



Ames Lake Water Association

Date: September 13, 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 Commission:

The Ames Lake Water Association (ALWA) provides both water service to over 1,000 connections and fire protection in an approximate 10 square mile Washington Department of Health designated Service Area in eastern King County. ALWA was formed in 1969 as a federally funded cooperative (Farmers Home Administration now Rural Development Administration) and has always served only our membership (although some extremely small amounts of ancillary water sales occur to provide for fire fighting and construction water). All ALWA Members have a vote in the election of our Board of Directors, and all have equal rights/interests as members in any residual value upon dissolution of the water utility. We are aware of several other water associations in Eastern King County that are organized and operate in a similar manner.

The Ames Lake 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 their face, they run counter to case law.

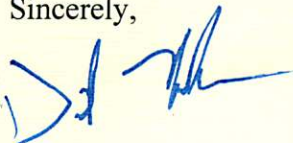
Alternatively, if the UTC proceeds with the proposed rule making and revisions to the WAC, the WAC exemptions should be MODIFIED NOT ELIMINATED to provide very clear and concise rules that, if met, provide non-profit water utilities with exemption from Commission regulation. Based on the test provided in Inland Empire and Nob Hill cases, the rule if amended at all, should 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.

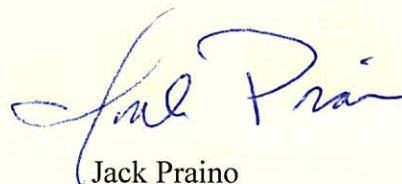
Further detail addressing these key items could be developed by the Commission in the form of policy guidance document. However, we would suggest that the UTC work very closely with water utilities to help ensure that unintended consequences are not introduced with the development of the policy guidance. 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 "Customers whose use is ancillary, intermittent, or of 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 interties. 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 state 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 Robert Pancoast at either 425.222.7003 or via cell at 206.819.4215.

Sincerely,



David Hoffmann
President, ALWA



Jack Praino
Vice President, ALWA