

To: Utilities and Transportation Commission
Date: September 13, 2013
Re: Rulemaking Inquiry to Consider the Need to Evaluate and Clarify Jurisdiction of Water Companies, WAC 480-110-255, Jurisdiction, and related rules Docket UW-131386
Date: September 13, 2013

Dear Commission,

We are providing these comments on behalf of Curran Road Mutual Water Assoc. and its 650 members in response to proposed changes in WAC 480-11-255(2)(e) and (f). Our Company was incorporated in 1940 and has always served only our membership*, all of whom have a vote in the election of our board of directors, and all of whom have equal rights as members. We know of no other homeowner association, cooperative, or mutual corporation that is not organized under this same basic framework.
*(*Some ancillary water sales occur to provide for fire hydrant use, construction water, and emergency intertie supply, all of which occur on a very limited and intermittent basis.)*

Curran Road Mutual Water Assoc. strongly believe that the existing RCWs and WACs, including RCW 80.04.015 Conduct of business subject to regulation – Determination by Commission, are sufficient to address issues that may be presented before the Commission. This is particularly true with the legal tests that are articulated in the Inland Empire Rural Electrification, Inc. v. Department of Public Service and West Valley Land Company, Inc. v. Nob Hill Water Association cases. In those cases it is very clear that regardless of what the water company, or the state, may call an entity, what the entity does is determinant. The proposed changes to the WAC raise many issues only some of which are presented in the attached Talking Points and Proposal dated September 5, 2013.

Alternatively, if the commission believes rulemaking is truly necessary, the process should provide very clear and concise rules that, if met, provide the entity any exemption from Commission regulation. Based on the test provided in Inland Empire and Nob Hill cases, that rule if required, should include the following elements:

WAC 480-110-225(2)

(b) Providers of water service when:

1. The entity only serves its members/customers and not the general public or any part of it* (*see above*); and
2. All customers have a voice in the management of the entity; and
3. All customers have an interest in any dividends or surplus from the entity and any residual value upon dissolution of the entity.

Further detail addressing these key items could then be further developed by the Commission in the form of policy. An example of a policy item would be a statement that “Customers whose use is ancillary, intermittent, or of short duration are not considered customers as use in this subsection. Examples of ancillary water use would include water used for fire- fighting, construction water, or emergency interties.

Again, we believe the current RWCs and WACs provide the Commission with the necessary authority and rules to perform their responsibilities. If rulemaking is required, the basic elements required for exemption from regulation should be clearly provided by rule with policy only used to provide further detail and examples.

It should be noted that if the Commission potentially expands the range of water company’s which it regulates the term “customer” as used in WAC 480-110-255(1)(b) should be provided with a more limited definition. For example as water systems expand they will often begin to provide service to commercial, industrial, and school of public facilities.

Such facilities often have water use equivalent to hundreds or even thousands of homes. The inclusion of such facilities in the calculation of average annual gross revenue per customer may be a misrepresentation of the true median revenue per customer.

It would appear that the concept of average annual gross revenue per customer is intended to be based upon and protective of average residential connection. Even within residential connections, a connection might include a single meter serving a two hundred unit apartment. The average annual gross revenue per customer in such a case should be based on the single meter charges divided by the two hundred residential units served by the meter.

We appreciate the opportunity to provide these comments and are willing to work with the Commission as this process continues. Should you have any questions or comments please contact me at (253) 537-1388 office, or (253) 255-5892 cell.

Sincerely,

Ken Corcoran,
General Manager

Attachment 1

UTILITIES AND TRANSPORTATION COMMISSION
Rulemaking Inquiry to Consider the Need to Evaluate and Clarify Jurisdiction of
Water Companies, WAC 480-110-255, Jurisdiction, and related rules
Docket UW-131386

The Situation:

WAC 480-11—255 (2)(a) currently provides that the commission does not regulate providers of water service including:

- (e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.
- (f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to nonmembers unless they serve one hundred or more nonmembers, or charge nonmembers more than five hundred and fifty-sever dollars average annual revenue per nonmember.

On August 21, 2013 the commission has filed a CR-101 that includes discussion draft rules that strike the exemption for homeowner associations, cooperatives and mutual corporations, or similar entities.

The Problem:

The proposed CR-101 revisions for the UTC would potentially have the following significant detrimental effects on a specific group of existing long-term water utilities (water associations, coops and mutuals, etc.):

1. The revision in manner of operation and administration of the water utility could have significant impacts to the viability of the utility. Many water associations, coops and mutuals have now operated for significant periods of time in Washington and have developed specific economic models to finance and recover the cost of water service from members. UTC oversight would reduce the flexibility of operation of these institutions and further burden the rate payer with additional regulatory oversight and cost. Many of these institutions (associations, coops, etc.) were formed under federal loans from FHA or RDA and continue to obtain federal financing. Presently these institutions meet all federal requirements for these loans and an additional level of oversight and cost is not productive or warranted.
2. Water associations, coops and mutual currently operate more like public entities very similar to water districts and public utility districts and do not require an additional layer of regulatory oversight. These institutions are governed by elected boards from the members and owners of the institution. The loss of the exemption for these entities will detrimentally impact the member/customers of the entities voice in the management of the entities affairs. Currently the voice of the member/ customer is direct at entity meetings or through the member/customer elected directors. Should actions by directors not implement the intent of the members/customers, the members/customers can and will replace the directors.
3. The economics of water utilities is a very delicate balance between cost recovery, project financing, and management of water resources. These water utilities are regulated and operate under an approved Washington Department of Health Water System Plan that lays out operation, management and future projects and obligations for the utility. There is potential significant disruption of anticipated future projects and management of the water systems Water Use Efficiency Programs under the proposed UTC changes.

It is not clear if the commission is attempting to address issues related to one or a few entities or a larger group of entities. These types of entities have operated for many decades without issues being raised or brought before the commission. Considering the significant disruption that the proposed language would bring across the state and the

breadth of issues that would be created, serious consideration should be given as to the true need for the rulemaking.

The Goal:

Ensure that the water utility operates in the most efficient manner and ensure voices of the members/customers continue to direct the management of the entity and retain a direct interest in the entity. This goal can be achieved by retaining the existing WAC language and addressing issues brought before the commission on a case by case basis; or with much greater difficulty, develop new language which address, among others, the issues identified below.

A Short List of Issues that Would Need to Be Addressed if Rulemaking Proceeds:

- How do members/ customers retain a voice in setting rates and fees?
- How do members/customers retain a voice in management and policy?
- How is water customer to be defined; by connection, meter, residential unit, equivalent residential unit?
- How is a “water service” to be defined; by connection/meter, residential unit?
- How are commercial, industrial, school and university, or public “water services” addressed as these connections often are the equivalent of multiple or hundreds of residential connections?
- How will commercial, industrial, school, university, and public water service use be addressed in calculating the average annual cost per member/customer?
- How are ancillary water uses to be classified, such as temporary construction water, irrigation systems, hydro-seeder use, firefighting training, actual firefighting use?
- How are bulk fill stations to be incorporated into possible new rules?
- How will member/customer discretionary irrigation water use be considered in calculating water services costs as they relate to commission regulations?
- How would the member/customer directed policies toward system improvements and their funding be impacted?
- How would the member/customer policies regarding growth and system expansion be addressed?
- How would the member/customer directed management of existing assets and cash reserves be addressed?
- How would an entity’s obligation to provide water service within their retail, wholesale, and planned service areas under Department of Health regulations be addressed?
- How would an entity’s ability to provide timely and reasonable water service be addressed?

- How will the entity's members/customers retain the ability to set tiered water rates under their effort to satisfy the Department of Health's Water Efficiency Use regulations?

The Proposal:

- Retain the existing WAC 480-110-255 language.
- Only if necessary, add additional authorization for commission investigation of exempt entities under a narrow set of circumstances yet to be developed.
- Do not address the exemption issues in "policy". If required any changes should be through the rule making process.