

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET UW-132281
Classification of, and Complaint)	
for Penalties against:	)	ORDER 01
)	
	)	ORDER INSTITUTING SPECIAL
NEWAUKUM WATER SYSTEM,	)	PROCEEDING; COMPLAINT
INC.	)	SEEKING TO IMPOSE
	)	PENALTIES; NOTICE OF
	)	MANDATORY APPEARANCE
	)	AT HEARING AND SUBPOENA
	)	(Set for March 10, 2014,
	)	at 9:30 a.m.)
.....)	

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 80.04.015 and RCW 80.04.110, institutes this special proceeding and Complaint on its own motion to determine whether Newaukum Water System, Inc. (NWS) is a water company subject to regulation by the Commission under RCW Title 80 and, if so, should be subject to monetary penalties.
- 2 The Commission has information from which it believes and therefore alleges that NWS is engaged in business as a water company, as defined in RCW 80.04.010 and WAC 480-110-255.
- 3 Pursuant to RCW 80.04.015, upon proof of these allegations, the Commission is authorized to issue an order declaring NWS to be subject to the provisions of RCW Title 80 and ordering such actions as may be necessary to require NWS to comply with RCW Title 80 and the Commission’s rules adopted under that title.
- 4 In addition, the Commission has information from which it believes and therefore alleges that NWS is providing Commission-regulated water service without having filed a tariff as required by RCW 80.28.050 and WAC 480-110-433.

5 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion
setting forth any act or omission by NWS that violates any law, or any order or rule of
the Commission. The Commission may impose financial penalties of up to \$1,000
for each violation proven. RCW 80.04.380. The Commission initiates this Complaint
to consider the alleged violations of law by NWS, as specified below, and whether
NWS should be penalized.

6 At the hearing in this special proceeding that will be conducted pursuant to Part IV of
the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here,
the Commission will also consider its Complaint against NWS.

7 The significant findings of Commission Staff's investigation, which remain to be
proven in this formal proceeding, are as follows:

8 (1) NWS owns, controls, and manages a water system for the purpose of
providing water service to the public for hire in King County, Washington.

9 (2) According to records maintained by the Washington Secretary of State, NWS
is a Washington Non-Profit Corporation organized under RCW 24.03,
effective October 14, 2011. Kenneth Lindebak is the registered agent and
president of NWS and Caroline Lindebak is the secretary of NWS.

10 (3) Water companies are exempt from the Commission's jurisdiction if they have
fewer than 100 customers and receive average annual per-customer revenue of
less than \$557. Thus, a company that is below the jurisdictional threshold
could come within the Commission's jurisdiction either by connecting its 100th
customer or upon receiving, over a period of one year, average per-customer
revenue of more than \$557.00. RCW 80.28.010(30)(b) and WAC 480-110-
255.

11 (4) NWS serves 22 customers in Auburn, Washington. However, based upon a
\$55 per month flat rate in effect October 2013, the average annual revenue per
customer served by NWS is \$660. Thus, NWS met the revenue threshold for
Commission jurisdiction, as defined by WAC 480-110-255, as of October
2013, if not before.

12 (5) WAC 480-110-255(2)(e) provides an exemption from Commission
jurisdiction for water companies that are "homeowners associations,

cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.” In addition, WAC 480-110-255(2)(f) exempts from Commission jurisdiction homeowner associations, cooperatives, and mutual corporations or similar entities that provide water service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than \$557 average annual revenue per nonmember.

- 13 (6) The Articles of Incorporation of NWS state that the initial Board of Directors consists of Kenneth Lindebak and Caroline Lindebak. The Articles of Incorporation also state that the number of directors on the Board of Directors of NWS may be increased or decreased in the manner specified in the Bylaws of NWS. According to the Bylaws of NWS, the corporation’s Board of Directors consists of the owners of the 27 lots served with water by NWS. However, the Bylaws were not approved by any lot owner other than Kenneth Lindebak and Caroline Lindebak. Thus, all owners of lots served by NWS are not members of NWS other than Kenneth Lindebak and Caroline Lindebak. Thus, NWS does not qualify for the exemption of either WAC 480-100-255(2)(e) or 2(f).
- 14 (7) In accordance with the Commission’s rules, NWS should have filed a tariff to become effective on the date on which its revenues met the threshold for jurisdiction. WAC 480-110-433(3).
- 15 (8) NWS has not filed a tariff with Commission.

ORDER, SUBPOENA AND NOTICE OF HEARING

- 16 The hearing in this matter will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), Chapter 34.05 RCW. The Commission has jurisdiction to institute a special proceeding to determine whether NWS is subject to regulation under RCW Title 80 and is performing any act requiring approval of the Commission without securing such approval, pursuant to RCW 80.01.040 and RCW 80.04.015. In addition to the foregoing statutes, this matter involves RCW Title 80, including but not limited to RCW 80.01.040, RCW 80.04.010, RCW 80.04.020, and RCW 80.28.050. This matter also involves the administrative rules set forth in WAC 480-110 and WAC 480-07.

17 **IT IS HEREBY ORDERED** That NWS appear before the Commission in this special proceeding conducted under the authority of RCW 80.04.015 at 9:30 a.m. on March 10, 2014, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington to give testimony and evidence under oath as to its operations. NWS shall appear at the time and place set forth above unless the Executive Director and Secretary of the Commission, by notice of hearing, specifies a different time and place. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 80.04.015. RCW 80.04.020.

18 **THE COMMISSION FURTHER ORDERS** that, pursuant to RCW 34.05.446 and RCW 80.04.015, NWS bring to the special proceeding for each water system owned, operated or controlled by NWS:

1. Records of all revenues (monthly or otherwise) received from each customer of NWS since January 2013, including but not limited to, invoices and/or billing notices for water service, including usage information; and
2. Any customer notices regarding water rates and services sent by NWS, or on its behalf, to customers since January 2013.
3. Records pertaining to the ownership and governance of NWS, including but not limited to, deeds or other evidence of transfer of ownership from or to NWS, articles of incorporation, corporate bylaws, lists of members of the Board of Directors, including each member's acceptance of their membership on the Board of Directors, notices and minutes of meetings of the Board of Directors, and all documents filed by NWS with the Washington Secretary of State.

19 **NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

20 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

21 The names and mailing addresses of all parties and their known representatives are shown as follows:

Respondent: Newaukum Water System, Inc.
38017 181st Ave. SE
Auburn, WA 98092

Representative: Kenneth Lindebak
38017 181st Ave. SE
Auburn, WA 98092

Commission: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

Representative: Robert D. Cedarbaum
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1188

COMPLAINT SEEKING PENALTIES

PARTIES

22 Complainant, the Washington Utilities and Transportation Commission, is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including water companies, under the provisions of RCW Title 80.

23 Respondent, Newaukum Water System, Inc. is a water company that owns, controls, and manages a water system for the purpose of providing water service to the public for hire in King County, Washington.

JURISDICTION

- 24 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.010, RCW 80.04.110, RCW 80.04.160, RCW 80.04.380, RCW 80.04.405, RCW 80.04.470, and RCW 80.28.

APPLICABLE LAW AND REGULATION

- 25 The Commission regulates the rates, service, facilities and practices of water companies under RCW 80.01, RCW 80.04 and RCW 80.28. A “water company” is defined by RCW 80.04.010(30)(a) to include “every corporation, company, association, joint stock association, partnership and person, . . . owning, controlling, operating, or managing any water system for hire within this state.”
- 26 Water companies are exempt from the Commission’s jurisdiction if they have fewer than 100 customers and receive average annual per-customer revenue of less than \$557. Thus, a company that is below the jurisdictional threshold could come within the Commission’s jurisdiction either by connecting its 100th customer or upon receiving, over a period of one year, average per-customer revenue of more than \$557.00. RCW 80.28.010(30)(b) and WAC 480-110-255(1)(b).
- 27 WAC 480-110-255(2)(e) exempts from Commission jurisdiction water companies that are “homeowners associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.” In addition, WAC 480-110-255(2)(f) exempts from Commission jurisdiction homeowner associations, cooperatives, and mutual corporations or similar entities that provide water service to non-members unless they serve one hundred or more nonmembers, or charge nonmembers more than \$557 average annual revenue per nonmember.
- 28 It is illegal to engage in business as a water company within the state of Washington without having on file with the Commission, and in effect, tariffs showing all rates and charges made, established or enforced, or to be charged or in forced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities, granted or allowed by such water company. RCW 80.28.050 and WAC 480-110-433.

29 Any person, corporation, or company that engages in business as a water company in the state of Washington without the required tariff is subject to a penalty of up to \$1000 per violation. Every violation of the tariff requirement is a separate violation, and in the case of a continuing violation every day's continuance is a separate and distinct offense. RCW 80.04.380 and RCW 80.04.405.

30 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

31 A water company is a public service company. RCW 80.04.010(23).

32 The Commission (Commission) is authorized to institute a special proceeding on its own motion to determine whether any person or corporation is conducting business subject to regulation by the Commission under RCW Title 80.

COMPLAINT

33 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 7 through 15 above.

34 NWS has violated RCW 80.28.050 and WAC 480-110-433 by failing to file with the Commission, and have in effect, tariffs showing all rates and charges made, established or enforced, or to be charged or in forced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities, granted or allowed by such water company.

REQUEST FOR RELIEF

35 Staff requests that the Commission, pursuant to its authority under RCW 80.04.380, assess penalties of \$100 per violation against Newaukum Water System, Inc. In total, Staff requests that the Commission assess penalties against NWS in the amount of \$4400, representing two monthly billing cycles for each of the 22 water customers served by NWS. Staff may request that some portion of any penalty actually imposed be suspended for a period of time sufficient to demonstrate NWS's intent to comply with all applicable laws and rules governing water companies subject to Commission jurisdiction.

PROBABLE CAUSE

36 Based on a review of the Investigation Report of the Commission Compliance Investigator assigned to this matter, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

NOTICE OF HEARING

37 **THE COMMISSION GIVES NOTICE THAT it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9:30 a.m. on March 10, 2014, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

38 Administrative Law Judge Dennis J. Moss, from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective January 21, 2014.

GREGORY J. KOPTA
Administrative Law Judge
Director, Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: Steven V. King, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual_____ Tactile_____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____