

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

Board Members

Cedar River Water & Sewer District
Soos Creek Water & Sewer District
City of Duvall
K. C. Water District #119
City of Snoqualmie
City of North Bend
N. E. Sammamish Sewer & Water District
Fall City Water District
Snoqualmie Pass Utility District

Affiliate Members

Seattle Public Utilities

Associate Members

Sallal Water Association
Ames Lake Water Association
Union Hill Water Association

East King County Regional
Water Association
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Dear Commission:

We are providing these comments on behalf of the East King County Regional Water Association (EKCRWA). The EKCRWA was formed in 1967 as a coalition of special purpose districts and cities that provide water service in the central and eastern portions of King County. The first major project of the newly formed EKCRWA was the production of the 1989 East King County Coordinated Water System Plan (CWSP) in accordance with the Public Water System Coordination Act of 1977 (RCW 70.116) providing coordination among the 57 water utilities within the East King County Critical Water Supply Service Area.

Today the EKCRWA represents a wide variety of water utilities including water associations, water districts and municipal (city) water utilities. In particular, several water associations (cooperatives) in eastern King County have relatively large Service Areas and serve a mixture of residential, business, and industrial demands including service within city limits. These water associations also provide water for fire suppression to a very large portion of east King County. Basically, these water associations function in a very similar manner as a water district with elected Boards. Over the past decade, the Washington Legislature has recognized in at least three separate pieces of major legislation that associations, cooperatives and mutuals perform in a manner similar to water districts and public utility districts (PUDs) and should be afforded similar responsibilities and benefits.

The East King County Regional Water Association strongly believes that the existing RCWs and WACs are more than sufficient to address issues on a case-by-case basis 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.

The currently proposed changes to the WAC will cause confusion if adopted because, on their face, they run counter to case law. If the Commission believes rulemaking is truly necessary and proceeds, we would like to offer the following comments on the Discussion Draft Rules, August 21, 2013:

1. 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 include the following elements for provision of water service by associations, cooperatives and mutuals:

- a) All members have a voice in the management of the entity; and
- b) All members have an interest in any dividends or surplus from the entity and/or any residual value upon dissolution of the entity.

If rulemaking is required, the basic elements required for exemption from regulation should be clearly provided by rule (in the WAC) with policy only used to provide further detail and examples.

2. We would like to express some concern over the concept of associations, cooperatives and mutuals “only serving their members”. This concept only works if the intent is water service on a regular ongoing basis. The original genesis of this concept may have been in regards to only domestic water service but many water utilities today are called upon to provide limited or intermittent water sales for construction, hydroseeding, fire suppression, environmental mitigation/enhancement and public safety. The Washington Legislature, state agencies and local governments all see significant value in water for fire suppression. In addition, water utilities may be called upon to provide water for environmental purposes including mitigation and flow enhancement or for emergency situations through an intertie. These intermittent water sales should be disregarded as they are in the public interest and developed water supply policy. The Commission in the form of policy or guidance document could then develop further detail addressing these key items. An example of a policy item 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, environmental purposes, public safety, construction water, or emergency interties.

3. In general we have some concern about the annual gross revenue determination threshold of \$557/year/customer. This again appears to be an artifact of only domestic water service to a hypothetical “average residence”. However, rural customers on 5 to 10 acres with barns, horses and large gardens will have a much higher demand and cost of service than a smaller home on a more urban or lakeside recreational lot. Why the use of one value to determine a hypothetical annual revenue level? Why is the water utility serving larger more rural customers exceeding a jurisdictional threshold or under more scrutiny than a more urban water utility with lower customer demand and lower average annual revenue per customer costs?

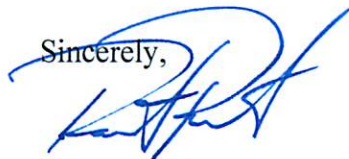
It should be noted that if the Commission potentially expands the range of water company's which it regulates the term "customer" as used in WAC 480-110-255(1)(b) should be provided with a more limited definition. For example as water systems expand they will often begin to provide service to commercial, industrial, and school or public facilities. Such facilities often have water use equivalent to hundreds or even thousands of homes. The inclusion of such facilities in the calculation of average annual gross revenue per customer may be a misrepresentation of the true median revenue per customer.

In addition, the value used of \$557/year/customer is only \$46.42/month. This is far from a large or excessive water utility charge in these modern times of cable and cellular phone bills of multiple hundreds of dollars. The cost of providing water service is significantly rising for a wide variety of very valid reasons. Many larger homes and developments have water demands that would easily exceed this level of cost. In addition, creating these average annual revenue thresholds may have a very detrimental effect on what is the most effective tool (inclined block rates for water service) for mandatory Water Use Efficiency Programs now required by the Washington Department of Health. If the Commission decides to proceed with rule making and/or development of policy guidance, this annual gross revenue jurisdictional threshold is one that should be evaluated for its detrimental effects on current water supply and water use efficiency policy.

4. And finally, we would urge significant caution on the part of the Commission in the internal development of any policy rather than the open process of rule making or guidance development. The intricate nature of policies concerning water supply, water resource, and human health and safety create a very ripe environment to create new guidance or policy that can have detrimental effects or unintended consequences on the provision of water supply and public safety. We would urge the Commission to develop any guidance or policy in a public manner perhaps soliciting advice/comment from water utilities and other state agencies throughout the process. It is important to not hinder the tremendous effort that has gone into coordinating water utility and local and state government efforts on water resource and water supply policy.

We appreciate the opportunity to provide these comments and are willing to work with the Commission as this process continues. Should you have any questions or comments please contact me at (206) 819-4215 cell.

Sincerely,



Robert Pancoast
EKCRWA Executive Director