

SERVICE DATE

AUG 23 2000

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending WAC 480-110) DOCKET NO. UW-991634
 255(2)(g))
) GENERAL ORDER NO. R-473
)
)
 RELATING TO INVESTOR OWNED WATER) ORDER AMENDING AND
 COMPANIES) ADOPTING RULE PERMANENTLY
)

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR #00-11-043, filed with the Code Reviser on May 11, 2000. This rule was reserved from the adoption and amendment of the balance of the 480-110 WAC under Notice WSR #98-24-123. The Commission brings this proceeding pursuant to RCW 80.01.040.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopted this rule on August 21, 2000.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** This rule clarifies that the Commission does not regulate entities or persons that provide water to their tenants as part of the business of renting or leasing, but not to others. The rule thus clarifies the jurisdictional limits of Commission authority.

5 **REFERENCE TO AFFECTED RULES:** This rule amends Section 480-110-255(2) of the Washington Administrative Code by adding subpart (2)(g).

6 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on February 13, 1998, at WSR #98-05-056.

7 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The Preproposal Statement advised interested persons that the Commission was considering entering a rulemaking to review all provisions required for water regulation, especially (but not limited to) the

CODE REVISER'S OFFICE
 advised interested
 AUG 21 2000
 TIME 11:42 PM
 WSR 00-17-135

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provisions of chapter 480-110 WAC. The Commission also informed potentially interested persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by providing notice to all Commission regulated water utilities, public utility attorneys, state granges, legislators, and consumers who had previously shown interest in water matters.

- 8 The Commission held stakeholder meetings on April 16 and June 30, 1998. Subsequent stakeholder meetings were held on September 15 and October 6, 1998, and on April 21, 1999 to address discussion drafts of proposed rules.
- 9 A draft of the proposed rule came before the Commission originally on July 28, 1999, along with other revisions to chapter 480-110 WAC. At that open meeting the Commission adopted all revised rules submitted to them except this rule in its original form. The Commission directed Staff to file a subsequent Notice of Proposed Rulemaking (CR-102) to address the practice of landlords that bill their tenants for water usage, either directly or through a third party.
- 10 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a subsequent Notice of Proposed Rulemaking (CR-102) on May 11, 2000 at WSR #00-11-043. The Commission scheduled this matter for oral comment and adoption on Wednesday, August 9, 2000 in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive SW, Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 11 **MEETINGS OR WORKSHOPS; COMMENTS:** The Commission received written comments after the issuances of the original and subsequent CR-102 from the following interested persons: George Andre Fields Esq. for Conrad Hunt, Kum Ho, and others; Donald Nelson; Thomas Hougland; Philomena Coyle; Henry Vernon; Dale R. Wiltshire; and Marc Treitler on behalf of National Water & Power, Inc., the National Submetering and Utility Allocation Association, and Viterra Energy.
- 12 The Commission received six comments in 1999, prior to Notice of Proposed Rulemaking (CR-102) that was filed on May 11, 2000. The comments urged the Commission to regulate landlords and set the rates landlords could charge their tenants for water. On January 6, 2000, the Commission was advised by an informal opinion letter from the Attorney General's Office that the Commission does not have legal jurisdiction over landlords that bill their tenants for water, if such landlords do not also provide water to others. Thus, the proposal to regulate landlords and the rates they charge their tenants for water became moot since it

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was based on the incorrect premise that the Commission has the legal authority to regulate landlords that furnish water to their tenants.

- 13 In response to the May 11, 2000, Notice of Opportunity to Comment, Viterra Energy Services Incorporated (Viterra Energy) on its own behalf and on behalf of National Water & Power, Inc., and the National Submetering and Utility Allocation Association, offered its comment. The comment supported our adoption of the rule. The Commission received no other comments at this stage of the rulemaking proceeding.
- 14 No workshops or meetings were held because the Commission determined that the outcome of the rulemaking turned on a question of law. Under the circumstances, workshops or meetings would not have served any meaningful purpose.
- 15 **RULEMAKING HEARING:** The proposed rule was considered for adoption, pursuant to notice, at a rulemaking hearing scheduled to coincide with the Commission's regularly scheduled open public meeting on August 9, 2000. The matter was heard by Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from Danny Kermode of the Commission Staff. No interested person made oral comments.
- 16 **SUGGESTION FOR CHANGE THAT HAS NOT BEEN INCORPORATED INTO THE ADOPTED RULE:** Viterra Energy, in its written comments, suggested that the term "tenant," as used in the proposed rule, be changed to "occupant." Staff believes that the suggested change would materially alter the meaning and impact of the rule, Staff rejected the suggested change as expanding the proposed rule beyond the bounds outlined in the Attorney General's informal opinion.
- 17 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-110-255(2) should be amended to read as set forth in Appendix A (i.e., by adding subpart (2)(g)), and should be a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER


THE COMMISSION ORDERS:

- 18 1. WAC 480-110-255 is amended by adding subpart (2)(g). WAC 480-110-255 is revised to read as set forth in Appendix A, and shall become a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after filing with the Code Reviser pursuant to RCW 34.05.380(2).
- 19 2. This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.
- 20 3. The Commission adopts the Commission Staff's open meeting memoranda, presented when the Commission considered filing a Preproposal Statement of Inquiry, when it considered filing the formal notice of proposed rulemaking, and when it considered adoption of this proposal, in conjunction with the text of this order, as its Concise Explanatory Statement of the reasons for adoption and for rejection of proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington, this 21st day of August, 2000

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


MARILYN SHOWALTER, Chairwoman


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 1, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

AMENDATORY SECTION (Amending Order R-467, Docket No. UW-980082, filed 11/30/99, effective 12/31/99)

WAC 480-110-255 Jurisdiction. (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 receive average revenue of four hundred twenty-nine dollars per customer per year.

If a water company serves customers	and receives average annual revenue per customer	commission regulation
99 or less	less than \$429	No
99 or less	\$429 or more	Yes
100 or more	less than \$429	Yes
100 or more	\$429 or more	Yes

(2) The commission does not regulate the following providers of water service:

- (a) Cities, towns, or counties.
- (b) Public utility districts.
- (c) Water districts.
- (d) Local improvement districts.

(e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.

(f) 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 four hundred twenty-nine dollars average annual revenue per nonmember.

(g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.

This may include:

- (i) Apartment buildings.
- (ii) Mobile home parks.
- (iii) Manufactured home rental communities.
- (iv) Office complexes.
- (v) Commercial or industrial parks.

(3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have

paid:

- (a) Water-availability letter fees.
- (b) Standby charges.
- (c) System-readiness fees.
- (d) Ready-to-serve charges.

(4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers pay on a monthly basis, other than contributions in aid of construction. For example, this includes money paid for flat-rate service or the metered base-charge and all usage charges.

(a) The commission does not include charges paid by customers who do not receive water, such as:

- (i) Water availability letter fees.
- (ii) Standby charges.
- (iii) System-readiness fees.
- (iv) Ready-to-serve charges.

(b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:

- (i) Connection to system.
- (ii) Meter installation.
- (iii) System buy-in.
- (iv) Facilities charges.
- (v) Assessments for capital plant and equipment.

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

- (a) Select the most recent twelve consecutive months.

Example: February 1999 through January 2000.

(b) For each customer who received water service during the twelve-month period, add the amount the customer paid to the water company for items other than contribution in aid of construction items.

Example: Customer A paid \$340.
Customer B paid \$283.

(c) For each customer who received water service during the twelve-month period, add the number of months the customer received water service.

Example: Customer A received water service for twelve months.
Customer B received water service for nine months.

(d) Total the amount paid by customers during the twelve-month period.

Example:

	Paid to Water Company During the <u>Twelve-Month Period</u>
Customer A	\$340
Customer B	+ <u>\$283</u>
Total Paid During Twelve- Month Period	\$623

(e) Total the number of months each customer received water service.

Example:

	Number of Months Received Water Service During the <u>Twelve-Month Period</u>
Customer A	12
Customer B	+ <u>9</u>
Total Months Received Water Service During the Twelve-Month Period	21

(f) Calculate the "Average Monthly Revenue Per Customer": Divide the "Total Paid During the Twelve-Month Period" by the "Total Months Received Water Service During the Twelve-Month Period."

Example:

Total Paid During the Twelve-Month Period	\$623
Total Months Received Water Service During the Twelve-Month Period	÷ <u>21</u>
Average Monthly Revenue Per Customer	\$29.67

(g) Calculate the "Average Annual Revenue Per Customer": Multiply the "Average Monthly Revenue Per Customer" times 12 months.

(A) Average Monthly Revenue Per Customer	\$29.67
Months in a Year	x <u>12</u>
(B) Average Annual Revenue Per Customer	\$356.04

DATA USED IN THE EXAMPLE
TO CALCULATE
AVERAGE ANNUAL REVENUE PER CUSTOMER

**Example--
Customer A**

	<u>Standby Charge</u>	<u>Ready-to- Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>	
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes	
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No	
<u>Year</u>							<u>Total Paid</u>
1997					\$20	\$4	\$24
1997					\$20	\$5	\$25
1997					\$20	\$2	\$22
1997					\$25	\$5	\$30
1997					\$25	\$6	\$31
1997					\$25	\$12	\$37
1997					\$25	\$6	\$31
1997					\$25	\$4	\$29
1997					\$25	\$4	\$29
1997					\$25	\$3	\$28
1997					\$25	\$2	\$27
1998					\$25	\$2	\$27
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$285</u>	<u>\$55</u>	<u>\$340</u>

Number of months service	12	
Not Receiving Water		\$0
Receiving Water - Contribution in Aid of Construction		\$0
Receiving Water - Other than Contribution in Aid of Construction		<u>\$340</u>
Total customer paid during period		\$340

**DATA USED IN THE EXAMPLE
TO CALCULATE
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example--
Customer B**

	<u>Standby Charge</u>	<u>Ready-to- Serve Charge</u>	<u>Connection Charge</u>	<u>Facilities Charge</u>	<u>Meter Base Charge</u>	<u>Meter Usage Charge</u>
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes

Contribution in Aid of Construction		No	No	Yes	Yes	No	No	Total
Year	Month							Paid
1997	February	\$7						\$7
1997	March	\$7						\$7
1997	April		\$12					\$12
1997	May			\$300	\$4,500	\$25	\$5	\$4,830
1997	June					\$25	\$4	\$29
1997	July					\$25	\$3	\$28
1997	August					\$25	\$12	\$37
1997	September					\$25	\$10	\$35
1997	October					\$25	\$15	\$40
1997	November					\$25	\$5	\$30
1997	December					\$25	\$2	\$27
1998	January					\$25	\$2	\$27
-		<u>\$14</u>	<u>\$12</u>	<u>\$300</u>	<u>\$4,500</u>	<u>\$225</u>	<u>\$58</u>	<u>\$5,109</u>

Number of months service	9	
Not Receiving Water		\$26
Receiving Water - Contributions in Aid of Construction		\$4,800
Receiving Water - Other than Contribution in Aid of Construction		<u>\$283</u>
Total customer paid during period		\$5,109

(h) To ensure that all customers are treated equitably, the commission will impute the same rates to any customers receiving free or reduced service that apply to other customers receiving comparable service on the same system.