

[Service Date April 8, 2005]

April 8, 2005

Mr. Rhys A. Sterling, P.E., J.D.  
Attorney at Law  
P.O. Box 218  
Hobart, WA 98025-0218

Re: William Stuth and Aqua Test, Inc.  
Petition for Declaratory Order, Docket No. A-050528

Dear Mr. Sterling,

The Commission acknowledges receipt of your petition, filed on March 16, 2005, for a declaratory order asserting jurisdiction over Aqua Test, Inc., as a public service company.

Pursuant to RCW 34.05.240(5)(d) and WAC 480-07-930(5)(b), however, the Commission notifies you that it will not enter a declaratory order in response to your request.

You state that your client, William Stuth and Aqua Test, Inc., provide operation and management services to large on-site sewage systems (LOSS), pursuant to Department of Health (DOH) regulation WAC 246-272B-08001(2)(a)(vi) and its predecessor. You urge that the Commission declare that it has jurisdiction to regulate LOSS operators and managers, in order to qualify as "public entities" within the terms of DOH regulations, and offer support in the form of a letter from the pertinent DOH program manager.

You cite RCW 80.01.040(3) for the proposition that persons "supplying any utility service" are subject to regulation as public service companies. You also cite to cases, including *Inland Empire Rural Electrification Inc. v. Department of Public Service*, 199 Wash. 527, 92 P.2d 258 (1939), to support your view that a corporation holding itself out to provide its service to the public is a public service company. You argue that under RCW 80.04.015, whether or not a

Mr. Rhys A. Sterling  
April 8, 2005  
Page 2

company is a public service company is a question of fact to be determined by the Commission, and you urge that the Commission should conduct a declaratory order proceeding to determine whether your clients' LOSS management service constitutes a public service company.

The Commission declines to begin a declaratory order proceeding because it believes, as a matter of law, that it has no jurisdiction over companies providing such services. The Commission's enabling statute, chapter 80.01 RCW, is broad in its language to enable the Commission to pursue whatever programs the legislature may authorize it to conduct with specific grants of authority in the remaining relevant chapters of titles 80 and 81. Without the authority to conduct a program, however, the Commission lacks the jurisdiction to regulate the services your clients conduct.

As the State Supreme Court held in *Cole v. Washington Utilities and Comm'n*, 79 Wn.2d 302, 306, 485 P. 2d 71 (1971), "although RCW 80.01.040(3) demands regulation in the public interest, that mandate is qualified by the following clause[:] 'as provided by the public service laws . . .'" The Court further required a showing that some section of Title 80 RCW rendered the business in question "within the jurisdictional concern of the commission" before allowing the Commission to exercise jurisdiction over the business. The *Inland Empire* decision that you cite refers to the conduct of a regulated public service, the provision of electricity, which is defined in RCW 80.04.010 and for which regulatory jurisdiction is granted in Chapter 80.28 RCW. We believe that without legislation defining the service as a regulated public service business, and without a specific statute defining the Commission's regulatory role and granting it the authority to act, the agency has no authority to regulate the operation or management of large on-site sewage systems.

Thank you for your inquiry.

Sincerely,

CAROLE J. WASHBURN  
Executive Secretary