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January 11, 2013

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, Washington 98504-7250

RE: *WUTC v. Sand Point Improvement Company*
Docket UW-121408

Dear Mr. Danner:

Enclosed for filing in the above-referenced docket are the original and 12 copies of the Response by Commission Staff to Sandy Point's Motion to Bifurcate and for Stay, and Certificate of Service.

Sincerely,

DONALD T. TROTTER
Assistant Attorney General

DTT:klg
Enclosures
cc: Parties

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT
COMPANY,

Respondent.

DOCKET UW-121408

RESPONSE BY COMMISSION
STAFF TO SANDY POINT'S
MOTION TO BIFURCATE AND FOR
STAY

1 This Response is filed in behalf of the Staff of the Washington Utilities and Transportation Commission (Commission). On January 4, 2013, Sandy Point Improvement Company (Sandy Point) filed a Motion to Bifurcate and for Stay (Sandy Point Motion). In essence, Sandy Point requests the Commission to decide first whether the Commission has jurisdiction over Sandy Point, and if so, to then decide issues related to penalties and rates. The Commission would “stay consideration” of the rate and penalty issues until the Commission decides the jurisdictional issue. Sandy Point Motion at 2.

2 Although some statements Sandy Point makes to support its Motion are inaccurate or incomplete,¹ deciding the jurisdictional issue first will likely be an efficient way to process this case. Staff does not believe any person will be disadvantaged by this process. In

¹ For example, Sandy Point states that in 2006, the “Commission” “determined Sandy Point was not subject to Commission jurisdiction and regulation” and made “findings” to that effect. Sandy Point Motion at 3 & 4, ¶ 5. The facts will show the Commission has yet to determine that issue and has made no findings regarding its jurisdiction over Sandy Point. Notably, Sandy Point cites no Commission order to support its statement.

Sandy Point also suggests there is no dispute that Sandy Point’s average annual revenue per customer is no greater than \$557. Sandy Point Motion at 6, ¶ 10. While Staff’s investigation indicates that Sandy Point’s average annual revenue per customer is no greater than \$557, this case is now in litigation and Staff will need to firm up that figure. While Staff likely will not dispute the revenue figure, an evidentiary record on the issue will be necessary, because the Commission will need to decide that issue. In any event, it remains a possibility that there will be intervention, and an intervenor may contest the average annual revenue per customer issue.

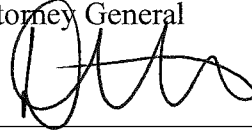
particular, deferring the rate issues will not prejudice customers, because if the Commission ultimately classifies Sandy Point as a water company and decides the company's rates are excessive, the Commission has discretion to order refunds at least as of the date of the complaint. With this understanding, Commission Staff supports the relief sought by the Sandy Point Motion.

3 Finally, Staff requests the administrative law judges entertain discussion of the Sandy Point Motion at the January 14, 2013, prehearing conference, after all parties have been identified. If there are intervenors, they should be given an opportunity to make their arguments to the Commission on the Sandy Point Motion. At the prehearing conference, Staff plans to recommend the Commission consider a process in the jurisdictional phase for an orderly opportunity for motions for summary determination.

Dated this 11th day of January 2013.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



DONALD T. TROTTER
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff