



# Investigation Report

## Sandy Point Improvement Company

UW-121408

Lynda Holloway  
Compliance Investigations

November 2012

## **PURPOSE, SCOPE, AND AUTHORITY**

### **Purpose**

The purpose of this investigation is to determine whether Sandy Point Improvement Company (Sandy Point) is conducting business subject to regulation under Revised Code of Washington (RCW) 80.28 and is performing any act requiring approval of the Washington Utilities and Transportation Commission without securing such approval.

### **Scope**

The scope of this investigation includes an analysis of information related to whether Sandy Point is providing water services to the public, and, if so, whether those services are subject to the commission's jurisdiction.

### **Staff**

Lynda Holloway, Compliance Investigator  
(360) 664-1129  
lholloway@utc.wa.gov

## BACKGROUND

### Company

Sandy Point was incorporated on April 22, 1965. Currently there are seven governing members, with Ron Jepson acting as President pro-tem. Sandy Point maintains an “active” status with the Washington Secretary of State and the Washington State Department of Revenue.<sup>1</sup>

Sandy Point is a for-profit corporation that operates a water system near Ferndale, Washington. In addition to its water operations, Sandy Point operates recreational facilities that include a club house, marina, swimming pool and golf course.

Sandy Point serves approximately 944 customers and has never been regulated by the commission. Sandy Point has 898 shares of stock outstanding, in two classes, with 898 shareholders.

### Investigation

In 2006, commission Regulatory Services staff received an inquiry from a consumer about Sandy Point. On March 31, 2006, Regulatory Services staff sent a letter to Sandy Point to obtain information about the company’s business practices, which included a water system questionnaire that is intended to assist staff in determining jurisdiction. Sandy Point did not respond, and a second request for the same information was sent on July 14, 2006.<sup>2</sup>

In response to the second request, Sandy Point forwarded Regulatory Services staff a fee schedule and information about the services offered by Sandy Point.<sup>3</sup> After reviewing the information, staff determined Sandy Point was operating as a homeowners association and did not fall under commission jurisdiction. At some point after the review, Sandy Point changed from a homeowners association to a for-profit company. Regulatory Services staff has been unable to determine the exact date the change took place.<sup>4</sup>

In January 2012, commission Consumer Protection staff received an inquiry from a consumer with questions about Sandy Point’s business practices. The consumer was concerned that Sandy Point was not regulated by the commission and allegedly used monies received from water customers to fund unrelated activities and services at Sandy Point.

Consumer Protection staff confirmed that Sandy Point did not have a tariff on file with the commission, and referred the matter to Regulatory Services staff. On January 23, 2012, Regulatory Services staff sent a letter and water system questionnaire to Sandy Point via email.<sup>5</sup>

On April 13, 2012, Sandy Point, through its legal representative, returned a completed water system questionnaire to Regulatory Services staff.<sup>6</sup> Regulatory Services staff has continued communications with Sandy Point and its legal representative to gain additional financial information about the water system and to determine the definitions of specific water system

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<sup>1</sup> See Attachment A, Washington Secretary of State and Department of Revenue records for Sandy Point.

<sup>2</sup> See Attachment B, March 31, 2006, and July 14, 2006, letters to Sandy Point to determine jurisdiction.

<sup>3</sup> See Attachment C, Sandy Point HOA information, policies and fee schedules.

<sup>4</sup> Upon further investigation, staff determined that Sandy Point has always been a for-profit corporation.

<sup>5</sup> See Attachment D, January 23, 2012, letter to Sandy Point to determine Jurisdiction.

<sup>6</sup> See Attachment E, Completed water system questionnaire.

shares. Regulatory Services staff has also been in communication with several Sandy Point customers who believe Sandy Point should be regulated by the commission. These customers believe excessive rates are being charged by Sandy Point for water usage. They also want to ensure funds paid by water customers are not being used for non-water related expenses.

## INVESTIGATION

### Background

Sandy Point serves 944 customers divided into three categories: 779 Class A shareholder water customers with average annual gross revenue of \$336.49 per customer, 119 Class C shareholder water customers with average annual gross revenue of \$376.53 per customer, and 46 non-shareholder water customers with average annual gross revenue of \$451.73 per customer.<sup>7</sup>

Class	Shares	Customers	Average Annual Gross Revenue per Customer
Class A Stock	779	779	\$336.49
Class C Stock	119	119	\$376.53
Non-Shareholder	NA	46	\$451.73
Total Company	898	944	

Each share represents one vote. Thus, each Class A and C shareholder has one share and one vote. Class A shareholders have the right to membership in the club house, golf course, marina and pool; Class C shareholders do not. Class A and C shares accompany the real property in the Sandy Point area that is owned by the shareholder. The Class A and C shares cannot be transferred except in the sale of real property to which they are attached.<sup>8</sup>

Sandy Point’s Articles of Incorporation state that, “the Class C shareholders may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant ...”<sup>9</sup>

For Class A shareholders, the Articles of Incorporation contain no such restrictions against dividends or distributions of assets upon liquidation.

### Analysis

The commission regulates water companies under RCW 80.28. Under the statutory definitions, in RCW 80.04.010(30)(a) “water company” includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by

<sup>7</sup> See Attachment F, Letter stating 250 Class B shares held by Ronald T. Jepson and Shelley D. Jepson were surrendered to Sandy Point on September 20, 2012, and permanently retired. The class B shares were not tied to water service.

<sup>8</sup> See Attachment G, Sandy Point Articles of Amendment to Articles of Incorporation (dated December 29, 2011).

<sup>9</sup> See Attachment H, Id., Article V, Section 3.

any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state. However, a company meeting this definition is not necessarily subject to UTC jurisdiction, because there are two exemptions potentially applicable.

The first exemption is the “statutory exemption”. The statutory exemption is found in RCW 80.04.010(30)(b), which excludes from the definition of “water company” any water system meeting both of the following conditions: 1) the company serves 99 or fewer customers; and 2) the company’s average annual gross revenue per customer is \$557 or less.

The second exemption is the “entity exemption”. The entity exemption applies to companies that meet the literal definition of “water company” in the statutes, but do not hold themselves out to the serve the public. This exemption may arise from RCW 80.04.010(23), which classifies each water company as a “public service company”.

The commission has codified the entity exemption in WAC 480-110-255(2)(e), which exempts from commission regulation “homeowners associations, cooperatives and mutual corporation, or similar entities that provide service only to their owners or members.”

Sandy Point meets the statutory definition of “water company” because it is a corporation operating or managing a water company for hire within the state.

### **Discussion**

For purposes of commission jurisdiction, “water company” does not include any water system serving less than 100 customers when the average gross revenue per customer does not exceed \$557.

1. Water service provided by Sandy Point to Class A shareholders/customers is likely exempt from commission regulation because the Class A shareholders/customers have a right to dividends and a claim to any assets upon dissolution. With respect to Class A, Sandy Point does not hold themselves out as a public service company for profit from that group of shareholders.
2. Water service provided by Sandy Point to Class C shareholders/customers is subject to commission regulation, absent any other qualifying exemption. Under the Articles of Incorporation, Class C shareholders/customers are not eligible for dividends or distribution of assets should Sandy Point dissolve. Because the Class C shareholders/customers consist of 119 customers, they are ineligible for any other exemptions under commission rules and laws.
3. Water service provided by Sandy Point to the non-shareholder customers is also subject to commission jurisdiction, absent any other qualifying exemption, due to Class C shareholders/customers exceeding the minimum customer threshold.

Current revenue and customer thresholds are set in WAC 480-110-255(1)(b). This rule sets forth the statutory minimums in RCW 80.04.010(30)(b).

“For purposes of commission jurisdiction, ‘water company’ does not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed five hundred fifty-seven dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit price deflator of the United States department of commerce. The measurement of customers or revenues must include all portions of water companies having common ownership or control, regardless of location or corporate designation.”

WAC 480-110-255(1)(b) provides that the commission regulate investor-owned water companies that:

Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than five hundred fifty-seven dollars per customer per year.

<b>If a water company serves customers</b>	<b>and has average annual revenue per customer</b>	<b>commission regulation</b>
99 or less	\$557 or less	No
99 or less	more than \$557	Yes
100 or more	\$557 or less	Yes
100 or more	more than \$557	Yes

RCW 80.28.020 provides in part that the commission shall determine just, reasonable or sufficient rates, charges, regulations, practices or contracts for water companies. RCW 80.28.050 provides in part that regulated water companies file tariffs with the commission showing all rates and charges.

Staff sought legal advice from the Attorney General’s Office to determine whether Sandy Point is a water utility subject to commission regulation. On September 6, 2012, Donald T. Trotter, Assistant Attorney General, Utilities and Transportation Division, sent a memorandum to commission regulatory staff. After research and analysis of the issues, Mr. Trotter concluded that Sandy Point is likely subject to commission jurisdiction.<sup>10</sup>

Mr. Trotter sent a supplemental memorandum to regulatory staff on September 20, 2012, after being informed that Sandy Point had redeemed 250 Class B shares. Mr. Trotter’s supplemental memorandum did not change his opinion that sufficient facts exist to support a recommendation that the commission initiate a classification proceeding for Sandy Point.<sup>11</sup>

<sup>10</sup> See Attachment I, September 6, 2012, Memo from Donald Trotter, Assistant Attorney General, Utilities and Transportation Division.

<sup>11</sup> See Attachment J, September 20, 2012, Memo from Donald Trotter, Assistant Attorney General, Utilities and Transportation Division.

**Conclusion**

Sandy Point is subject to commission jurisdiction as a water company to the extent it serves the 119 Class C shareholders/customers as a group, standing alone. Because this places Sandy Point above the 100 customer jurisdictional limit, the service to the 46 non-shareholder customer would also be subject to regulation.

Sandy Point is not subject to commission jurisdiction as a water company to the extent it serves the 779 Class A shareholders/customers as a group, standing alone.

**Recommendation**

Staff recommends the commission issue an order initiating a classification proceeding under RCW 80.04.015 to determine whether Sandy Point is conducting business subject to regulation under Title 80 RCW and WAC 480-110 and is performing any act requiring approval of the commission.

Staff further recommends penalties in the amount of \$16,500, calculated at \$100 per customer (119 Class C customers/shareholders and 46 non-shareholder customers) for a one month period, for failure to file a tariff with the commission as required by RCW 80.28 and WAC 480-110-433(3). Staff may recommend increasing the penalty depending on the date Sandy Point Class C customer/shareholders rose above the threshold of 99 customers and met the jurisdictional criteria under WAC 480-110-255.

## ATTACHMENT A

### Corporations and Charities Division Corporation Detail

All documents filed with the Corporations Division are considered public record.

#### SANDY POINT IMPROVEMENT CO.

UBI Number	600194252
Category	REG
Profit/Nonprofit	Profit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	04/22/1965
Expiration Date	04/30/2013
Inactive Date	
Duration	Perpetual
Registered Agent Information	
Agent Name	PHILIP E ROSELLINI
Address	1215 WEST HOLLY ST
City	BELLINGHAM
State	WA
ZIP	98227
Special Address Information	
Address	PO BOX 728
City	BELLINGHAM
State	WA
Zip	98227

#### Governing Persons

Title	Name	Address
Vice President	JEPSON , RON	4460 DECATUR DRIVE FERNDALE , WA
Director	CLUMPNER , ROY	4460 DECATUR DRIVE FERNDALE , WA
President,Chairman	KOLBO , L JAMES	4460 DECATUR DRIVE

		FERNDALE , WA
Director	KOMAC , JAEL	4460 DECATUR DRIVE FERNDALE , WA
Director	SWAN , LYNN	4460 DECATUR DRIVE FERNDALE , WA
Treasurer	KITCHING , GARY	4460 DECATUR DRIVE FERNDALE , WA
Secretary	DAWSON , MARLENE	4460 DECATUR DRIVE FERNDALE , WA

## Washington State Department of Revenue State Business Records Database Detail

TAX REGISTRATION NO: <b>600194252</b>	ACCOUNT OPENED: <b>04/01/1976</b>
UBI: <b>600194252</b>	ACCOUNT CLOSED: <b>OPEN</b>
ENTITY NAME: <b>SANDY POINT IMPROVEMENT COMPANY</b>	
BUSINESS NAME:	
MAILING ADDRESS:	BUSINESS LOCATION:
<b>4460 DECATUR DR</b>	<b>4460 DECATUR DR</b>
<b>FERNDALE, WA 98248-9501</b>	<b>FERNDALE, WA 98248-9501</b>
ENTITY TYPE: <b>CORPORATION</b>	RESELLER PERMIT NO: <b>A00 7140 13</b>
	PERMIT EFFECTIVE: <b>01/01/2010</b>
NAICS CODE: <b>221310</b>	PERMIT EXPIRES: <b>12/31/2013</b>
NAICS DEFINITION: <b>WATER SUPPLY AND IRRIGATION SYSTEMS (PT)</b>	

**FOR NON-COMMERCIAL USE ONLY**

**09/18/2012 4:40 PM**

**ATTACHMENT B**



STATE OF WASHINGTON

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

March 31, 2006

Ref: UT 4-1250

Sandy Point Improvement Co.  
P O Box 1418  
Ferndale, Washington 98248

Subject: Water System Questionnaire

Dear Water Purveyor:

The Washington Utilities and Transportation Commission (Commission) has received information that you serve water to a community in Whatcom County. To help us understand your current situation, please complete and return the enclosed questionnaire, which will enable us to determine your jurisdictional status.

If you have any questions, please contact me at (360) 664-1250 or [jward@wutc.wa.gov](mailto:jward@wutc.wa.gov) or please visit our website at [www.wutc.wa.gov](http://www.wutc.wa.gov) for additional information.

Sincerely,

Jim Ward  
Regulatory Analyst

Enclosure

*PLUS 133 CONV*



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

July 14, 2006

Ref: UT 4-1250

Sandy Point Improvement Co.  
4460 Decatur Drive  
Ferndale, Washington 98248

Subject: Water System Questionnaire

Second Request

Dear Water Purveyor:

The Washington Utilities and Transportation Commission (Commission) has received information that you serve water to a community in Whatcom County. To help us understand your current situation, please complete and return the enclosed questionnaire, which will enable us to determine your jurisdictional status.

If you have any questions, please contact me at (360) 664-1250 or [jward@wutc.wa.gov](mailto:jward@wutc.wa.gov) or please visit our website at [www.wutc.wa.gov](http://www.wutc.wa.gov) for additional information.

Sincerely,

Jim Ward  
Regulatory Analyst

Enclosure

## ATTACHMENT C



**SANDY POINT**  
IMPROVEMENT COMPANY

Mailing Address: P.O. Box1418  
4460 Decatur Drive  
Ferndale, WA 98248  
Phone/Fax 360.384.3921

### **HOA Assessments, Usage Fees and Policies** *Effective April 1, 2004*

The Sandy Point Improvement Company provides Homeowner Association (HOA) management to property stockholders in the Sandy Point area. The following assessment, service fees, and guest policies are applicable beginning April 1, 2004 and subject to change.

#### **SPIC Home Owners Association (HOA) Annual Assessment**

The Annual Assessment is \$300.00 per lot payable in U.S. funds, **due in the SPIC office by 2:00, May 31<sup>st</sup>, 2004**. Receipt by SPIC after this date (mail or in person) will be considered late and will be assessed a late fee of \$10.00. **If Assessment payment is not received by June 1, 2004 a lien may be automatically filed against the property and the account sent to a collection agency without further notice.** Accounts sent to collection will be charged a \$80.00 service fee plus interest at 1% per month or \$5.00 whichever is greater.

#### **Member Facilities & Key Card Prices**

SPIC members have access to the facilities using key cards which are for sale to paid-in-full members; cost of marina slips and trailer storage is per the following:

<b>Facility</b>	<b>Usage</b>	<b>Fee</b>
Golf and Tennis (includes ID Tag and Sticker)	Golf course, tennis courts, clubhouse restrooms. Tag with current year sticker required for golf. Limit 2 keys per lot.	\$50 per set
Golf ID Tag & Sticker (one per player required)	Current year ID tag for golf bag.	\$5.00 each
Golf Sticker only	Current year sticker for old golf tag.	\$2.50 each
Marina Key & Boat Trailer Sticker	Entry to moorage area, boat ramp, and restroom facilities. Trailer sticker is required on trailer tongue for ID purposes; trailers without ID stickers subject to towing at owners expense.	\$40.00 set
Marina & Golf Combo key	Allows access to golf and marina including launching ramp. Limit 2 keys per lot. (Limited availability)	\$80.00 each
Marina slip	Boat slip in SPIC marina (includes key)	\$500.00 year
Trailer storage (Member)	Secure trailer storage at marina (Six months minimum)	\$10.00/month

2004\_HOA Fee V1\_Water fees as fourth page.doc

Page 1 of 4



Mailing Address: P.O. Box1418  
 4460 Decatur Drive  
 Ferndale, WA 98248  
 Phone/Fax 360.384.3921

**Guest Fees and Policies**

Guests are permitted subject to the following fees and limits. No renters/lessees/guests permitted to use facilities without the property owner present.

Facility	Comment	Fee
Boat Launch Pass	A limited number of annual boat launch passes will be made available to relatives and friends of Class A Shareholders. SPIC owners may 'sponsor' up to 3 passes. First come, first served. (includes key)	\$500.00 per year payable in advance; no refunds
Clubhouse Pool	All guests must register and pay before entry.	\$1.50 per use
Golf	Guests accompanying members are permitted. SPIC members without annual tag are permitted.	\$7.00 per guest or member without annual tag
Guest Boat Launch	Guest accompanied by property owner.	\$22.00 per launch
Marina Overnight Moorage	Subject to space available, check with Harbormaster	\$6.00 per day SPIC member \$12.00 per day per guest
Trailer Storage (Non-member)	Subject to space available, secure trailer storage (6 months minimum)	\$30.00 per month
Marina Slip	Limited number of slips Subject to space available Payment in advance, no refunds (includes key)	\$1000.00 per year

**Other Services and Fees**

Service	Fee
Monthly Subscription to Board Meeting Minutes	\$10.00 per year
'For Sale' Sign	\$25.00 each
NSF Check Service Charges	\$25.00 first NSF check \$50.00 each additional



Mailing Address: P.O. Box 1418  
4460 Decatur Drive  
Ferndale, WA 98248  
Phone/Fax 360.384.3921

### **SPIC Policy on Renters/Lesseees/Guests**

Guests are allowed to use the S.P.I.C. facilities only if accompanied by a property owner in "good standing" (paid up membership) and if guest fees are paid. All of us at Sandy Point enjoy our recreational facilities with our guests. When inviting guests to share and enjoy our facilities, please use consideration of other lot owners in regards to the number of your guests. Our facilities are neither large enough (nor intended) to accommodate group picnics, parties **and** the general membership. Guest limits have been discussed but we prefer to not resorting to this. Your cooperation and consideration of all members will be greatly appreciated.

### **SPIC Policy on Consolidation Of Lots**

A lot owner may irrevocably combine adjacent lots by recording a covenant with the County that binds the lots together and vacates the middle property line. The requirement will include the following costs and fees: current year's assessment paid in full, all base water fees paid, all other special charges (if any) paid for the current year, a fee of one additional year's cost paid in advance, and a processing fee of \$50.00 paid to SPIC. Prior to approval by the SPIC Board, property owners need to sign an irrevocable consolidation agreement, pay all charges, and surrender one share of Class A stock.

### **SPIC Policy on Variance Requests**

Contact officer manager for details.

### **SPIC Policy on Water Transfer Requests**

Contact officer manager for details.



Mailing Address: P.O. Box 1418  
 4460 Decatur Drive  
 Ferndale, WA 98248  
 Phone/Fax 360.384.3921

## Water Service Fees

*Effective April 1, 2004*

The Sandy Point Improvement Company provides water services to property owners in the Sandy Point area. The following water service fees and usage charges are applicable beginning April 1, 2004 and subject to change.

### **Water Service Fees and Charges**

Water charges are in two parts, a Base Fee and a Usage Fee. The **Base Fee** is \$19.50 per month for each lot regardless of water use (\$234.00 annually). **Usage Fees** are variable depending on amount of water used per the following table. Water usage is billed every two months on the 15<sup>th</sup>, subject to change.

Water Usage Amount	Fees
Base Fee	\$19.50 per month
0 - 5,000 gallons per billing cycle	\$ 1.65 per 1,000 gallons
5,001 - 10,000 gallons per billing cycle	\$ 2.20 per 1,000 gallons
10,001 - 15,000 gallons per billing cycle	\$ 5.50 per 1,000 gallons
15,001 - 20,000 gallons per billing cycle	\$ 7.50 per 1,000 gallons
20,001 - 25,000 gallons per billing cycle	\$12.00 per 1,000 gallons
25,001 - 30,000 Gallons per billing cycle	\$15.00 per 1,000 gallons
30,001 gals and above	\$20.00 per 1,000 gallons

**Reading your Water Bill:** On the water statement, "Cur Rd" indicates your meter reading. "Use" is the amount of water used during that two month billing cycle (i.e. 23000 means 23,000 gallons of water used during the two months).

### **Water Service Fees**

SPIC reserves the right to charge for the following services. Other miscellaneous services will be billed at full cost of labor, material, and overhead.

Water Service	Fees
Voluntary turn on/turn off charge at property owner request	\$ 27.50
Nonpayment lock-off/reconnect fee	\$ 200.00
Repair broken padlock or angle stop (fee plus costs)	\$ 82.50
Repair tampered meter (fee plus costs)	\$ 220.00
Water theft, per month or part thereof	\$2,000.00
Emergency shut off due to broken property owner pipes	\$ 220.00

## ATTACHMENT D



STATE OF WASHINGTON

### WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250  
(360) 664-1160 • TTY (360) 586-8203

Ref: UT 4-1250

January 23, 2012

Sharon Thompson  
Sandy Point Improvement Company  
4460 Decatur Drive  
Ferndale, Washington 98248

Subject: Water System Questionnaire

via Email

Dear Ms. Thompson:

The Washington Utilities and Transportation Commission (Commission) has received information that you serve water to a community in Whatcom County that may put the water company under Commission jurisdiction. To help us understand your current situation, please complete and return the enclosed questionnaire, which will enable us to determine your jurisdictional status.

I understand that the water system may be owned by the Sandy Point Improvement Company. Then who are the owners of the Sandy Point Improvement Company?

If you have any questions, please contact me at (360) 664-1250 or [jward@wutc.wa.gov](mailto:jward@wutc.wa.gov) or please visit our website at [www.wutc.wa.gov](http://www.wutc.wa.gov) for additional information.

Sincerely,

Jim Ward  
Regulatory Analyst

Enclosure (1)

ATTACHMENT E

April 13, 2012



VIA EMAIL ONLY

Jim Ward  
Regulatory Analyst  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

RE: Sandy Point Improvement Company  
Water System Questionnaire

Dear Mr. Ward:

Per your request and our prior correspondence, please find enclosed a Water System Questionnaire prepared on behalf of the above-referenced water system. Please if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "m R".

Joseph A. Rehberger  
Direct Line: (360) 786-5062  
Email: jrehberger@cascadialaw.com  
Office: Olympia

JR:en

Enclosure

cc: Jim Kolbo, President, Sandy Point Improvement Company (via email)

## WATER SYSTEM QUESTIONNAIRE

The following assumes that the water systems are in operation and serving one or more customers. If a question is not applicable, so state. Add any information you feel will help provide a better understanding of the situation.

1. For each water system owned, operated or controlled by you or the utility, please list by Washington State Department of Health ID # each water system and whether you own, operate or control the water system.

**Sandy Point Improvement Company, System ID #76105. Sandy Point Improvement Company owns, operates, and controls the water system. Sandy Point Improvement Company is owned by its shareholder members who receive water from the company and is controlled by a Board of Directors, elected by the shareholders. The Company contracts with Brad Ferris, Northwest Water Works, Inc. for operation of the water system.**

2. Is (are) the water system(s) owned, operated and controlled by a proprietorship, partnership or corporation?

**Yes. The water system is owned, operated, and controlled by the Sandy Point Improvement Company, organized as a Washington corporation.**

3. Are the water system(s) owned, operated or controlled by a Co-op, homeowner's association or non-profit organization?

**Sandy Point Improvement Company is organized as a regular Washington corporation. The corporate documents provide that shares in the Company are appurtenant to real property and are nontransferable, except for transfers incident to and part of the transfer of real property owned by the shareholder to which the shareholder right is appurtenant.**

- a. Must all customers also be members?

**No. Sandy Point Improvement Company's corporate documents do not require water system customers also be members.**

**Sandy Point Improvement Company was and is organized, *inter alia*, to provide water system service to its shareholders and members. There are currently 909 Class A or Class C shareholders in Sandy Point, and based on the Company's 2011 Water System Plan Update, Sandy Point Improvement Company maintains 756 active service connections. Based on 2011 data, Sandy Point Improvement Company had 756 shareholders and customers that actually received and were billed for water service in 2011.**

**Based on the service policies described in its 2011 Water System Plan, provision of water service within the Company's service area is prioritized based on the current water shareholders agreements with Sandy Point.**

- b. Is there any language in the articles of incorporation or the bylaws that would indicate any intention to dedicate the property to public use?

**No.**

4. If owner is a nonprofit organization, registered with the office of the Washington Secretary of State, please provide full name, address and registration number (UBI#).

**N/A. See above.**

**Sandy Point Improvement Co.  
UBI No. 600194252  
4460 Decatur  
Ferndale, WA 98248**

5. For each water system owned, operated, or controlled by you, is control exercised directly by the owner or owners of the utility?

**Yes. Control of the water system is exercised by the shareholders of the Company through a Board of Directors, elected by the shareholders.**

6. Does the utility reserve the right to serve particular individuals of its own choice?

**No, as qualified below.**

**Sandy Point Improvement Company does adopt and follow a process regarding serving particular individuals. Since Sandy Point Improvement Company does not possess enough water rights available to serve all potential additional customers interested in receiving water, a lottery system has historically been used to distribute any additional water shares and/or connections.**

**Based on the service policies described in its 2011 Water System Plan, provision of water service within the Company's service area is prioritized based on the current water shareholders agreements with Sandy Point.**

7. How many customers of each system actually receive water or whose application to receive water has been accepted by the utility?

**Based on the 2011 data, there are 756 active service connections.**

Are all customers listed above using water and have houses on lot. Yes / No  
 What number of customers actually uses water? **There are 756 existing service connections that may use water, although many of these do not have houses on the lot and use water only in small amounts. Based on 2011 data, Sandy Point Improvement Company had 756 shareholders and customers that actually received and were billed for water service in 2011.**

8. For each water system, please list the maximum number of connections allowed by Department of Health or other government agency.

**The Washington State Department of Health (DOH) approval currently allows a maximum total of 821 equivalent residential units (ERUs). The number of connections is not specified.**

9. Does the utility have any service applications that it cannot connect at this time?

**Yes.**

10. What are the rates/charges for each system? (If multiple rates/systems use additional sheets)

Monthly Flat Rate \$ \_\_\_\_\_ (No meter) Number of Customers \_\_\_\_\_

Monthly Meter Basic Rate \$ \_\_\_\_\_ Number of Customers \_\_\_\_\_

Water Allowance with basic charge \_\_\_\_\_ (gallons/cubic feet)

Usage Block \_\_\_\_\_ (gallons/cubic feet) Rate \$ \_\_\_\_\_ per \_\_\_\_\_ (gallons/cubic feet)

Usage Block \_\_\_\_\_ (gallons/cubic feet) Rate \$ \_\_\_\_\_ per \_\_\_\_\_ (gallons/cubic feet)

Usage Block \_\_\_\_\_ (gallons/cubic feet) Rate \$ \_\_\_\_\_ per \_\_\_\_\_ (gallons/cubic feet)

Billing Frequency: Monthly \_\_\_\_\_ Bi-monthly \_\_\_\_\_ Other: \_\_\_\_\_

Irrigation Services: Rate \$ \_\_\_\_\_ Monthly \_\_\_\_\_ Bi-monthly \_\_\_\_\_ Other: \_\_\_\_\_

Any larger than normal size meters? \_\_\_\_\_ If so what size(s)? \_\_\_\_\_

Ancillary Charges: Service connection charge (new customer) \$ \_\_\_\_\_

Reconnection charge (customer caused disconnection) \$ \_\_\_\_\_

Account Set Up charge (new customer, not a new connection) \$ \_\_\_\_\_

Other charge(s) \_\_\_\_\_ \$ \_\_\_\_\_

**See Attached – Current Water Rate Schedule**

11. What is the average yearly revenue per customer for each water system? \$

\$396.37.

**This average is based on 2011 data for the average annual revenue based on all shareholders and customers receiving and billed for water service by Sandy Point Improvement Company.**

What is the average monthly water consumption per customer for each water system?

**The following average water use consumption table is based on Sandy Point Improvement Company's 2011 Water System Plan:**

Full-time Single Family Residence	156 gallons/day	4,745 gallons/month
Part-time Single Family Residence	67 gallons/day	2,038 gallons/month
Multi-family Residences	59 gallons/day	1,795 gallons/month
Vacant Metered Services	5 gallons/day	152 gallons/month
Non-residential	106 gallons/day	3,224 gallons/month

**Based on 2011 data, the average water consumption per customer is 4,215.77 cubic feet annually, for a monthly average of 351.31 cubic feet (2,627.8 gallons). This average is based on 2011 data for water consumption and usage based on all shareholders and customers receiving and billed for water service by Sandy Point Improvement Company.**

12. If any of the water systems serve only a subdivision in which it has an interest or with which it is associated, is there a covenant in the land contract or deed obligating the utility to provide water for each lot or purchaser of each lot?

**The Company is not aware of a covenant in the land contract or deed obligating it to provide water for each lot or purchaser of each lot. However, the Company's corporate documents provide that shares in the Company are appurtenant to real property and are nontransferable, except for transfers incident to and part of the transfer of real property owned by the shareholder to which the shareholder right is appurtenant.**

13. Under what name(s) is the system(s) or utility being operated?

**Sandy Point Improvement Company.**

13. Does the water company own all the assets used to provide water service?

**Yes.**

15. Please provide a contact phone number and e-mail address if the Commission has additional questions.

**Jim Kolbo, President**  
**Sandy Point Improvement Company**  
**Ph: 360-384-3921**  
**Email: [jimkolbo@comcast.net](mailto:jimkolbo@comcast.net) or [info@mysandypoint.com](mailto:info@mysandypoint.com)**

With copy to:

**Joseph Rehberger**  
**Cascadia Law Group**  
**Ph: 360-786-5062**  
**Email: [jrehberger@cascadialaw.com](mailto:jrehberger@cascadialaw.com)**



## WATER SERVICE FEES

The Sandy Point Improvement Company provides water service to property owners in the Sandy Point area. The following water service fees and usage charges are applicable October 1, 2010 and are subject to change.

### FEES and CHARGES:

Water is charged with a Base Fee and a Usage Fee. The **Base Fee** is \$23.00 per month for each lot regardless of water use (\$276.00 annually). **Usage Fees** are variable depending on amount of water used *per cubic foot* per the following table. Water fees are billed every two months on the 15<sup>th</sup>, subject to change. A finance charge of \$10.00 (or 1% of the outstanding balance) per month will be assessed on the 20<sup>th</sup> of each month on unpaid invoices.

Water Usage Amount	Fees
Base Fee	\$ 23.00 per month
0 - 665 cubic feet per billing cycle	1.364 cents per cubic foot
666 - 1332 cubic feet per billing cycle	1.815 cents per cubic foot
1333 - 2005 cubic feet per billing cycle	4.521 cents per cubic foot
2006 - 2673 cubic feet per billing cycle	6.171 cents per cubic foot
2674 - 3342 cubic feet per billing cycle	10.764 cents per cubic foot
3343 - 4010 cubic feet per billing cycle	14.573 cents per cubic foot
4011 cubic feet and above per billing cycle	22.425 cents per cubic foot

**Reading your Water Bill:** On the water statement, "Cur Rd" indicates your current meter reading in *cubic feet*. One cubic foot equals 7.48 gallons. "Use" is the amount of water used during that two month billing cycle (i.e. 23000 means 23,000 *cubic feet* of water was used during the previous two month billing cycle).

### OTHER FEES:

SPIC reserves the right to charge for the following services. Other miscellaneous services will be billed at full cost of labor, material, and overhead.

Water Service	Fees
Voluntary turn on/turn off charge at property owner request	\$ 25.00
Nonpayment lock-off/reconnect fee	\$ 100.00
After hours (if available) additional fee	\$ 50.00
Repair broken padlock or angle stop (fee plus costs)	\$ 82.50
Repair tampered meter (fee plus costs)	\$ 220.00
Water theft, per month or part thereof	\$ 2,000.00
Emergency shut off due to broken property owner pipes (includes turn back on if during business hours)	\$ 50.00



## **ACCOUNTS RECEIVABLE POLICY**

Customers will be given 30 days from date of the invoice to make payment in US Funds.

Customers failing to pay within the 30 day period will incur a \$10 late fee and notice will be sent via regular mail regarding service turnoff if payment is not received by the 45<sup>th</sup> day from the original billing date. Late notice will also serve as warning of imminent service shutoff. Customers who are shut off incur a shut off fee of \$100.

Customers wishing to have service reconnected must make good on all fees owing plus a \$50 reconnect fee in US funds only (cash, money order, cashier's check) delivered to the business address during normal business hours.

Customers with two NSF checks within a 12 month period will be required to pay with cash or money order.

Chronic non-payment (14 months in arrears) will result in a \$2000.00 lien/cost recovery fee charged to the account and a lien placed against the property.

ATTACHMENT F



4460 Decatur Drive  
Ferndale, WA 98248  
Phone: 360 384-3921  
Fax: 360 3843246

September 20, 2012

Sandy Point Improvement Company  
Attn: Sharon Thompson, Office Manager  
4460 Decatur Drive  
Ferndale, WA. 98248

Subject: Stock Certificate No. 005  
250 Class B Shares

Dear Sharon:

The Sandy Point Improvement Company acknowledges and accepts the surrender of 250 Class B Shares from Mr. Ronald T. Jepson and Mrs. Shelley D. Jepson, effective the date of surrender, September 20, 2012. These Shares will be permanently retired, along with the previous retirement of 2,250 Class B Shares received by the Company in 2001.

The above Shares, combined with a previous 250 Class B Shares received from Rogers and Rogers, mean that there are no longer any Class B Shares held by others.

All Class B Shares have now been permanently retired.

Sincerely,

A handwritten signature in blue ink that reads "Roy Clumpner".

Roy Clumpner  
Board Vice President

RC:sjt  
cc: Board of Directors

**ATTACHMENT G**

ARTICLES OF AMENDMENT TO

**ARTICLES OF INCORPORATION**

OF

**SANDY POINT IMPROVEMENT CO.**

The purpose of this amendment to the Articles of Incorporation is to add amendment(s) adopted by the shareholders at the 2011 annual meeting and to restate the Articles to incorporate numerous amendments made by the shareholders over the years into this amendment.

**ARTICLE I**

The name of the corporation shall be Sandy Point Improvement Co.

**ARTICLE II**

Its purposes, objects and powers are:

FIRST: To acquire, hold, develop, improve, operate and maintain real property and interests and rights therein in order to provide services and facilities for the use and enjoyment of its shareholders as the owners and residents of real property in and about the area known as Sandy Point in Whatcom County, Washington: to acquire, construct, hold, maintain, operate, reconstruct and improve water and sewer systems for such area and its shareholders, including water rights, easements, wells, tanks, pumps, pipelines, treatment plants, filter plants and any other property or property interest that may be incident thereto: to acquire lease, hold, improve, develop and dispose of real property interests including tidelands, for recreational facilities for its shareholders as such owners and residents: to undertake the construction, maintenance, repair, operation, improvement, reconstruction and disposal of a system of surface water drains, conduits, systems and apparatus for such area: and generally to acquire, hold, develop, improve, maintain, construct, and operate real property for such other purposes as may in the best interests of its shareholders and the area.

Articles of Amendment-1

DR-3

SECOND: To do and perform such things as may be necessary or convenient to accomplish the foregoing purposes, regardless of whether such activities may result in profit or gain to the corporation.

THIRD: To acquire, hold, mortgage, pledge, dispose of, buy, or otherwise acquire stocks, bonds, or other securities, goodwill or rights of any firm or corporation; having for its objectives, or some of them, any of the objectives of this corporation; to apply for, acquire, hold, use, sell or assign letters of patent, franchises, and permits; to enter into a partnership or joint venture with any person, partnership or corporation for the accomplishment of the corporate purposes of this corporation; to borrow money and to buy, hold and sell shares of stock, bonds and other evidence of indebtedness of this corporation, and to conduct any business, pursuit or activity and to exercise every power and authority granted or conferred by the Uniform Business Corporation Act of the State of Washington, and to do or perform any and all things necessary, proper or convenient for the carrying out or accomplishment of the objects and purposes herein specified.

### ARTICLE III

The corporation is to have perpetual existence.

### ARTICLE IV

The principal office and place of business of the corporation shall be located at 4460 Decatur Drive, Ferndale, Washington 98248 or at such other place as may be authorized by the Board of Directors or proper authorities.

### ARTICLE V

The total capital stock of the corporation shall be Four Thousand One Hundred Dollars (\$4,100.00) divided into the following classes of stock:

1. Class A Stock: There shall be one thousand (1000) shares of Class A stock of a par value of One Dollar (\$1.00) a share. By accepting a share of Class A stock the shareholder thereof agrees to make an annual capital contribution in an amount to be determined the vote of two-thirds of the corporate directors for the purpose of providing funds to maintain the properties and facilities of the corporation; provided, however, that the amount of such capital contribution shall not exceed the sum of One Hundred Thirty Five Dollars (\$135.00) for each share of Class A stock during any fiscal year of the corporation unless previously approved by a vote of fifty one per cent (51%) of the holders of Class A stock present at any meeting of shareholders called for the purpose of authorizing such increased amount. Class A stock shall have one vote for each share of stock on any matter presented to the

Articles of Amendment-2.

shareholders but shall not be transferable except as incident to the sale or other transfer of real property in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of the original issuance thereof. The holder of a Class A stock shall be entitled to use and enjoy the facilities and services of the corporation subject to such regulations for the use thereof as the directors may establish from time to time, any reasonable charge which the directors may impose for goods and services furnished by the corporation, including charges for water, to its shareholders. Non-payment of this annual contribution may result in a lien being filed against the shareholder's property.

2. Class B Stock: There shall be Three Thousand (3000) shares of Class B stock of a par value of One Dollar (\$1.00) a share. No shareholder of such Class B stock shall be required to make any capital contributions to the corporation by virtue of holding such stock, which shall be fully transferable at the discretion of the holder thereof and shall have one vote for each share on any matter presented to the shareholders.

3. Class C Stock: There shall be One Thousand Shares of Class C Stock of a par value of Ten Cents (\$0.10) a share. The holders of Class C Stock shall have one vote for each share of stock, provided however, the Class C shareholders may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water users charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contribution by virtue of holding such stock. Such stock shall not be transferable except as to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point Area.

## ARTICLE VI

The corporation shall begin business with a paid-in capital of Five Hundred Dollars (\$500.00).

## ARTICLE VII

The affairs of this corporation shall be managed by a board of from three to seven directors. The first directors, their names and post office addresses are:

Name	Address
R.E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Stuart E. Rogers	Rm. 26, 518 First Avenue North Seattle, Washington 98109
Robert E. Walker	The Highlands Seattle, Washington 98177

These directors shall serve until the first meeting of shareholders and incorporators and until their successors are elected and qualified.

No director of this corporation shall be liable on account of mismanagement of the corporate affairs made on the ground that this corporation shall fail to realize a profit on account of its activities, it being expected that the activities of this corporation shall require annual assessments against its shareholders as herein elsewhere provided for.

## ARTICLE VIII

The names and post office addresses of the incorporators and the number of shares subscribed by each are:

Name	Address	No. of Shares
Peter V. Gulick	1725 Exchange Building Seattle, Washington 98104	1
David W. Sandell	1725 Exchange Building Seattle, Washington 98104	1
Janice Hamilton	1725 Exchange Building Seattle, Washington 98104	1

## ARTICLE IX

A director or officer of this corporation shall not be disqualified by his office from

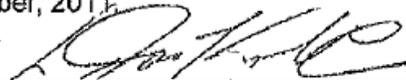
dealing or contracting with this corporation as a vendor, purchaser, creditor or debtor or otherwise. The fact that any director or officer, or any firm of which any director or officer is a shareholder, director or officer, is in any way interested in any transaction or contract of this corporation shall not make such transaction or contract void or voidable, or require such director or officer to account to this corporation for any profits there from, provided that such transaction or contract is or shall be authorized, ratified or approved either (i) by a vote of a majority or a quorum of the board of directors or (ii) by the written consent or general resolution approving the acts of the directors and officers at a shareholder meeting, of the holders of record of a majority in number of all the outstanding shares of capital stock of this corporation entitled to vote. Nothing herein contained shall create any liability in the events above described or prevent the authorization, ratification or approval of such transactions or contracts in any other manner.

#### ARTICLE X

Any person against whom a claim or liability is asserted, or who is made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of this corporation, or of any corporation which he served as such at the request of this corporation, shall be indemnified and reimbursed by this corporation for payment of any such claim or liability, costs or expenses, including attorney's fees, actually and necessarily incurred by him in connection with such claim or liability, or the defense of such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in any action, suit or proceeding that such officer, director or employee is liable for gross negligence or misconduct in the performance of his duties. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled.

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

DATED this 29<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
L. James Kolbo, President

  
\_\_\_\_\_  
Marlene Dawson., Secretary

3. Class C Stock: There shall be One Thousand Shares of Class C Stock of a par value of Ten Cents (\$0.10) a share. The holders of Class C Stock shall have one vote for each share of stock, provided however, the Class C shareholders may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the area of Sandy Point to which real property such share shall be appurtenant as may be determined by the corporation in accordance with its bylaws at the time of original issue thereof, provided that such shareholder shall comply with the regulations pertaining to the use of such water and shall pay the water users charge for water as may be established by the directors. No shareholder of Class C Stock shall be required to make any capital contribution by virtue of holding such stock. Such stock shall not be transferable except as to the sale or other transfer of the real property to which it is appurtenant in the Sandy Point Area.

ATTACHMENT I



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia, WA 98504-0128 • (360) 664-1183

MEMORANDUM

Attorney work product  
Attorney client privilege

DATE: September 6, 2012

TO: Gene Eckhardt, Assistant Director  
Water and Transportation

FROM: Donald T. Trotter, Assistant Attorney General  
Utilities & Transportation Division *DTT*

SUBJECT: Sandy Point Improvement Company

You asked me whether there is a sufficient basis for Commission Staff to recommend the Commission initiate a classification proceeding pursuant to RCW 80.04.015, to determine whether Sandy Point Improvement Company (Sandy Point) is a water utility subject to Commission regulation under RCW 80.28, et al. For the reasons stated below, there is a sufficient basis for Staff to make that recommendation.

**Facts**

Sandy Point is a for-profit corporation that operates a water system near Ferndale, Washington. In addition to its water operations, Sandy Point operates recreational facilities: a club house, swimming pool and golf course.<sup>1</sup>

<sup>1</sup> I also considered the non-water related operations of Sandy Point. However, I understand that Sandy Point accounts for its water operations separately from its other endeavors. Absent further information indicating that water revenues are used to subsidize non-water activities, the existence of non-water operations does not change the outcome of the analysis.

Sandy Point's water customers generate average annual gross revenues per customer as follows<sup>2</sup>:

Class A shareholder/customers	\$336.49
Class C shareholders/customers	\$376.53
46 non-shareholders/customers	\$451.73
All customers	\$347.15

Sandy Point has 1148 shares of stock outstanding, in three classes, with 899 shareholders and 944 water customers:

	<u>Shares</u>	<u>Shareholders</u>	<u>Water Customers</u>
Class A stock	779	779	779
Class B stock	250	1	0 <sup>3</sup>
Class C stock	119	119	119
Non-shareholders:	_____	_____	<u>46</u>
TOTALS:	1148	899	944

Each share has one vote. Thus, each Class A and C shareholder has one share and one vote, and the single Class B shareholder has 250 shares and 250 votes. Sandy Point's Class A shareholders have the right to membership in the club house, golf course and pool. The Class C shareholders do not. Each Class A and C share is appurtenant to the real property in the Sandy Point area that is owned by the shareholder. The Class A and C shares cannot be transferred except in the sale of that real property.<sup>4</sup>

Sandy Point's Articles of Incorporation state that Class C shareholders:

may only vote for the election of the Board of Directors and on water service matters that are presented by the Board of Directors for a vote of the shareholders at any annual or special meeting called for that purpose. The holders of Class C stock shall have no vote on other matters presented at any meeting of the shareholders and shall not participate in any dividend of the corporation or in any distribution on liquidation of the corporation. Such share shall solely represent the right of the holder thereof to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which property such share shall be appurtenant ...<sup>5</sup>

<sup>2</sup> Sandy Point's response to Staff Data Request 2. As I understand it, Staff has reviewed these figures and considers them reliable. WAC 480-110-255(3) sets forth the formula for calculating annual average revenues per customer.

<sup>3</sup> The Class B shareholder is not a Sandy Point water customer.

<sup>4</sup> Sandy Point Articles of Incorporation (dated December 29, 2011), Article V, Sections 1 and 3, respectively.

<sup>5</sup> *Id.*, Article V, Section 3. There appears to have been some dispute whether the Class C vote language quoted here was a legitimate change to the Articles of Incorporation. However, Staff has reviewed the minutes of a special shareholder meeting on May 19, 2012, which indicate a vote was taken and those voting rights were approved. In addition, Mr. Rehberger, counsel for Sandy Point, confirmed that we have the current version of the Sandy Point Articles of Incorporation. We therefore will assume the language in Article V, Section 3 of the Articles of Incorporation (quoted above and at the bottom of page 1 of this memo) accurately reflects the nature of the Class C voting rights.

For Class A and B shareholders, the Articles of Incorporation contain no such restrictions against dividends or distributions of assets upon liquidation.

We understand the Class B shareholder is a developer, though it is not clear what interest the 250 shares represent. According to the Articles of Incorporation, each Class B share “shall be fully transferable at the discretion of the holder thereof : . . .”<sup>6</sup> Thus, unlike the Class A and C shares, the Class B shares are not tied to specific parcels of real estate.

### Issue and Brief Answer

Issue: Is Sandy Point, or any parts thereof, exempt from UTC regulation as a water company?

Brief Answer:

1. Subject to Conclusion 4 below, Sandy Point is not subject to UTC regulation as a water company to the extent it serves the 46 non-shareholder customers as a group, standing alone.
2. Sandy Point likely is subject to UTC jurisdiction as a water company to the extent it serves the 119 Class C shareholders/customers as a group, standing alone.
3. Sandy Point may or may not be subject to UTC jurisdiction as a water company to the extent it serves the 779 Class A shareholders/customers as a group, standing alone, depending on the legal impact of the single Class B non-customer shareholder, who has 250 votes.
4. If Sandy Point is ineligible for the entity exemption regarding its Class A or Class C shareholders/customers, then Sandy Point would also be subject to UTC regulation as to the 46 non-shareholder customers.

### Analysis

#### *1. Applicable Law: Statutes, Rules and Judicial Precedent*

The UTC regulates water companies under RCW 80.28. Under the statutory definitions, as pertinent here, “water company” “includes every corporation . . . controlling, operating, or managing any water system for hire within this state.” RCW 80.04.010(30)(a). However, a company meeting this definition is not necessarily subject to UTC jurisdiction, because there are two exemptions potentially applicable here.

The first exemption I call the “statutory exemption”. The statutory exemption is found in RCW 80.04.010(30)(b), which excludes from the definition of “water company” any water system meeting both of the following conditions: 1) the company serves 99 or fewer

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<sup>6</sup> *Id.* Article V, Section 2.

customers; and 2) the company's average annual gross revenue per customer is \$557 or less.<sup>7</sup>

The second exemption I call the "entity exemption". The entity exemption applies to companies that meet the literal definition of "water company" in the statutes, but do not have the indicia of a public service company, i.e., they do not hold themselves out to the serve the public. This exemption may arise from RCW 80.04.010(23), which classifies each water company as a "public service company". In any event, this exemption is recognized by the courts of this state.

There are three court cases from Washington that provide guidance on this entity exemption. The first case is *State ex rel. Addy v. Department of Public Works*, 158 Wash. 462 (1930), which involved The Fruitdale-on-the-Sound Water Company (Fruitdale Company). The Fruitdale Company was a for-profit corporation that operated a water utility serving customers on property located within a plat called "Fruitdale-on-the-Sound". Fruitdale Company also served customers on property outside, but in the vicinity of, that plat.

The court ruled that the Fruitdale Company was a water company subject to regulation by the UTC's predecessor agency. The court rejected the Fruitdale Company's claim that it was not a public utility because each customer it served had a separate, private contract with the company. The court reasoned that the Fruitdale Company fell within the statutory definition of "water company", and it could not alter that status by private contract. 158 Wash. at 466.

The second case is *Inland Empire Rural Electrification, Inc. v. Department of Public Service*, 199 Wash. 527 (1939). That case involved Inland Empire Rural Electrification, Inc. (Inland Empire), a non-profit mutual corporation that operated electrical facilities to provide electricity to its members only. The court noted that while Inland Empire met the literal definition of "electrical company" in the statutes of the UTC's predecessor agency, that did not make Inland Empire a "public service corporation" subject to state regulation. 199 Wash. at 535. The court identified the applicable legal test as follows:

A corporation becomes a public service corporation subject to regulation by [the UTC's predecessor agency] only when, and to the extent that, its business is dedicated or devoted to public use. The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular customers of its own selection.

*Id.* at 537 (citations omitted). The court emphasized that "[w]hat it does is the important thing, not what it, or the state, says that it is." *Id.* at 538.

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<sup>7</sup> The version of WAC 480-110-255(1)(b) in effect on the date of this memo increased the annual revenue per customer exemption maximum from the initial \$300 level in the statute to \$471, per the authorization in RCW 80.04.010(30)(b). The Commission recently approved a rule amendment that increases the exemption level for average annual gross revenue per customer to \$557 or less. That rule change is effective September 9, 2012. I will use the \$557 figure in my analysis, but the analysis would not be different had I used the \$471 figure.

The court went on to conclude that Inland Empire was not a public service company subject to state regulation because it was not “engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns”, and thus its customers did not require protection of the public service laws. *Id.* at 539. The court emphasized that Inland Empire served only its members, at cost, and any surplus funds were returned to those members ratably each year. *Id.* at 540<sup>8</sup>. The court specifically noted the “complete identity of interest between the corporate agency supplying the service and the persons who are being served. It is a league of individuals associated together in corporate form for the sole purpose of producing and procuring for themselves a needed service at cost.” *Id.*

Note that the legal test enunciated by the court in *Inland Empire* qualified the application of the public service laws “to the extent” that the company dedicated its property to public use. This means, for example, that had Inland Empire served non-members, it would be a regulated water company, but only “to the extent” it served those non-members. This is consistent with the court’s underlying rationale that non-member customers need the protection of the public service laws.

The third court case from this state on this subject is *West Valley Land Company, Inc. v. Nob Hill Water Association*, 107 Wn.2d 359 (1986). This case involved the Nob Hill Water Association (Nob Hill); a non-profit cooperative that provided water service only to its members, at cost. The court observed that while Nob Hill met the literal definition of “water company” in RCW 80.04.010, that did not end the inquiry. The court quoted and applied the legal test stated in the *Inland Empire* case, which is set forth in the block-indent above.

In applying the legal test from *Inland Empire*, the court emphasized that Nob Hill “did not conduct its operations for gain to itself, or for the profit of investing stockholders, but functions entirely on a cooperative basis.” 107 Wn.2d at 367. Nob Hill served only its shareholder members, all of which “have a ‘voice’ in the management of its affairs.” 107 Wn.2d at 368. The court contrasted Nob Hill with a corporation “engaged in business for itself at the expense of a consuming public which has no voice in the management of its affairs and no interest in its financial returns.” 107 Wn.2d at 368.

At the same time, the court noted that some water users did not literally have a vote because they were served via a landlord or condominium association that was the water customer and co-op member. However, these tenants “receive the same benefit as other members and are not charged an additional amount for their water nor are they treated differently as a class.” *Id.* at 369. Because the tenants had the same interest as their landlord or condominium association, they could not be “exploited”. The court said “[e]quality of representation is not required by *Inland Empire*; all that is requisite is a voice in the cooperative”. *Id.*<sup>9</sup>

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<sup>8</sup> The court did not explain what it meant by “ratably”.

<sup>9</sup> Because the facts are sketchy, it is not clear why the *Nob Hill* court deemed the tenants to be an important consideration, because the landlord was Nob Hill’s water customer. If the court was concerned about the plight of the tenants regarding water service, it should have analyzed whether the landlord was a public service company vis a vis the tenants, because as between the two, the landlord was the water provider.

The court also noted that, unlike Inland Empire, Nob Hill retained its net income rather than paying it out ratably to its shareholders. However, the court did not find this distinction meaningful, because “a reasonable retention of profits for future liquidity and working capital is permissible”. *Id.*

The UTC has codified the entity exemption in WAC 480-110-255(2)(e), which exempts from UTC regulation “homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members”. The rules go on to state that this exemption does not apply to the extent such entities serve more than 99 non-owners or non-members, or the average annual gross revenue related to those non-owners or non-members exceed \$557 per customer. WAC 480-110-255(2)(f), as amended (see footnote 4). I conclude that these rules reasonably implement the statute and the principles of the court decisions I located and discussed above, and should be applied in light of that statute and those decisions.

## 2. *Applying the Law to the Facts*

As a starting point, there is no question Sandy Point meets the statutory definition of “water company” because Sandy Point literally is a “corporation ... controlling, operating, or managing any water system for hire within this state.” RCW 80.04.010(30)(a).

However, Sandy Point may be eligible for the statutory exemption or the entity exemption I discuss above. Also, because the *Inland Empire* court adopted a legal test to determine “the extent” to which a company would be subject to UTC regulation, I analyze these exemptions with regard to the separate various customer/shareholder groups Sandy Point serves.

### *The 46 Non-Shareholder Customers.*

Sandy Point’s 46 non-shareholder customers are not members, owners or shareholders of Sandy Point. Therefore, they must be analyzed under the statutory exemption, because the entity exemption does not apply to them.

These 46 non-shareholder water customers qualify for the customer number part of the statutory exemption (i.e., 46 is within the 99 customer number exemption maximum), and, because they have average annual gross revenues per customer of \$451.73, they also qualify for the average annual gross revenue per customer part of the statutory exemption (i.e., \$451.73 is within the \$557 average annual gross revenue per customer exemption maximum). Therefore, Sandy Point is not subject to UTC jurisdiction as a water company to the extent Sandy Point provides water service to those 46 non-shareholder customers.

However, it is important to point out that if it turns out that Sandy Point is not eligible for the entity exemption for its Class A or Class C shareholders/customers, then Sandy Point would be subject to UTC jurisdiction to the extent it serves the 46 non-shareholder customers, because in that circumstance, Sandy Point would then exceed the statutory customer number exemption maximum of 99 customers.

*The Class A Shareholders/Customers.*

The next issue is whether Sandy Point is eligible for the entity exemption to the extent it serves the Class A shareholders/customers.

Sandy Point is a for-profit corporation, like the company the court found to be subject to regulation in *Addy*, and unlike the companies the court found not subject to regulation in *Inland Empire* and *Nob Hill*. If the court intended all profit-seeking corporations to be ineligible for the entity exemption, Sandy Point would be subject to UTC regulation because it would exceed the maximum customer number exemption of 99 customers<sup>10</sup>.

However, as I described in the “Facts” section above, each of Sandy Point’s 779 Class A shareholders/customers have one vote and, apparently, have a right to any dividends Sandy Point may declare, plus a claim to any assets remaining when Sandy Point dissolves. These facts likely render inapplicable the court’s concern about for-profit corporations “engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns”.<sup>11</sup> Therefore, I tentatively conclude Sandy Point is not subject to UTC regulation to the extent it serves the Class A shareholders/customers.

The reason this conclusion is “tentative” is because of the impact the Class B shareholder has on the analysis. Recall that the Class B shareholder is not a water customer, yet holds 250 shares, and thus has 250 votes. With regard to voting rights, the *Nob Hill* court stated that “all that is requisite is a voice”, and Sandy Point’s Class A shareholders/customers literally have “a voice” (i.e., they have a vote). However, the court made that statement in the context of shareholders/customers with one vote each, with any non-voting water users having an identity of interest with those shareholders/customers.

Here, by contrast, the 250 vote Class B block is not held by a Sandy Point water customer, and 250 shares in one shareholder diminishes substantially the “one customer, one vote” situation that applied in *Inland Empire* and *Nob Hill*. Moreover, we are lacking information regarding whether the 250 shares represent a proportionate interest in Sandy Point’s operations, or whether the Class B shareholder has an identity of interest with the Class A and C shareholders.

In this regard, I considered a recent decision by the Utah supreme court,<sup>12</sup> *Bear Hollow Restoration, LLC v. Public Service Commission of Utah*, 274 P.3d 956 (2012), in which the court affirmed the Utah commission’s determination that a non-profit mutual water company was not subject to regulation as a public service company. The crux of the case was the fact that two shareholders formed a partnership that held more than 50 percent of all outstanding shares. The court acknowledged that the partnership “exerts considerable influence over [the water cooperative’s] affairs”. 274 P.3d at 959. However, the court concluded that

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<sup>10</sup> Because Sandy Point would exceed the customer number exemption maximum, the annual gross revenue per customer threshold becomes irrelevant.

<sup>11</sup> *Inland Empire*, 199 Wash. at 539.

<sup>12</sup> This case was referred to me by counsel for Sandy Point.

partnership's interests "are aligned with those of other shareholders to provide adequate service at affordable rates", and the partnership was voting "only its proportionate interest". 274 P.3d at 963.<sup>13</sup>

It is not clear at present whether Sandy Point's Class B shareholder's interests are aligned with other ratepayers and that the Class B shares represent a "proportionate interest" in Sandy Point's operations. Absent more, the facts do not clearly exempt Sandy Point from UTC jurisdiction to the extent it serves the Class A shareholders/customers.

#### *The Class C Shareholders/Customers.*

Sandy Point's Class C shareholders/customers stand in a position similar to the Class A shareholders/customers, but there is an important difference. Under the Sandy Point Articles of Incorporation<sup>14</sup>, the Class C shareholders/customers are denied participation in any dividend the corporation may declare and any distribution on corporate dissolution. As the Articles summarize, the Class C shares "solely represent the right of the holder thereof to have water service provided by [Sandy Point]." The Class A shareholders/customers are not subject to these limitations.

Recall again the *Inland Empire* court's concern about companies "engaged in business for profit for itself at the expense of a consuming public that has no voice in the management of its affairs and no interest in the financial returns" (emphasis added). 199 Wash. at 539. The *Nob Hill* court reiterated this point. 107 Wn.2d at 368. Even assuming the Class C shareholders/customers have a sufficient "voice"<sup>15</sup>, it is apparent they have no legal interest in Sandy Point's "financial returns". Therefore, the entity exemption likely does not apply to the extent Sandy Point serves the Class C customers.

I conclude that even assuming the Class C shareholders'/customers' vote constituted a sufficient "voice" under *Inland Empire*, Sandy Point likely is subject to UTC jurisdiction as a water company to the extent it serves the Class C shareholders/customers, because the entity exemption does not apply, and the Class C shareholders/customers are 119 in number, which exceeds the statutory customer number exemption maximum of 99 customers.

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<sup>13</sup> The Utah court does not explicitly follow the test enunciated in *Inland Empire*. In Utah, the analysis evaluates, among other things, whether the entity at issue has "monopolistic incentives" or presents a risk of "monopolistic coercion". 274 P.3d at 962 and 963. In the *Bear Hollow* case, the court noted that for a cooperative, such concerns typically are not at issue because if rates are too low, the consumer-members must either "accept curtailed service or contribute to the cooperative to improve service. On the other hand, if rates are too high, the collected surplus is returned to the consumer-members pro rata." *Id.* at 962-63, citing *Garkane Power Co. v. Public Service Commission*, 100 P.2d 571 (1940). The court also referred to the consumer-members "power to elect other directors and demand certain changes." *Id.* at 963, quoting *Garkane*, 100 P.2d at 573.

Sandy Point does not simulate this situation because the Class C shareholders cannot share in a surplus. Under the Sandy Point Articles of Incorporation provisions discussed earlier, Class C shareholders are not entitled to a dividend or any share of the funds that remain upon dissolution of the corporation.

<sup>14</sup> I quoted the pertinent language in the Facts section above.

<sup>15</sup> The same issue I raised for Class A shareholders/customers regarding the impact of the Class B shareholders' 250 shares applies to the Class C shareholders/customers. See my discussion of Class A shareholders/customers in this regard.

## ATTACHMENT J

### MEMORANDUM

Attorney work product  
Attorney client privilege

DATE: September 20, 2012

TO: Gene Eckhardt, Assistant Director  
Water and Transportation

FROM: Donald T. Trotter, Assistant Attorney General  
Utilities & Transportation Division

SUBJECT: Sandy Point Improvement Company

I am sending this memo to supplement my September 6, 2012, memo regarding Sandy Point Improvement Co., Inc. (Sandy Point). Since I wrote that memo, I received a phone call from Mr. Rehberger, attorney for Sandy Point, who informed me the corporation has redeemed the Class B shares, or soon would redeem those shares.

The absence of Class B shares does not change my legal conclusion, because the primary issue I have identified is that the Class C shareholders have no right or claim to the earnings of Sandy Point's water operations, or to Sandy Point's water property upon dissolution of the corporation.<sup>1</sup>

As I explained, having such a right or claim was a key basis for the court's conclusion in the *Inland Empire* and *Nob Hill* cases that the owners/customers of a cooperative did not need the protection of the public service laws, and hence the cooperatives in those cases were not subject to UTC regulation.<sup>2</sup>

However, the absence of Class B shares changes some of the discussion in my September 6, 2012, memo, because I had expressed uncertainty whether the 250 Class B shares were proportional to the underlying interest of the shareholder, and whether that shareholder's

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<sup>1</sup> September 6, 2012, memo at 4-6 and at 8.

<sup>2</sup> *Id.*

interests were the same as the other shareholders, who are Sandy Point water customers. I noted that how those issues were resolved could help determine whether the other shareholders had a sufficient “voice” in the affairs of the water utility. As I explained, this “voice” element is another factor considered by the court in both *Inland Empire* and *Nob Hill*.<sup>3</sup> However, if Sandy Point redeemed the Class B shares, that issue is no longer relevant.

In sum, while my earlier discussion requires clarification due to updated information regarding the status of the Class B shares, my conclusion is unchanged: there are sufficient facts to support a UTC Staff recommendation that the UTC initiate a classification proceeding for Sandy Point.<sup>4</sup>

DTT:klg