

Agenda Date: January 26, 2005
Item Number: C1

Docket: UW-040375

Subject: Rulemaking to consider for Investor Owned Water Companies whether it is appropriate to raise the jurisdictional threshold and if appropriate, by how much and to consider amending WAC 480-110-255 to clarify its regulatory intent

Staff: Danny Kermode, Team Lead
Karen Caillé, Administrative Law Judge
Jonathan Thompson, Assistant Attorney General

Recommendation:

Direct the Secretary to file a *Notice of Proposed Rulemaking* (CR-102) with the Office of the Code Reviser in Docket UW-040375 proposing changes to WAC 480-110-255, Jurisdiction, and WAC 480-110-205, Application of rules, which relate to Commission jurisdiction of water companies.

Background:

On February 6, 2004, MacKaye Harbor Water Company, Inc. (MacKaye Harbor), filed a petition to amend WAC 480-110-255 to increase the revenue threshold. At its March 31, 2004, Open Meeting, the Commission denied the petition because the method MacKaye Harbor used was different from that authorized by RCW 80.04.010. The Commission ordered the Executive Secretary to file a preproposal statement of inquiry (CR-101) with the Code Reviser to give notice that the Commission was beginning the process to consider the amendment of the jurisdictional threshold for water companies set forth in WAC 480-110-255.

The CR-101, filed April 7, 2004, states the purpose of this rulemaking is to:

- consider whether it is appropriate to raise the jurisdictional threshold and if appropriate, by how much should it be raised;
- consider amending WAC 480-110-255 to clarify its regulatory intent.

The Commission issued a *Notice of Opportunity to File Written Comments* on April 12, 2004, requesting comments from stakeholders. No comments were received.

In order to notify non-regulated water companies, Staff prepared an article describing the rulemaking that the Department of Health, Office of Drinking Water, published in its June newsletter. The article discussed the Commissions intent in this rulemaking and provided contact information.

On September 13, 2004, the Commission decided to delay oral comments on the draft rule

proposal until the Commission issued an order in Docket UW-040367, a special proceeding to determine whether Cougar Ridge Water System was subject to Commission regulation; the Commission entered an order on November 22, 2004.

Copies of all meeting notices mailed by the Commission, written comments and all materials upon which staff has relied in this rulemaking process are included in the rulemaking file, which is located in the Commission's record management section.

Stakeholder Comments

On July 20, 2004, the draft rule was mailed to all interested parties and posted on the Commission's internet web site. The Commission received three comments on the proposed rule. The comments with Staff's response are summarized below.

Gary Hall, a consulting engineer for several water purveyors, wrote "...the threshold for regulation [should be tied] to some percentage of the average of ... public water systems' annual revenue per customer...I suggest the threshold be regionalized, to account for the difference in climates. Making the threshold relative to the local public rates, seems reasonable..."

Staff Response: The methodology used to set the regulatory threshold is set by statute, RCW 80.04.010. The Commission does not have discretion to choose a different methodology.

Patrick C. Roe of Mackaye Harbor Water Company wrote "The figures I have on the implicit price deflator shows 98.432 for 1999 and 107.00 for 2004. This is an 8.7% increase which applied to the current limit of \$429 would result in a new limit of \$466 rather than the \$460 limit proposed."

Staff Response: Mr. Roe uses the 4th quarter 1999 index number as a base whereas Staff uses the 2nd quarter 1985 implicit price deflator as the base number. The amendment to RCW 80.04.010 that allows the Commission to adjust for the effects of inflation became effective July 1, 1985¹. Using the 2nd quarter 1985 implicit price deflator index number of 69.550 and the 108.482 final 3rd quarter 2004 index number (released December 22nd) results in a \$468 threshold. Staff believes the use of the 1985 2nd Quarter implicit price deflator index number as a base avoids miscalculations due to occasional restatements of historical implicit price deflator index numbers. Staff intends to recommend a threshold level that uses the latest final index number prior to adoption.

¹ Laws of Washington 1985, ch. 161, § 1

In response to Staff's proposal to change the rule wording from a "revenue received" basis to "revenue billed" basis, Richard Finnigan, Esq. commented "It is my opinion that such a change would place the Commission in violation of RCW 80.04.010. In RCW 80.04.010, the legislature used the word 'revenue' as the determinative factor in setting the jurisdictional threshold. Where a term is not otherwise defined, it is black letter law that the ordinary and common definition of the term shall apply."

Staff Response: Staff believes that when the word "revenue" is used in a regulatory setting, the common and ordinary meaning is that which applies under accrual-basis accounting. The proposed wording change from "received" to "billed" recognizes that the Commission regulates using the accrual basis of accounting. The Commission has never, to Staff's knowledge, set rates using the cash receipts method. The term "revenue," as consistently applied by the Commission, means amounts billed to customers, not the amounts paid by customers.

The proposed wording change simply makes the jurisdictional rule consistent with other Commission rules that use the word revenue. WAC 480-110-275 requires all water companies to use the Uniform System of Accounts published by the National Association of Regulatory Utility Commissioners (NARUC). The NARUC Uniform System of Accounts defines Water Revenue as "the net *billing* for water supplied for residential, commercial and industrial ...purposes...[emphasis added]."²

WAC 480-110-245 defines a rate increase filing as "any filing by the company that would increase gross annual *revenues* of the company from activities regulated by the Commission [emphasis added]." If the term revenue as used in this rule referred to amounts *paid* by customers, rate increases could depend solely on customers' payment patterns and not the actual obligations incurred by customers, which is obviously not the intent of the rule.

Small Business Economic Impact Statement

RCW 19.85.030 requires agencies to prepare a Small Business Economic Impact Statement "If the proposed rule will impose more than minor costs on businesses in an industry." The proposed rule imposes no costs, rather it would allow nonregulated water companies to increase rates without becoming subject to Commission jurisdiction. The nonregulated company may increase revenue up to the threshold amount without incurring the additional costs associated with regulation. Therefore, a Small Business Economic Impact Statement was not prepared for this rulemaking proposal.

² Uniform System of Accounts for Class C Water Utilities, 1996, National Association of Regulatory Utility Commissioners, page 56.

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Attachments:

WAC 480-110-255 Proposed Rule (legislative format)

WAC 480-110-205 Proposed Rule (legislative format)