

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT
COMPANY,

Respondent.

DOCKET UW-121408

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

ANSWER

i. Respondent Sandy Point Improvement Company's ("Sandy Point") address is 4460 Decatur Drive, Ferndale, WA 98248. Sandy Point is represented by Joseph A. Rehberger of Cascadia Law Group PLLC, located at 606 Columbia Street NW, Suite 212, Olympia, Washington 98501.

ii. Respondent Sandy Point, by and through its undersigned counsel, and in answer to Complainant Washington Utilities and Transportation Commission's ("Commission") Order Initiating Special Proceeding Under RCW 80.04.015; Complaint Against Rates and Charges; and Complaint for Penalties ("Order 01"), hereby admits, denies, and alleges as follows:

I. SPECIAL PROCEEDING

1. Paragraph 1 contains a description of the Commission's special proceeding to which no response is necessary. The Commission's claims are set forth in its Order 01, which speaks for itself. To the extent this paragraph contains any averments of material fact to which a response is necessary, they are hereby denied.

2. Sandy Point is without sufficient knowledge or information to admit or deny allegations as to the Commission's beliefs, and therefore denies the same. To the extent the remainder of this paragraph could be construed to contain any averments of material fact to which a response is necessary, they are hereby denied.

3. Paragraph 3 contains legal assertions or conclusions to which no response is necessary. Notwithstanding the foregoing, Sandy Point denies its activities are subject to the provisions of Title 80 RCW. Sandy Point further states that Title 80 RCW and the Commission's rules speak for themselves. To the extent this paragraph contains any additional averments of material fact to which a response is necessary, they are hereby denied.

4. Sandy Point is without sufficient knowledge or information to admit or deny allegations as to the findings of the Staff's informal investigation, and therefore denies the same. Paragraph 4 contains introductory language regarding the Commission's alleged findings as stated in Order 01 to which no response is necessary. The Commission's claims are set forth in its Order 01, which speaks for itself. To the extent this paragraph contains any averments of material fact to which a response is necessary, they are hereby denied.

5. (1) Sandy Point admits that it owns, controls, and manages a water system in the state of Washington, near Ferndale, Washington. Except as expressly admitted, Sandy Point denies the allegations in Paragraph 5.

6. (2) Sandy Point admits it is a Washington corporation organized under Title 23B RCW. Sandy Point denies all remaining averments of material fact contained in or otherwise implicit in this paragraph.

7. (3) Sandy Point admits the allegations contained in paragraph 7.

8. (4) Paragraph 8 contains legal assertions or conclusions to which no response is necessary. Sandy Point further states that the statute and regulation cited each speak for themselves.

9. (5) Paragraph 9 contains legal assertions or conclusions to which no response is necessary. Sandy Point assumes the Commission intends to refer to WAC 480-110-255(2)(f), and states that the regulation speaks for itself.

10. (6) Sandy Point admits the allegations contained in this paragraph.

11. (7) Sandy Point admits that it has Articles of Incorporation and asserts that those Articles speak for themselves, and thus no response is necessary.

12. (8) Paragraph 12 contains legal assertions or conclusions to which no response is necessary. Notwithstanding the foregoing, if Sandy Point is determined to be an investor-owned water company, Sandy Point affirmatively states that it is entitled to the exemption identified in WAC 480-110-255(2)(f) that exempts from regulation “[h]omeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than five hundred fifty-seven dollars average annual revenue per nonmember.” To the extent this paragraph contains any additional allegations of material fact to which a response is necessary, they are hereby denied.

13. (9) Paragraph 13 contains legal assertions or conclusions to which no response is necessary. Notwithstanding the foregoing, Sandy Point denies it is subject to

Commission jurisdiction. To the extent this paragraph contains any additional allegations of material fact to which a response is necessary, they are hereby denied.

14. (10) Paragraph 14 contains legal assertions or conclusions to which no response is necessary. Notwithstanding the foregoing, Sandy Point denies it is subject to Commission jurisdiction. To the extent this paragraph contains any additional allegations of material fact to which a response is necessary, they are hereby denied.

II. COMPLAINT AGAINST SANDY POINT'S RATES AND CHARGES

15. Paragraph 15 contains a description of the Commission's complaint proceeding to which no response is necessary. The Commission's claims are set forth in its Order 01, which speaks for itself.

16. Paragraph 16 is so vague and ambiguous that Sandy Point cannot reasonably be required to frame a responsive pleading. Notwithstanding the foregoing, Sandy Point denies its rates and charges are unfair, unjust and unreasonable, or unreasonably discriminatory or unduly preferential, or are in any other way in violation of law. To the extent this paragraph contains any additional allegations of material fact to which a response is necessary, they are hereby denied.

17. Paragraph 17 contains no legal or factual allegations to which a response is necessary. To the extent this paragraph contains any allegations of material fact to which a response is necessary, they are hereby denied.

18. Paragraph 18 contains no legal or factual allegations to which a response is necessary. Sandy Point neither admits nor denies this paragraph. To the extent this paragraph contains any allegations of material fact to which a response is necessary, they are hereby denied.

III. COMPLAINT AGAINST SANDY POINT FOR PENALTIES

19. Paragraph 19 contains a description of the Commission's complaint proceeding to which no response is necessary. The Commission's claims are set forth in its Order 01, which speaks for itself.

20. Sandy Point affirmatively states that it is not subject to Commission jurisdiction, and therefore Sandy Point denies the allegations contained in this paragraph.

21. Sandy Point admits it has not filed a tariff with the Commission. Sandy Point denies all remaining averments of material fact contained in or otherwise implicit in this paragraph.

22. Sandy Point denies the allegations in the first sentence of this paragraph. Answering the second sentence, Sandy Point states that the statute cited speaks for itself. To the extent the remainder of this paragraph contains any averments of material fact to which a response is necessary, they are hereby denied.

23. Paragraph 23 contains no legal or factual allegations to which a response is necessary. To the extent this paragraph contains any allegations of material fact to which a response is necessary, they are hereby denied.

24. Paragraph 24 contains a description of the Commission's complaint proceeding to which no response is necessary. The Commission's claims are set forth in its Order 01, which speaks for itself.

25. (1) Paragraph 25 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

26. (2) Paragraph 26 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

27. (3) Paragraph 27 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

28. (4) Paragraph 28 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

29. (5) Paragraph 29 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

30. (6) Paragraph 30 contains no legal or factual allegations. Sandy Point neither admits nor denies this paragraph.

IV. PROBABLE CAUSE

Section IV contains a legal assertion or conclusion to which no response is necessary. To the extent this paragraph contains any allegations of material fact to which a response is necessary, they are hereby denied.

All averments of material fact and allegations contained in Order 01 not expressly admitted herein are hereby denied. Sandy Point denies that the Commission is entitled to the relief requested, or any relief whatsoever.

AFFIRMATIVE DEFENSES

Having fully answered the Commission's Order 01, Sandy Point further responds by alleging the following affirmative and other defenses:

1. The Commission lacks jurisdiction over the matters alleged in Order 01 because Sandy Point is not subject to Commission jurisdiction or regulation.

2. Sandy Point has at all times acted in good faith in the operation of its water system and with regard to its belief that it was not subject to obligations under the rules and regulations of the Commission.

3. The Commission's claims, in whole or in part, fail to state a claim upon which relief can be granted.

4. The Commission's claims, in whole or in part, are barred by the equitable doctrines of laches, waiver, and estoppel.

5. The Commission's Complaint Against Sandy Point's Rates and Charges and Complaint Against Sandy Point for Penalties, as set forth in Sections II and III of Order 01, are barred as premature and not ripe for adjudication.

6. The Commission's Complaint Against Sandy Point's Rates and Charges and Complaint Against Sandy Point for Penalties, as set forth in Sections II and III of Order 01, may be barred, in whole or in part, by the applicable statute of limitations.

7. As to the Commission's Complaint Against Sandy Point's Rates and Charges and Complaint Against Sandy Point for Penalties, as set forth in Sections II and III of Order 01, Sandy Point asserts and alleges that (1) the jurisdictional issues presented are ones of first impression; (2) Sandy Point could not have reasonably known its conduct constituted a violation, if established as such; (3) the alleged offending conduct was unknowing and unintentional; (4) the alleged offending conduct was not gross or malicious; (5) the violation is isolated and not repetitive, (6) the Commission has not previously found violations by Sandy Point; (7) Sandy Point has reasonably addressed the alleged offending conduct in good faith; and (8) Sandy Point has taken reasonable remedial steps.

The Commission's Order 01 fails to set forth sufficient facts to allow Sandy Point to determine all potential affirmative defenses. Accordingly, Sandy Point reserves the right to assert additional defenses when such information is ascertained through discovery or further investigation. By stating and asserting the above affirmative and other defenses, Sandy Point does not concede that Sandy Point bears the burden of proof as to the defenses raised.

PRAYER

Wherefore, having fully answered the Commission's Order 01, and having plead the above affirmative and other defenses, Sandy Point prays and requests that Order 01 be dismissed and for such other and further relief as the Commission deems just and proper.

DATED this 7th day of December 2012.

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