

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending)	DOCKET NO. UW-040375
)	
WAC 480-110-205, Application of)	GENERAL ORDER NO. R-519
rules, and WAC 480-110-255,)	
Jurisdiction)	
)	
Relating to jurisdictional revenue)	ORDER AMENDING RULES
threshold for investor-owned water)	PERMANENTLY
companies.)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice WSR # 05-04-063, filed with the Code Reviser on January 31, 2005. The Commission brings this proceeding pursuant to RCW 80.01.040, RCW 80.04.160, and RCW 80.04.010.

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 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission’s consideration of the comments.

- 5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.
- 6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing, and at the open meetings where the Commission considered whether to begin a rulemaking, and whether to propose adoption of specific language. Together, the documents provide a complete and concise explanation of the agency actions and its reasons for taking those actions.
- 7 **REFERENCE TO AFFECTED RULES:** This rulemaking amends the following sections of the Washington Administrative Code:

WAC 480-110-205 Application of rules.

Consistent with the amendments to WAC 480-110-255, amendments to this section increase the jurisdictional threshold related to revenue for water companies to \$471.

WAC 480-110-255 Jurisdiction.

Increases the maximum average annual revenue per customer jurisdictional threshold for water companies to reflect the latest final implicit price deflator of the U.S. Department of Commerce at the time of adoption. The amendment raises the revenue threshold from \$429 to \$471, pursuant to RCW 80.04.010.

Clarifies that the accounting methodology for computing the revenue threshold is based on *billed* revenues, rather than *paid* revenues.

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 7, 2004 at WSR # 04-08-132.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking to consider amendment of rules relating to the maximum average annual revenue per customer jurisdictional threshold for water companies in WAC 480-110-255. The Commission also informed 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 submitting an article describing the rulemaking that was published in the Department of Health, Office of Drinking Water June 2004 newsletter. The Commission posted the relevant rulemaking information on its internet web site at <http://www.wutc.wa.gov>.

10 **WRITTEN COMMENTS:** Pursuant to the notice, the Commission invited written comments. The Commission received written comments from Patrick C. Roe of MacKaye Harbor Water Company, Gary Hall of Hall Engineering Associates, and Richard Finnigan, attorney.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on January 31, 2005, at WSR #05-04-063. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 05-04-063 at 9:30 a.m., Wednesday, March 16, 2005, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

- 12 **COMMENTERS (WRITTEN COMMENTS):** The Commission received no written comments on the CR-102 proposal.
- 13 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on March 16, 2005, before Chairman Mark Sidran, Commissioner Patrick Oshie, and Commissioner Philip Jones. Danny Kermode of Commission Staff, Patrick Roe of MacKaye Harbor Water Company, and Drew Noble , an operator of water systems, presented oral comments at the rulemaking hearing.
- 14 **ORAL COMMENTS:** Mr. Patrick Roe of MacKaye Harbor Water Company voiced his support for the rule proposal. Mr. Drew Noble, a water system operator for fifteen years, commented in opposition to the proposed amendment of WAC 480-110-255 that would raise the jurisdictional threshold for water companies.
- 15 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED:** In this section the Commission responds to comments made on the proposed rules. In each response we indicate whether we made a change in the adopted rules based upon the comment, or whether we adhered to the language in the proposed rule.
- 16 Mr. Drew Noble expressed concern that the public interest would be better served if all water systems were regulated. He related his experience as an operator of systems that fall under the threshold. He mentioned that without Commission oversight, some smaller unregulated water companies do not provide needed maintenance and improvements to their water systems. He stressed that customers would be better served if the Commission regulated these water systems.

17 The Commission is bound by statute to regulate only those water systems that exceed the jurisdictional revenue threshold set forth in RCW 80.04.010, as adjusted for inflation. The Commission recognizes that there may be circumstances where it is not in the public interest to raise the revenue threshold. Such circumstances appear to have been contemplated by the legislature in RCW 80.04.010, when it gave the Commission the discretion to increase the revenue figure annually by rule. Based on the rulemaking record before us, we find an increase in the revenue threshold appropriate.

18 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend the rules as proposed in the CR-102 Notice at WSR # 05-04-063, with the changes described below.

19 **CHANGES FROM PROPOSAL:** After reviewing the entire record, the Commission adopts the CR-102 proposal with the following changes from the text notices at WSR # 05-04-063.

WAC 480-110-205 Application of rules.

20 The Commission stated in its Notice of Proposed Rulemaking (CR-102), that the proposed threshold amount of \$468 may change at the time of adoption based on the latest final implicit price deflator of the Department of Commerce. Accordingly, the threshold revenue amount is changed from four hundred sixty-eight dollars to four hundred seventy-one dollars to reflect the March 30, 2005, release of the fourth quarter 2004 final implicit price deflator index.

21 The word *receive* is deleted from the last sentence of this section to clarify that the accounting methodology is based on accrual basis revenues.

WAC 480-110-255 Jurisdiction.

- 22 The Commission stated in its Notice of Proposed Rulemaking (CR-102), that the proposed threshold amount of \$468 may change at the time of adoption based on the latest final implicit price deflator of the Department of Commerce. Accordingly, the threshold revenue amount is changed from four hundred sixty-eight dollars to four hundred seventy-one dollars to reflect the March 30, 2005, release of the fourth quarter 2004 final implicit price deflator index.
- 23 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction, should be amended to read as set forth in Appendix A, as rules 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:**

- 24 WAC 480-110-205, Application of rules, and WAC 480-110-255, Jurisdiction, are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

25 This Order and the rules 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.

DATED at Olympia, Washington, this 1st day of April, 2005

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, 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 2, repealed 0.

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