

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-121408
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 01
)	
v.)	
)	ORDER INITIATING SPECIAL
SANDY POINT IMPROVEMENT)	PROCEEDING UNDER RCW
COMPANY,)	80.04.015; COMPLAINT AGAINST
)	RATES AND CHARGES; AND
Respondent.)	COMPLAINT FOR PENALTIES
)	
.....)	

I. SPECIAL PROCEEDING

- 1 The Washington Utilities and Transportation Commission (Commission) hereby initiates a special proceeding pursuant to RCW 80.04.015 to determine whether (and the extent to which) Sandy Point Improvement Company (Sandy Point or Company) is subject to Commission regulation under Chapter 80.28 RCW and is performing any act requiring approval of the Commission without securing such approval.
- 2 Based on the results of an informal Staff investigation, the Commission believes that Sandy Point may be engaged in business as a water company, as defined by RCW 80.04.010 and WAC 480-110-255, without having filed a tariff with the Commission as required by RCW 80.28.050 and WAC 480-110-295(3).
- 3 If the Commission determines, on the basis of evidence received in this formal proceeding, that Sandy Point’s activities are subject to the provisions of Title 80 RCW, the Commission may issue such orders as may be necessary to require Sandy Point to comply with the title and the Commission’s rules adopted under that title.
- 4 The significant findings of Staff’s informal investigation, which remain to be proven in this formal proceeding, based on applicable statutes and rules, are as follows:

- 5 (1) Sandy Point owns, controls, and manages water plant for the purpose of providing water service to the public for hire in the state of Washington, near Ferndale, Washington.
- 6 (2) Sandy Point is a for-profit Washington corporation.
- 7 (3) Sandy Point has not filed a tariff with the Commission.
- 8 (4) Water companies are exempt from the Commission’s jurisdiction if they have fewer than 100 customers and receive less than \$557 average annual gross revenue per customer. RCW 80.04.010(30(b)). Thus, a water company comes within the Commission’s jurisdiction either upon connecting its 100th customer or upon receiving, over a period of one year, more than \$557 average annual gross revenue per customer. WAC 480-110-255(5) details how to determine when the jurisdictional threshold for average annual gross revenue per customer is met.
- 9 (5) Water companies are also exempt from the Commission’s jurisdiction if they are “homeowner associations, cooperatives and mutual corporations, or similar entities ...” WAC 480-110-255(1)(f).
- 10 (6) Sandy Point provides water service to 46 customers who do not hold any shares of Sandy Point stock; 119 customers who each hold one share of Class C stock issued by Sandy Point; and 779 customers who each hold one share of Class A stock issued by Sandy Point.
- 11 (7) According to Sandy Point’s Articles of Incorporation, Sandy Point’s Class C shareholders “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 thereto to have water service provided by the corporation to real property owned by the shareholder in the vicinity of Sandy Point to which such share shall be appurtenant ...”
- 12 (8) Sandy Point is not eligible for the exemption identified in WAC 480-110-255(1)(f) for certain “homeowner associations, cooperatives and mutual corporations, or similar entities ...”

- 13 (9) If Sandy Point is subject to Commission jurisdiction as a water company solely because it is a for-profit corporation, then Sandy Point would be subject to Commission jurisdiction as to its water service to all of its 944 water customers. In that circumstance, Sandy Point would exceed the 100 customer jurisdictional threshold in RCW 80.04.010(30)(b).
- 14 (10) If Sandy Point is subject to Commission jurisdiction as a water company solely because Sandy Point's Class C shareholders have no legal interest in the financial returns of Sandy Point, then Sandy Point would be subject to Commission jurisdiction as a water company to the extent Sandy Point serves the 119 Class C shareholders and Sandy Point's 46 non-shareholder customers (a total of 165 customers). In that circumstance, Sandy Point would exceed the 100 customer jurisdictional threshold in RCW 80.04.010(30)(b).

II. COMPLAINT AGAINST SANDY POINT'S RATES AND CHARGES

- 15 The Commission also hereby initiates a complaint proceeding pursuant to RCW 80.04.110 and RCW 80.28.020.
- 16 The Commission alleges that the rates and charges being collected by Sandy Point are unfair, unjust and unreasonable, or unreasonably discriminatory or unduly preferential, or are in any other way in violation of the provisions of law.
- 17 If the Commission determines the rates and charges being collected by Sandy Point are unfair, unjust and unreasonable, unreasonably discriminatory or unduly preferential, or are in any other way in violation of a provision of law, the Commission will set rates that are fair, just and reasonable, or non-discriminatory or non-preferential, or otherwise in compliance with the law.
- 18 If the Commission determines that any rates and charges being collected by Sandy Point are excessive, unfairly discriminatory or unduly preferential, the Commission reserves the right to require Sandy Point to issue refund the difference between the excessive, unfairly discriminatory or unduly preferential rate and the appropriate rate set by the

Commission, from the date of issuance of this Complaint to the effective date of the appropriate rates set by the Commission.

III. COMPLAINT AGAINST SANDY POINT FOR PENALTIES

- 19 The Commission also hereby initiates a complaint proceeding for penalties pursuant to RCW 80.04.110 and RCW 80.04.380.
- 20 Sandy Point should have filed a tariff with the Commission to become effective when Sandy point first served 100 total customers for services subject to Commission jurisdiction.
- 21 Sandy Point failed to file a tariff with the Commission at any time relevant to this Complaint.
- 22 Sandy Point's failure to file tariffs with the Commission constitutes a violation of RCW 80.28.050. Per RCW 80.04.380, each day of such failure is a separate violation and subject to a separate monetary penalty.
- 23 At this time, the Commission does not know the maximum dollar amount of penalties at issue; that will be determined at hearing, if necessary. The Commission retains discretion to issue a monetary penalty in the maximum amount permitted by law, a monetary penalty less than such maximum or no monetary penalty.
- 24 THEREFORE, the Commission enters into a full and complete investigation into the matters alleged and will commence hearings pursuant to Chapter 34.05 RCW and Chapter 480-07 WAC for the following purposes:
- 25 (1) The Commission will determine whether, and the extent to which, Sandy Point Improvement Company is conducting business subject to regulation under Title 80 RCW and is performing any act requiring approval of the Commission without securing such approval.
- 26 (2) If the Commission determines that Sandy Point Improvement Company is conducting business subject to regulation under Title 80 RCW, the Commission

will issue such orders as may be necessary to require the Company to comply with Title 80 RCW and the Commission's rules adopted under that title.

- 27 (3) To the extent the Commission determines that Sandy Point Improvement Company is conducting business subject to regulation under Title 80 RCW, the Commission will determine whether the rates or charges demanded, exacted, charged or collected by Sandy Point Improvement Company for regulated services, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates are unfair, unjust, unreasonable, unjustly discriminatory or unduly preferential, or are in any other way in violation of the provisions of law.
- 28 (4) If the Commission determines that Sandy Point Improvement Company's rates or charges, including its connection charges, are unfair, unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any other way in violation of the provisions of the law, the Commission will determine the fair, just, reasonable, non-discriminatory or non-preferential or otherwise lawful rates or charges to be charged. The Commission reserves the right to order refunds with respect to any rate found to be excessive, unjustly discriminatory or unduly preferential, from the date of issuance of this Complaint to the effective date of the appropriate rates set by the Commission.
- 29 (5) If the Commission determines that Sandy Point Improvement Company is required to file tariffs with the Commission, the Commission will also determine whether Sandy Point improvement Company failed to file tariffs with the Commission in violation of RCW 80.28.050, and if so, the appropriate amount of monetary penalties, if any, for such violations.
- 30 (6) The Commission will make such other determinations and enter such other orders as may be just and reasonable.

IV. PROBABLE CAUSE

Based on a review of Staff's investigation report and all supporting documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this complaint.

DATED at Olympia, Washington, and effective November 13, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Director, Administrative Law Division