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Via Electronic Filing

September 23, 2013

Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket UW-131386

Dear Mr. King:

This law firm represents a number of homeowners' associations in and around Whatcom, Skagit and Island Counties. Of the numerous homeowners' associations this office represents, two of them maintain their own water system and have members ranging from 300 to 800 properties. I am writing on behalf of these associations to provide comments for the Washington Utilities and Transportation Commission ("UTC") staff's rule making inquiry under Docket UW-131386. The two associations I write on behalf of have been operating as independent and self-governed water systems serving water to their own members for over 45 years.

It is my understanding that the UTC staff has asked the UTC to consider repealing WAC 480-110-255(2)(e) and (f). UTC should not repeal these provisions for the reasons I outline in this letter.

1. Removing the Exemption Infringes on Private Contract Rights.

Currently homeowners' associations have a declaration of covenants, conditions and restrictions filed in conjunction with the formation of the plat ("covenants"). These covenants are binding against each and every lot within the plat. Each and every owner that purchases real property within the plat purchases it subject to the covenants and agrees to the terms thereof. These covenants also provide the establishment of a homeowner association. The association is made up of each and every owner of property within the plat.

Typically the homeowners association also has articles of incorporation and bylaws of the association. These documents, along with the covenants, make up the governing documents of the association which every member is bound by.

The governing documents will outline the powers of the association and, specific to this matter, the authority of the association in providing and delivering potable water to its membership. The governing documents also set forth what is expected of members in terms of payment for services and consequences of nonpayment. When an individual purchases property within a plat governed by a homeowners association, that individual agrees to the provisions within the governing documents and voluntarily agrees to be bound by all terms and conditions therein.

Procedures are already in place that the members have been agreed to by virtue of purchasing property within the association. These are private contracts between the association and its members. The members are bound by these governing documents (private contracts). Removing the exemption of a homeowner's association would impose rules of the UTC upon the association which will interfere and potentially conflict with the governing documents of the association; private contract rights already agreed to by the parties.

2. Homeowners' Associations Are Already Protected.

The Washington State Homeowners' Association Act at RCW Chapter 64.38 sets forth the powers and authority of a homeowners' association. The homeowners association acts through its board of directors. *See*, RCW 64.38.025(1). The homeowners association, through its board of directors, has the power to impose and collect assessments from its members. *See*, RCW 64.38.020(2). Removal of the exemption at WAC 480-110-255(2)(e) and (f), will take away the authority granted by the Homeowners' Association Act.

The Homeowners' Association Act has a method for approving a budget for the costs of services, maintenance and repairs on an annual basis. *See*, RCW 64.38.025(3). The owners who receive these services have the right to review the budget, have input and the ability to reject or approve it through a voting process. The associations are self-governed entities providing each and every member a voice in the budgeting process. The customers who receive water within an association that provides such service are also members of the association and have a say in the affairs of the organization; specifically in management and policy determinations, as well as the cost of service provided by the association. Providing additional UTC oversight and rules will conflict with current state law.

3. Inconsistent Legal Administration

Homeowners' associations are bound by the provisions of RCW Chap. 64.38; the state Homeowners' Association Act. The intent of Homeowners' Association Act "...is to provide consistent laws regarding the formation and legal administration of

homeowners' associations". See, RCW 64.38.005. Removal of the exemption within WAC 480-110-255(2)(e) and (f), will defeat the intent of the Homeowners' Association Act; it will require those homeowners' associations that manage their own water systems to abide by a completely different set of rules than those that do not. This will result in the inconsistent legal administration and conflict with RCW Chap. 64.38.

Further, adding another layer of governmental oversight on a water system owned and operated by the association will only add confusion as to the methods of budgeting; will only increase the time to obtain a budget; and will add another level of unneeded oversight in approval of any increases. The association is already subject to the rules and regulations of the Department of Health and must work closely with that governmental entity. It is also subject to the Homeowners' Association Act and reserve study requirements which include water system maintenance and repairs. It bases its budget on an annual basis which is sent to the owners for review and ratification. The current state Homeowners' Association Act, rule and regulations imposed by the Department of Health, and the associations' governing documents provide consistent legal administration.

4. Removing the Exemption Will Only Cost Homeowners' Associations and Their Members More Money.

Currently homeowners' associations already struggle with the budgeting process and collecting dues from their members. Homeowners' associations are non-profit entities; the budget is drafted so members pay as little as possible in order to fully function and meet the needs of the association - taking into consideration the current budget requirements of RCW Chap. 64.38.

Requiring homeowners' associations to be regulated by the UTC will unnecessarily add another layer of governmental oversight which would result in associations expending additional funds to attend to the rules and regulations of the UTC in addition to the rules and regulations that it already must attend to. This comes at a time when homeowners' associations and their respective members are already on a limited and tight budget.

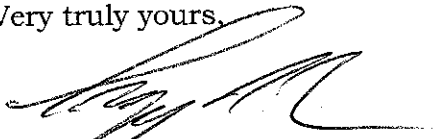
In order to attend to the UTC rules and regulations, it will be necessary for associations to hire a full-time individual or utilize the services of an attorney at great costs and expense. If the association does not, then it may unknowingly subject itself to potential violations resulting in significant monetary penalties if the homeowner's association misunderstands or misinterprets the rules.

If the exemption of WAC 480-110-255(2)(e) and (f) is removed, this increase in costs will be passed along to the members of the association, having a disparate impact on these homeowners. It is likely their rates will increase in order to cover the additional costs and fees that the association incurs to abide by the UTC rules and regulations.

In conclusion, removing the exclusion will result in confusion, additional costs and expenses, and potentially conflict with existing statutory rules and regulations as well as conflict with governing documents of the homeowners' associations. I urge the staff and UTC to refuse elimination of these exemptions.

Should you have questions regarding these comments, please do not hesitate to contact me.

Very truly yours,



Gregory E. Thulin

GET:jb

cc: clients