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5 Plaintiff in Pro Per

6 BEFORE THE
7 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

8 WASHINGTON UTILITIES AND
9 TRANSPORTATION COMMISSION,
10 Complainant,
11 v.

DOCKET UW-143181
(Consolidated)

12 NEWAUKUM WATER SYSTEM, INC.,
13 Respondent.

14 NEWAUKUM WATER SYSTEM, INC,
15 Complainant,
16 v.

DOCKET UW-143330
(Consolidated)

17 WASHINGTON UTILITIES AND
18 TRANSPORTATION COMMISSION
19 Respondent

NEWAUKUM'S REBUTTAL TO
STAFF'S RESPONSE TO
NEWAUKUM'S MOTION FOR
SUMMARY DETERMINATION AND
STAFF'S MOTION FOR SUMMARY
DETERMINATION OF
COMMISSION'S JURISDICTION

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21 **NEWAUKUM'S REBUTTAL TO STAFF'S RESPONSE TO NEWAUKUM'S**
22 **MOTION FOR SUMMARY JUDGEMENT**

23 Newaukum Water System, inc. ("Newaukum" or "Company") is filing a rebuttal to the Staff's
24 (Staff) response to Newaukum's request for summary determination of Commission's ("Commission")
25 jurisdiction over Newaukum Water System, Inc.

26 The format of this rebuttal follows the Staff sequence of presentation and references the Staff's

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28 NEWAUKUM'S REBUTTAL TO STAFF'S RESPONSE TO NEWAUKUM'S MOTION FOR
SUMMARY DETERMINATION AND STAFF'S MOTION FOR SUMMARY DETERMINATION OF
COMMISSION'S JURISDICTION - 1

1 document paragraph numbers.

2 **Ref. Par (1)**

3 Staff has in the past and in the current document to the Commission have used the Washington rules of for
4 profit corporations against Newaukum, which is a not for profit corporation. The Staff has also deliberately defined
5 a nonprofit corporations as a for profit corporation, which is contrary to law and all written definitions of the two
6 types of corporations.

7 Newaukum Water System, Inc. (Newaukum) continues to move for the release from the Washington
8 Utilities and Transportation Commission (Commission) based on the correct facts of law.

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10 **Ref par (5)**

11 Newaukum's operations do not fall within the Commission's jurisdiction when the relevant statutes and
12 Commission rules are correctly applied for nonprofit corporations. Therefore, the Commission should summarily
13 reject the Staff's cross-motion for summary determination, and reject the scheduled proceedings for rate
14 determinations. The Company's rates are determined by a budget approved by the membership to cover the cost of
15 operations and debt.

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17 **Ref par (8)**

18 The Staff has continued to quote RCW Chapter 80.04.010, Definitions, to demonstrate that Newaukum is a
19 company subject to Commission regulation, when there is reasonable doubt that this chapter applies "carte blanche"
20 to nonprofit corporations. This is further supported by the definition of "corporation" within RCW 80.04.010 (9)
21 "Corporation" includes a corporation, company, association or joint stock association. This definition of a
22 corporation is congruent with the definition of a corporation for profit. The definition for a nonprofit corporation in
23 RCW24.03.005, Definitions (1) "Corporation" or "domestic corporation" means a corporation not for profit subject
24 to the provisions of this chapter, except a foreign corporation." The application of RCW Chapter 80.04.010 to
25 Newaukum is also questionable when WAC 480-110-255(1) states that the commission only regulates investor
26 owned water companies.

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Ref Par (9)

RCW Chapter 80.04.010(30)(b) routinely applies to for profit companies and therefore there is reasonable doubt that it applies to Newaukum as a nonprofit corporation. The reasonable doubt stems from the fact that the Commission has either never dealt with nonprofits or only on rare occasion as is the case now.

Ref Par (10)

It is not a logical conclusion that the definition of a “water company”, as defined in RCW Chapter 80.04.010, constitutes control of a nonprofit corporation. Therefore, Newaukum takes exception to the statement that by definition of a “water company” constitutes Newaukum being subject to regulation.

Ref Par (11) and Ref Par (12)

Even though Newaukum does not disagree with the long standing definition of the term “Investor-owned utility”, we disagree that this long standing definition includes a nonprofit corporation. By definition and rule of law, a nonprofit corporation has neither investors nor owners. A nonprofit corporation is a contract between an organization and the Secretary of State and cannot be construed to be included as “Investor-owned”. Since the Commission does not normally deal with nonprofits, the Staff is applying the rules of for profits to nonprofits. This section, WAC 480-110-255(1), therefore, releases Newaukum from the jurisdiction of the Commission.

Ref Par (14) and Ref Par (15)

The Lindebaks created the corporation, quitclaimed the water system to the corporation, then established the first bylaws for the corporation. There was dissatisfaction with the corporate leadership (spring 2014) which led to the drafting of a new (third) bylaws. This draft was approved by a vote of the membership. These bylaws maximize control of the corporation by the members through an elected board of directors.

1 The charges, from the Staff, that customers were forced into ownership are incorrect, because there is no
2 ownership of a nonprofit corporation and furthermore, the corporation was formed under the rules of RCW 24.03
3 and defined as quoted below by paragraph number of RCW 24.03.

4 (1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions
5 of this chapter, except a foreign corporation

6 (2) "Not for Profit Corporation" or "nonprofit corporation" means a corporation no part of the income
7 of which is distributable to its members, directors or officers.

8 (6) "Member" means an individual or entity having membership rights in a corporation in accordance
9 with the provisions of its articles or [of] incorporation or bylaws.

10 Since the water users are given the right to membership does not mean they are required to exercise their rights.

11 The original developer, Bill Noah, completed the water system as an incentive for sales based on water
12 being available to their lot. All current lots have been connected to the system since its inception and there is no
13 other alternative for obtaining potable water. The drilling of individual wells on lots would not be approved by King
14 County or Washington State Department of Health (DOH) based on the distance between wells and a violation of
15 the distance from septic systems. Therefore, all lot owners have always been a captive group without alternatives for
16 potable water and are committed to whatever management of the system is in place. The current management was
17 put in place by the desire of the community not by any outside forcing.

18 Newaukum is exempt, also, under WAC 480-110-255(2)(e), which exempts "home owners associations,
19 cooperatives and mutual corporations, or similar entities that provide service only to their owners or members". A
20 nonprofit corporation is also categorized as a mutual corporation, a home owners association is also a nonprofit
21 corporation, which Newaukum is similar to, so therefore, Newaukum is not under the jurisdiction of the
22 Commission.

23
24 **Ref Par (16)**

25 Contrary to the Staff's statement, there has been no transfer to or forced acceptance by any individual. The
26 only ownership transfer was the previous water system owners transfer (via quitclaim deed) of the water system to

1 the nonprofit corporation, Newaukum Water System, Inc. There has been no forced transfer of ownership to the
2 property owners. The property owners do not own either the corporation or the water system. They only manage the
3 corporation and its water system. As for the issue of the public interest, it is in the public interest of the Newaukum
4 community that the community should control the water system that it relies on.

5 Since there is no ownership involved with a nonprofit corporation and therefore no forcing of anything, the
6 point of protecting public interest does not apply. In fact the formation of the nonprofit corporation has just the
7 opposite effect, it allows the public to have more control if they desire. Therefore, Newaukum serves only members
8 and the company is exempt from jurisdiction under either WAC 480-110-255(2)(e) or WAC 480-110-255(2)(f).
9 Additionally, there are 19 letters from Newaukum members requesting that Newaukum be released from UTC
10 control. These letters were submitted as part of the request that established UW-143330.

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12 **Ref Par (17)**

13 Under RCW 80.12 the Commission claims to regulate transfers of property when the company is under the
14 control of the Commission. At the original time in 2011 that the nonprofit corporation was formed and the assets
15 were quitclaim deeded to the corporation, the Commission had no control over Newaukum. This accusation is also
16 in conflict with rights of a company to change management structure and the rules of RCW 24.03 for forming a
17 nonprofit corporation.

18 The language in paragraph 17 appears to be an effort to apply UTC jurisdiction over Newaukum after the
19 fact. When the ownership was transferred from the previous owner of the water system to the nonprofit corporation,
20 the water rates were \$35/household/month (i.e., \$420/year), which is below the jurisdictional threshold in WAC
21 480-110-255. The water rate was raised to \$55/month in January 2013.

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23 **Ref Par (18)**

24 Based on the Commission's charge that the previous owner transferred both debt and ownership to
25 Newaukum customers is incorrect. The facts are documented that the company was not under Commission control
26 until March of 2014, which was approximately 28 months after the forming of the corporation and transfer of assets

1 to the nonprofit corporation. [The Corporation was formed in Oct. 14, 2011; quitclaim was dated the 16th
2 day of November, 2011.] The company was debt free in mid 2013. The debts for property and litigation were
3 incurred in late 2013 and early 2014. The debt for advisory services related to Commission actions was incurred in
4 March of 2014. Both debts were incurred within the guidelines of the corporation bylaws at the time. Members
5 voted to allow the President to incur these debts.

6 Further, paragraph 18 misstates facts. The reference to “the Company’s transfer of ownership to its
7 customers through forced memberships” describes an event that never occurred. Ownership of the water system was
8 transferred from the previous owners (via quitclaim) to the nonprofit corporation (not to its members/customers) in
9 November of 2011. The role of the members is to manage the water system in the interest of the community.

10 Again, there was no forced transfer of ownership or debt to members of the corporation. The nonprofit is
11 not owned by anyone, but membership in the corporation has been determined by the fact that there is a long
12 standing system furnishing water to each member, now managed by the nonprofit corporation. WAC 480-110-
13 255(2)(e) and WAC 480-110-255(2)(f) exemptions to jurisdiction apply.

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15 **Ref Par (19)**

16 **CONCLUSION**

17 Newaukum has described, in the previous paragraphs, what the Staff has sought to maintain control of a
18 company that the Commission should not have control over. The Commission should reject the Staff’s response to
19 Newaukum’s motion for summary determination, and grant Newaukum release from Commission control.

20 Newaukum also requests that the Commission view our request with relation to WAC 480-07-110 (1)
21 “**Exceptions and modifications.** The commission may grant an exemption from or modify the application of its
22 rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable
23 statutes. The commission may modify the application of procedural rules in this chapter during a particular
24 adjudication consistent with other adjudicative decisions, without following the process identified in subsection (2)
25 of this section.”

1 The company, without the control of the Commission, will be able to accomplish its goals and DOH
2 requirements and recommendations, but our system viability is in question under the requirements and analysis from
3 the Commission.

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5 Dated this 10th day of December, 2014.

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7 Original signed by
8 Maurice Kurtz
9 Chairman of the Board
10 Newaukum Water System, Inc.