

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending	)	DOCKET UW-120246
	)	
WAC 480-110-205 and WAC 480-110-255	)	GENERAL ORDER R-566
	)	
Relating to Water Companies	)	ORDER AMENDING AND
	)	ADOPTING RULES PERMANENTLY
	)	
.....	)	

1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 12-11-131, filed with the Code Reviser on May 23, 2012. The Commission has authority to take this action pursuant to RCW 80.01.040, RCW 80.04.160, and RCW 80.04.010(30)(b).

2     **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3     **DATE OF ADOPTION:** The Commission amends and adopts WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction on the date this Order is entered.

4     **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission’s responses to the comments reflecting the Commission’s consideration of them.

OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED
<b>DATE: August 09, 2012</b> <b>TIME: 9:42 AM</b>
<b>WSR 12-17-047</b>

5 The Commission amends WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction increasing the maximum average annual revenue per customer used to determine Commission jurisdiction over water companies from \$471 to \$557. The requested rulemaking is beneficial to, or requested or supported by, the small businesses that it affects. The proposed rules would benefit small water companies (less than 100 customers in the aggregate). Such companies should not be subject to Commission jurisdiction unless their size or average annual revenues justify regulation. The revenue figure in the existing rule no longer reflects an appropriate jurisdictional threshold, and revising that amount would be beneficial to the small water companies that the Commission currently does not regulate. There are no differences between the text of the proposed rules as published in the register and the text of the rules as adopted. The Commission designates the discussion in this Order, including Appendix A, as its concise explanatory statement.

6 **REFERENCE TO AFFECTED RULES:** This Order amends the following sections of the Washington Administrative Code:

Amend	WAC 480-110-205	Application of rules
Amend	WAC 480-110-255	Jurisdiction

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

**THEREUNDER:** In accordance with RCW 34.05.330(1)(b),<sup>1</sup> the Commission did not file a Preproposal Statement of Inquiry.

8 On November 11, 2011, MacKaye Harbor Water Company, Inc. (MacKaye), filed with the Commission a petition, pursuant to RCW 34.05.330, requesting the Commission initiate a rulemaking to amend WAC 480-110-205, Application of rules and WAC 480-110-255, Jurisdiction, to increase the maximum average annual revenue per customer used to determine Commission jurisdiction over water companies.

9 On April 26, 2012, MacKaye filed a revised petition requesting to increase from \$471 to \$557 the maximum average annual revenue per customer a water company can generate before becoming subject to the Commission jurisdiction.

---

<sup>1</sup> RCW 34.05.330(1)(b) states the agency may “initiate rule-making proceedings in accordance with RCW 34.05.320.”

- 10 The Commission currently regulates investor-owned water companies that serve 100 or more customers, or have average annual revenue of more than \$471 dollars per customer. The Commission entered Order 01 on May 17, 2012, granting the amended petition and directing the filing of a notice of proposed rulemaking (CR-102) in accordance with RCW 34.05.330(1)(b).
- 11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a CR-102 on May 23, 2012, at WSR # 12-11-131. The CR-102 advised interested persons that the Commission was proposing rules related to Commission jurisdiction over water companies. The Commission also informed persons of this proposal by providing notice of the subject and the CR-102 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated water companies. In addition, the Commission issued a press release on May 25, 2012, informing the general public of the pending rulemaking and seeking public comment. The Commission posted the relevant rulemaking information on its Internet website at <http://www.utc.wa.gov/120246>.
- 12 The Commission scheduled this matter for oral comment and adoption under Notice WSR # 12-11-131 at 1:30 p.m., Friday, July 27, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 13 **WRITTEN COMMENTS:** The Commission received one comment in support of the rulemaking from Mr. Richard Finnigan. Mr. Finnigan stated that he works with several unregulated water systems with fewer than 100 customers, they are all having financial difficulties, and he believes raising the threshold to \$557 will be helpful to those companies.
- 14 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Friday, July 27, 2012, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The Commission heard oral comments from three interested persons, none of whom addressed the proposed rule itself. Two commenters suggested that the Commission should on its own motion, annually update the maximum average annual revenue per customer that a water company can generate before becoming subject to Commission

jurisdiction, while the other commenter expressed concerns with water regulation in general. No other interested person made oral comments.

15 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend the rules as proposed in the CR-102 at WSR # 12-11-131.

16 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-110-205 and WAC 480-110-255 should be amended 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**

17 **THE COMMISSION ORDERS:**

18 WAC 480-110-205 and WAC 480-110-255 are amended 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).

19 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 RCW 80.01 and RCW 34.05 and WAC 1-21.

20 DATED at Olympia, Washington, August 9, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



JEFFREY D. GOLTZ, Chairman



PATRICK J. OSHIE, Commissioner



PHILIP B. JONES, Commissioner

*Note: The following is added at Code Reviser request for statistical purposes:*

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 2, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

**Appendix A**

**WAC 480-110-205 and WAC 480-110-255 Amended Rules**