

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-143181
TRANSPORTATION)	(<i>Consolidated</i>)
COMMISSION,)	
)	ORDER 03
Complainant,)	
)	
v.)	
)	
NEWAUKUM WATER SYSTEM,)	
INC.,)	
)	
Respondent.)	
.....)	
)	Docket UW-143330
In the Matter of the Petition of)	(<i>Consolidated</i>)
)	
NEWAUKUM WATER SYSTEM,)	ORDER 02
INC.,)	
)	ORDER ON CROSS-MOTIONS FOR
Petitioner,)	SUMMARY DETERMINATION
)	
Seeking Removal from Commission)	
Jurisdiction)	
.....)	

BACKGROUND

- 1 On September 11, 2014, the Washington Utilities and Transportation Commission (Commission) entered Order 01 in Docket UW-143181, which sets forth the Commission’s Complaint against Newaukum Water System, Inc.’s (Newaukum or Company) rates and charges, alleging they may be excessive.

- 2 On September 15, 2014, Newaukum Water System, Inc. (Newaukum or Company) filed a petition in Docket UW-143330 requesting to be removed from Commission jurisdiction.

3 The Commission convened a prehearing conference in both proceedings on October 23, 2014, and adopted a procedural schedule that includes an evidentiary hearing set for May 5, 2015. The procedural schedule also suggested timelines for filing cross-motions for summary determination on the issue of jurisdiction.

4 On November 19, 2014, Newaukum filed a Motion for Summary Determination (Newaukum’s Motion), and on December 2, 2014, Commission Staff (Staff) filed a response to Newaukum’s Motion (Staff’s Response), a Motion for Summary Determination (Staff’s Motion), the parties’ Stipulation of Facts, and a Joint Request to Accept Stipulation of Facts. On December 10, 2014, Newaukum filed a rebuttal to Staff’s Response (Newaukum’s Rebuttal). We accept the parties’ Stipulation of Facts.

5 Newaukum argues in its Motion that the Company’s status as a nonprofit corporation means it is outside the definition of “investor-owned utilities” as the term is used in WAC 480-110-255(1).¹ The Company further argues that its status as a non-profit mutual corporation serving only its members exempts it from Commission regulation under WAC 480-110-255(2)(f).²

6 The Stipulation of Facts filed jointly by the parties includes the following information:

- Newaukum is a non-profit corporation that owns, controls, and manages a water system for hire in Washington state.

¹ WAC 480-110-255(1) provides that, “(1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter [70.116](#) RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than five hundred fifty-seven dollars per customer per year.”

² WAC 480-110-255(2)(f) exempts from regulation “homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than five hundred fifty-seven dollars average annual revenue per nonmember.”

- Newaukum has 22 customers, and an average annual revenue per connection greater than \$557.
- After the previous owners of the water system quitclaimed the system to Newaukum, the customers were informed that they were all members of the newly-created nonprofit corporation.
- Two customers rejected, and continue to reject, membership in Newaukum.
- Staff recognizes these two customers as non-members. Newaukum views these customers as non-voting members.

- 7 Staff’s Motion argues that Newaukum’s operations fall within the Commission’s jurisdiction and do not qualify for any exemption from the relevant statutes or Commission rules. Staff notes that RCW 80.04.010(30)(a) broadly defines the term “water company” to expressly include “every corporation,”³ which necessarily includes nonprofit corporations. Staff also asserts that the term “investor-owned utility” is a longstanding regulatory term used to distinguish publicly-owned from privately managed utilities. Newaukum is a privately managed nonprofit corporation that serves its customers, none of whom own the Company, and two of whom do not participate in its governance or internal operations.
- 8 Staff notes that Newaukum’s attempt to transfer membership to each of its customers without their consent or acceptance is unlawful. Because the Company may not forcibly transfer membership interest to its customers, the two customers who have not accepted membership are nonmembers. Finally, Staff argues that because Newaukum serves two nonmembers and collects revenues in excess of \$557 per customer, per year, the exemption from regulation available under WAC 480-110-255(2)(f) does not apply.
- 9 In its Rebuttal, Newaukum asserts that the application of RCW 80.04.010(9) is questionable because WAC 480-110-255(1) states that the Commission only regulates

³ RCW 80.04.010(30)(a) provides: “‘Water company’ includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state.”

“investor-owned utilities,” and nonprofit corporations have neither investors nor owners.⁴ Finally, Newaukum claims that its customers cannot be forced into ownership because nonprofit corporations have no owners. Voting rights were given to all customers, which two members choose not to exercise.

DISCUSSION AND DECISION

- 10 We grant Staff’s Motion for Summary Determination and deny Newaukum’s Motion. The Parties stipulate to the fact that Newaukum owns, operates, and manages a water system for hire in Washington. The Parties also stipulate to the fact that the Company meets the monetary threshold for Commission jurisdiction by charging an average annual revenue of greater than \$557 per connection. The only remaining issue, which we resolve here, is whether the Company qualifies for an exemption under WAC 480-110-255(2)(f),⁵ which excludes from regulation “homeowner associations, cooperatives and mutual corporations ... unless they ... charge nonmembers more than five hundred fifty-seven dollars average annual revenue per nonmember.” The application of this section turns on the question of whether Newaukum serves nonmembers.
- 11 According to the Stipulation of Facts, two of Newaukum’s customers have refused to accept Newaukum’s offer of membership in the Company. Neither customer has participated in the Company’s decision making process or its operational functions. We find Newaukum’s attempt to characterize these customers as merely “non-voting members” unpersuasive, and adopt Staff’s view that they are, in fact, nonmembers. The Company may not unilaterally transfer membership interest to its customers without their acceptance, which, as Staff notes, is a legally necessary condition of transfer.

⁴ RCW 80.04.010(9) defines “corporation” to include “a corporation, company, association or joint stock association.”

⁵ The exemptions available under WAC 480-110-255(2)(a) through (2)(d) apply to cities, towns, counties, public utility districts, water districts, and local improvement districts. The exemptions available under WAC 480-110-255(2) apply to entities or persons that provide water only to their tenants as part of the business of renting or leasing, such as apartment buildings, mobile home parks, manufactured home rental communities, office complexes, and commercial or industrial parks. None of these exemptions applies here, and Newaukum makes no claim that they do.

12 Newaukum also argues that it is exempt from regulation because, by virtue of its nonprofit status, it does not meet the definition of “investor-owned” utility. The term “investor-owned water companies,” as used in WAC 480-110-255(1), refers to any water company that is privately managed, distinguishing it from governmental agencies and cooperatives. Newaukum is plainly not a governmental agency, and the fact that it serves two nonmembers disqualifies it from obtaining status as a cooperative. The Company’s non-profit status alone, therefore, does not place it outside the definition of “investor-owned.” As long as Newaukum continues to serve nonmembers at rates in excess of \$557 per year, it is subject to Commission regulation.

FINDINGS AND CONCLUSIONS

- 13 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including water companies.
- 14 (2) Newaukum owns, operates, and manages a water system for hire in Washington.
- 15 (3) Newaukum collects revenues in excess of \$557 per customer, per year, which meets the monetary threshold for Commission jurisdiction.
- 16 (4) Because two of Newaukum’s customers have refused membership in the Company, Newaukum serves nonmembers.
- 17 (5) Newaukum is an investor-owned water company and is a public service company subject to Commission jurisdiction.
- 18 (6) Newaukum’s motion for summary determination should be denied, and Staff’s motion for summary determination should be granted.

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ORDER

19 **THE COMMISSION ORDERS That Newaukum Water Supply, Inc.’s motion for summary determination is DENIED, and Commission Staff’s motion for summary determination is GRANTED.**

Dated at Olympia, Washington, and effective January 13, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge