the Class A shareholders have the proprietary interest in the Company by virtue of their share ownership, SPIC’s for profit status does not negate the Class A shareholders’ “complete identity of interest” with the Company.

⁴⁵ *Supra*, at 5, ¶ 11.

⁴⁶ *Supra*, at 4-5, ¶ 10, quoting Exhibit 5: March 2010 letter to shareholders from its then President and Chairman of the Board of Directors at 1, 4th ¶ under “Corporate Structure”.

⁴⁷ *Supra*, at 5, ¶ 10, quoting Exhibit 8: Company’s Articles of Incorporation at 3, Article V, Section 3.

shareholders/customers lack a “complete identity of interest” with the Company, which means the Company’s water service to Class C shareholders/customers is subject to Commission regulation.

48 Of course, SPIC’s 46 non-shareholder water customers have neither a vote nor an interest in the financial returns of the Company. Standing alone, this non-shareholder group would be exempt from regulation because 46 is within the “99 or fewer” customer number exemption in RCW 80.04.010(30)(b). However, because the 119 Class C shareholders/customers place SPIC above 99 customers, SPIC also is subject to Commission regulation as to the Company’s service to its non-shareholder customers.

49 In other words, there are 165 water service customers⁴⁸ who lack a “complete identity of interest” with the Company. Consequently, SPIC is subject to regulation regarding its service to those customers: SPIC’s Class C shareholders/customers and non-shareholder customers.

IV. CONCLUSION

50 For the reasons stated above, SPIC satisfies the literal definition of “water company” in RCW 80.04.010(30) and the court’s “service to the public” test in regard to its service to its Class C shareholders/customers and non-shareholder customers. Consequently, the Commission should issue an order classifying the Company as a water company subject to Commission jurisdiction to the extent of the Company’s service to Class C shareholders/customers and non-shareholder customers, and proceed to the penalty and rate phases of this docket.

⁴⁸ 119 Class C shareholders/customers + 46 non-shareholder customers = 164 customers.

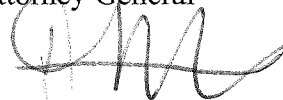
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SPIC does not satisfy the judicial “service to the public” test regarding the Company’s service to Class A shareholders/customers. Consequently, the Company is exempt from Commission regulation to that extent.

Dated this 6th day of May 2013.

Respectfully submitted,

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