

LAW OFFICES OF

**MILLS MEYERS SWARTLING**

A PROFESSIONAL SERVICE CORPORATION

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SCOTT M. ELLERBY

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May 30, 2014

VIA U.S. MAIL and EMAIL: [sking@utc.wa.gov](mailto:sking@utc.wa.gov)

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr., SW  
Olympia, WA 98504-7250

Re: *Washington Water Supply, Inc. ("WWS") – UW-140598*

Dear Mr. King:

This letter is in furtherance of my May 8, 2014 letter to the Washington Utilities and Transportation Commission ("UTC") and in response to Sharon Wallace's May 20, 2014 letter to you regarding WWS. Parenthetically, despite the request in my May 8 letter to the UTC that a response be sent to me, not only did I receive no response, I was not even copied on Ms. Wallace's letter to you and had to rely on the delay in receiving it by mail from my client. Moreover, Ms. Wallace's letter to you neither acknowledged nor even mentioned my letter. I have therefore enclosed a copy of that letter for your review. In that letter, I attempted to explain that my goal is to assist WWS in developing an action plan designed to satisfy UTC concerns with WWS's operations. To that end, I investigated the history of WWS's engagement with the Silent Sky and Bainbridge 1 water systems described in UW-140598 and concluded, after reviewing all available information, that there was no transfer of title or other evidence of transfer of any ownership interest in these water systems to WWS. There was no contract regarding the management and operation of the systems, and WWS's operation was purely on an informal management basis. Although WWS had intended, as it explained on numerous occasions to UTC staff, to acquire these systems, it did not do so.

UTC staff have recognized, both in writing and orally, that WWS would not need to add these systems to its tariff if it had not formally acquired them. I have attached a copy of Mr. Poppe's email exchanges with UTC staff in January, 2014 documenting those discussions and the fact that WWS would work with the customers of the water systems and the local PUD on arranging for a new operator to take over. Mr. Ward's January 8, 2014 email to Mr. Poppe states:

May 30, 2014

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I can't make any recommendations of how you should proceed with these water systems. I was only asking the question of if you claim ownership and responsibility, how can you legally show ownership. As to who should have ownership of the water system(s), that is best decided by the customers of the water system once they are informed of their options.

As you can see from these emails, the issue of ownership, which is presented to you in Ms. Wallace's May 20 letter as an issue for determination at hearing, was fully addressed with staff several months ago and well before the April 17, 2014 Notice of Penalties.

Given the complication these systems pose to WWS's existing tariff, we have recommended that WWS notify the customers of these systems that WWS will no longer offer informal management services, and that the customers of the systems will be given a reasonable opportunity to arrange for substitute operation and management. WWS will offer its assistance in that process, and has conferred with the staff at Kitsap PUD regarding this process and the assumption of these systems by the PUD.

WWS seeks to engage with UTC on the details and timing of communications with these systems' customers. I have enclosed a draft customer notice for review and comment. If a meeting with UTC staff cannot be scheduled, I would appreciate their written comments regarding this issue and proposed notices.

WWS has not billed any customer of the two affected systems since April, 2014. Given the lack of ownership, the express and detailed notice given to UTC staff that WWS did not own the systems and did not intend to pursue ownership, and the acknowledgment of that by UTC, it makes little sense for UTC to sanction WWS for a failure to amend its tariff to add these systems. It is hardly appropriate to sanction a utility for not adding systems to its tariff when the UTC acknowledges that the utility does not own the systems. It also would make little sense to proceed to a hearing on what has been a moot issue for several months, and clearly well-after the September 2013 deadline contended by UTC.

Finally, WWS has provided ample evidence to UTC staff that it transferred its interest in the Whidbey West system in 2012 in a process that UTC staff participated in and approved. WWS agrees in full that it is appropriate to amend its tariff to account for this change, and has engaged with UTC staff on a variety of reasonable questions that have arisen with WWS' application to amend. UTC's earlier insistence that the Silent Sky and Bainbridge 1 systems be added to WWS's tariff understandably clouded the issue of the tariff amendment and confused the process of removing the Whidbey West system from the tariff. UTC staff were unwilling to separate the two issues, and from the contents of Ms. Wallace's May 20, 2014 letter to you and the Notice of Penalties dated April 17, 2014, it is clear that UTC staff remain unwilling to separate those issues.

May 30, 2014

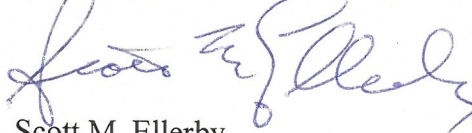
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In summary, I believe that proceeding to a hearing on these matters would be a significant waste of resources and time, which would be better spent in having the parties work together in completing the tariff amendment concerning the removal of the Whidbey West system. That process has already begun, and should not require any lengthy delay. I am committed to assisting WWS in that process and to see that it is completed expeditiously. However, if you believe that a hearing rather than cooperation is the best way forward, I will work with your staff in scheduling dates.

I look forward to your response. Should you have any questions, please feel free to telephone me.

Very truly yours,

MILLS MEYERS SWARTLING P.S.

A handwritten signature in blue ink, appearing to read "Scott M. Ellerby", written over the typed name below.

Scott M. Ellerby

SME:aka

Enclosures

cc: Client

LAW OFFICES OF

**MILLS MEYERS SWARTLING P.S.**

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1000 SECOND AVENUE, 30TH FLOOR  
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(206) 382-1000  
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May 8, 2014

Washington Utilities and Transportation Commission  
Attn: Gregory J. Kopta  
1300 S. Evergreen Park Dr., SW  
Olympia, WA 98504-7250

Re: *Washington Water Supply, Inc. – UW-140598*

Dear Mr. Kopta:

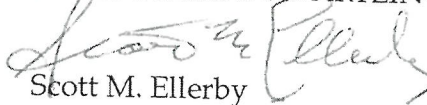
This firm represents Washington Water Supply, Inc. ("WWS") and John Poppe, and will assist them in responding to the concerns articulated by the Washington Utilities and Transportation Commission ("UTC") as detailed in Notice of Penalties Incurred and Due for Violations of Laws and Rules. WWS and Mr. Poppe responded to the Noticed with a letter dated May 2, 2014, filed with the UTC that day, and the UTC response form signed on May 2, 2014 referring to the letter of the same date. As indicated in the letter and form, WWS wishes to work with UTC staff on developing an action plan designed to satisfy UTC concerns with WWS's operations. Our goal is to assist WWS in achieving that resolution.

If it was not clear in Mr. Poppe's May 2, 2014 letter and response form, WWS requested, in addition to a prehearing meeting, both a hearing and to apply for mitigation. Given that no response to this request for a meeting has been received to date, we would like to reiterate WWS's desire for a meeting prior to the hearing regarding a contest of the alleged violations and mitigation. If the UTC is unwilling to meet and confer, we nevertheless request to schedule the contest and mediation hearing.

I look forward to your response and to working with WWS and the UTC in achieving a satisfactory resolution to these issues.

Very truly yours,

MILLS MEYERS SWARTLING P.S.

  
Scott M. Ellerby

SME:aka  
cc: Washington Water Supply, Inc.

John Poppe <poppe.john@gmail.com>  
To: sellerby <sellerby@millsmeyers.com>  
Fwd: Transfer of Property

May 30, 2014 8:59 AM

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----- Forwarded message -----

From: **Ward, Jim (UTC)** <jward@utc.wa.gov>  
Date: Wed, Jan 8, 2014 at 4:26 PM  
Subject: RE: Transfer of Property  
To: John Poppe <poppe.john@gmail.com>  
Cc: "Pearson, Rayne (UTC)" <rpearson@utc.wa.gov>

Mr. Poppe

I can't make any recommendations of how you should proceed with these water systems. I was only asking the questions of if you claim ownership and responsibility, how can you legally show ownership.

As to who should have ownership of the water system(s), that is best decided by the customers of the water system once they are informed of their options.

Jim Ward

Regulatory Analyst

Washington Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

Tel: [360-664-1250](tel:360-664-1250)

Fax: [360-586-1150](tel:360-586-1150)

E-mail: [jward@utc.wa.gov](mailto:jward@utc.wa.gov)

This email/letter states the informal opinions of commission staff, offered as technical assistance, and are not intended as legal advice. We reserve the right to amend these opinions should circumstances change or additional information be brought to our attention. Staff's opinions are not binding on the commission.

John Poppe <poppe.john@gmail.com>  
To: sellerby <sellerby@millsmeyers.com>  
Fwd: Transfer of Property Documents

May 30, 2014 9:00 AM

----- Forwarded message -----

From: **Ward, Jim (UTC)** <jward@utc.wa.gov>  
Date: Fri, Jan 17, 2014 at 7:49 AM  
Subject: RE: Transfer of Property Documents  
To: John Poppe <poppe.john@gmail.com>  
Cc: "Pearson, Rayne (UTC)" <rpearson@utc.wa.gov>

Thank you. I look forward to your action on this situation and I will forward this to our consumer compliance section.

Jim Ward

Regulatory Analyst

Washington Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

Tel: [360-664-1250](tel:360-664-1250)

Fax: [360-586-1150](tel:360-586-1150)

E-mail: [jward@utc.wa.gov](mailto:jward@utc.wa.gov)

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**From:** John Poppe [mailto:[poppe.john@gmail.com](mailto:poppe.john@gmail.com)]  
**Sent:** Friday, January 17, 2014 7:47 AM  
**To:** Ward, Jim (UTC)  
**Subject:** Re: Transfer of Property Documents

I will keep you informed.

On Fri, Jan 17, 2014 at 7:45 AM, Ward, Jim (UTC) <[jward@utc.wa.gov](mailto:jward@utc.wa.gov)> wrote:

Mr. Poppe

When will you stop being the operator and have you informed DOH regional office of this change?

Jim Ward

Regulatory Analyst

Washington Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

Tel: [360-664-1250](tel:360-664-1250)

Fax: [360-586-1150](tel:360-586-1150)

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**From:** John Poppe [mailto:[poppe.john@gmail.com](mailto:poppe.john@gmail.com)]

**Sent:** Friday, January 17, 2014 7:44 AM

**To:** Ward, Jim (UTC)

**Subject:** Transfer of Property Documents

Good Morning Jim,

I have talked to our local PUD and about the water system transfer. Be assured Washington Water Supply does not own the systems. Our objective is to remove ourselves from operating the systems that is in the best interest of the customers.

Thanks

John

John Poppe <poppe.john@gmail.com>  
To: sellerby <sellerby@millsmeyers.com>  
Fwd: Transfer of Water Systems

May 30, 2014 9:00 AM

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----- Forwarded message -----

From: **Ward, Jim (UTC)** <jward@utc.wa.gov>  
Date: Tue, Jan 21, 2014 at 7:49 AM  
Subject: RE: Transfer of Water Systems  
To: John Poppe <poppe.john@gmail.com>  
Cc: "Pearson, Rayne (UTC)" <rpearson@utc.wa.gov>

Thank You, please let us know when the transfer occurs (and what water systems) as I recall our consumer protection section was working on customer concerns on the water systems.

When will you be updating your tariff to reflex the Whidbey West water system?

Jim Ward

Regulatory Analyst

Washington Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

Tel: [360-664-1250](tel:360-664-1250)

Fax: [360-586-1150](tel:360-586-1150)

E-mail: [jward@utc.wa.gov](mailto:jward@utc.wa.gov)

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**From:** John Poppe [mailto:[poppe.john@gmail.com](mailto:poppe.john@gmail.com)]  
**Sent:** Monday, January 20, 2014 8:17 AM  
**To:** Ward, Jim (UTC)  
**Subject:** Transfer of Water Systems

Good Morning Jim,



I will meet with our PUD this week about the transfer of the water systems.

Thanks

John