

September 23, 2013

Initial Comments of Seven Lakes Water Association, Inc.

**Re: Docket UW-131386, Rulemaking Inquiry to Consider the Need to Evaluate an Clarify Jurisdiction of Water Companies, WAC 480-110-255, Jurisdiction, and related rules Docket UW-131386.**

Seven Lakes Water Association, Inc. (SLWA) is a not-for-profit corporation governed by and for its members that owns and operates a public water system. SLWA provides water service to more than 2,000 members in a service area totaling approximately 20 square miles in unincorporated western Snohomish County. SLWA is interested in and potentially affected by the rulemaking proposed by Utilities and Transportation Commission (UTC) staff to amend WAC 480-110-245 and -255 to regulate nonprofit water systems. SLWA requests that the UTC add SLWA as an interested party to this proceeding. SLWA respectfully offers the following initial comments for the Commission's consideration.

- ❖ SLWA has several questions and concerns about the proposed rulemaking and the draft rule text. Based on current information, SLWA supports the existing rule text and policy and expresses significant concern as to the draft rule.
- ❖ What is the "problem" to be solved or addressed by the rulemaking? The UTC's *Notice of Opportunity to File Written Comments* (Notice) states that the rulemaking is necessary to "avoid this problem" without specificity. The Notice references a recent proceeding that involved a question of interpretation of the UTC regulations regarding water companies. Although this proceeding is not identified in the Notice, we understand it to be the *Sandy Point* proceeding, which did not involve a Commission order or decision on the merits. The existing rule plainly states that the Commission only regulates "investor-owned" water companies, so the "problem" is not self-evident. The policy objective of the rulemaking is not clear.
- ❖ Staff's proposed rule language is confusing and unclear. The Notice and the background paper prepared by staff state that the objective is to repeal the categorical exclusion of homeowner associations and mutual and cooperative companies and to clarify in a "policy statement" which companies would continue to be exempt from Commission jurisdiction. The draft rule text, however, simply deletes section 255(e) and (f) and the provision that the Commission "only regulates investor-owned" water companies without proposing any replacement text. The proposed rule text does not authorize a staff policy paper. As written, the proposed rule text would subject all non-governmental water systems with more than 100 customers to Commission regulation. The plain meaning of the draft rule text and staff's statement of intent are inconsistent. As a result, SLWA is unable to determine how the proposed rulemaking would affect it.
- ❖ A staff "policy statement" is not appropriate in these circumstances. Staff proposes a vague rule that would be accompanied by a guidance document that, by definition, could be modified from

time to time by staff. If it decides to proceed with the rulemaking, the Commission should reject the “staff document” approach for several reasons. It will lead to more, not fewer, disputed cases. It would increase the power of staff to administer a vague standard and, in turn, it would prejudice non-profit water systems. A water company should be reasonably able to determine whether a certain action or corporate structure is within or without the UTC’s jurisdiction from the regulation itself (and Commission decisions).

- ❖ The draft rule does not account for various changes in water law and water purveyor organization and is flawed as a result. From the filings in the *Sandy Point* proceeding, Commission staff appears to believe that a water system’s compliance with RCW 43.20.260 regarding the “duty to serve” constitutes an offer to serve the public generally and defeats an association’s policy and practice to serve only its members. SLWA opposes any rule that bases Commission jurisdiction on a water system’s compliance with this statute and the accompanying rules promulgated by the Department of Health. RCW 43.20.260 was enacted in 2003 as part of the Municipal Water Law (MWL), a significant reform act. The draft rule’s definition of “to the public” compounds the problem by restating the general standard from case law without detailing any specifics, providing any factual findings, rationalizing the MWL’s provisions, or otherwise explaining the term’s meaning. The draft definition of “to the public” is, in effect, a non-definition that leaves it to staff to define Commission jurisdiction informally.
  
- ❖ Finally, the short time for review and comment coupled with the vagueness of the proposed rulemaking preclude thorough and complete comments at this time. In the event this rulemaking proceeds, SLWA urges the Commission to provide for a more deliberative and inclusive process that appropriately reflects the significant impact that the rulemaking could have for water systems across the state.

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