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SALLAL WATER ASSOCIATION

Member Owned Co-op

Date: September 18, 2013

To: Utilities and Transportation Commission

Re: Rulemaking Inquiry to Consider the Need to Evaluate and Clarify Jurisdiction of Water Companies, WAC 480-110-255, Jurisdiction, and related rules Docket UW-131386

Dear Commissioners,

The Sallal Water Association (SWA) is made up of more than 2,200 connections serving more than 6,000 people including the Wilderness Rim Homeowner Association. The Association currently supplies approximately 186 million gallons of water each year to its members. In addition, Sallal provides fire protection to an area of approximately 25 square miles of Washington Department of Health designated Service Area in Eastern King County. The Sallal Water Association was formed in 1967 as a federally funded cooperative (Farmers Home Administration now Rural Development Association) and has always served only our membership. We have on an almost annual basis also provided water to fight ground fires in our service area. All SWA members have a vote in the election of our Board of Trustees, and all have equal rights/interests as members in any residual value upon dissolution of the water utility.

The Sallal water Association is very concerned and strongly objects to the proposed changes in WAC 480-11-255(2)(e) and (f). In particular we disagree with the removal of the current exemption in the WAC for water associations, cooperatives and mutuals. We believe that the existing case law, RCWs and WACs are sufficient to address unique individual cases and issues that may be presented before the commission. This is particularly true with the legal tests that are articulated in the *Inland Empire Rural Electrification, Inc. v. Department of Public Service* and *West Valley Land Company, Inc. v. Nob Hill Water Association* cases. In those cases it is very clear that regardless of what the water utility may call itself, how the entity operates is determinant of its exemption. The currently proposed changes to the WAC will cause confusion if adopted because, on face value, they run counter to case law.

Alternatively, if the UTC proceeds with the proposed rule making and revisions to the WAC, the WAC exemptions should be MODIFIED NOT ELIMINATED to provide very clear and concise rules that, if met, provide non-profit water utilities with exemption from Commission regulation. Based on the tests provided in the *Inland Empire* and *Nob Hill* cases, the rule if amended at all, should contain the following elements for provision of water service by associations, cooperatives and mutuals:

- 1) The entity only serves its members on a regular basis. Limited or intermittent water sales to non-members for construction, hydroseeding, fire suppression, environmental mitigation/enhancement and public safety should be disregarded; and
- 2) All members have a voice in the management of the entity; and

- 3) All members have an interest in any dividends or surplus from the entity and any residual value upon dissolution of the entity.

Any further detail addressing these key items could be developed by the Commission in the form of a policy guidance document. However, we would suggest that the UTC work closely with water utilities to help ensure that unintended consequences are not introduced with the development of the policy guidance. With the complex inter-woven nature of water supply, water policies, water resource management and public health, it is very easy to develop policies with negative or unintended consequences. An example of a policy item that would be helpful would be a statement that says "Customers whose use is ancillary, intermittent or of a short duration, are not considered customers as use in this subsection". Examples of ancillary water use would include water used for fire fighting, construction water, human health, environmental benefits, or emergency enterties. This seems evident since there does not appear to be a desire on the part of UTC to deny water for fire suppression to local fire fighters, individuals, or state agencies; nor is there an interest in denying the sale of water for Water Trust Programs or environmental mitigation/enhancement.

We appreciate the opportunity to provide these comments to the Utilities and Transportation Commission. Should you have any questions or comments, please contact Paul Tredway, General Manager at either 425 888-3650 or via cell phone at 425 531-1383.

Sincerely,
Sallal Water Association Board of Trustees