



Rob McKenna

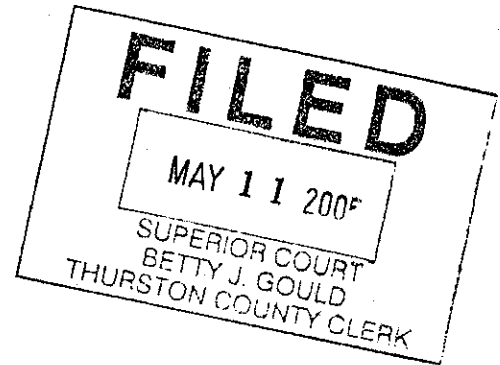
# ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

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

May 11, 2005

Clerk  
Thurston County Superior Court  
2000 Lakeridge Dr. SW  
Olympia, WA 98502



Re: *William A. Stuth, Sr. and Aqua Test, Inc. V. WUTC*  
Case No. 05-2-00782-3

Dear Clerk:

Enclosed for filing in the above-referenced docket are the original and 2 copies of the Answer to Petition for Judicial Review of Agency /Action Under the Administrative Procedure Act, or in the Alternative, Application for Issuance of Writ of Certiorari for Judicial Review, and Certificate of Service. Please conform and return one copy in the enclosed self-addressed, stamped envelope.

Very truly yours,

CHRIS SWANSON  
Assistant Attorney General

CS:kl  
Enclosures  
cc: Parties



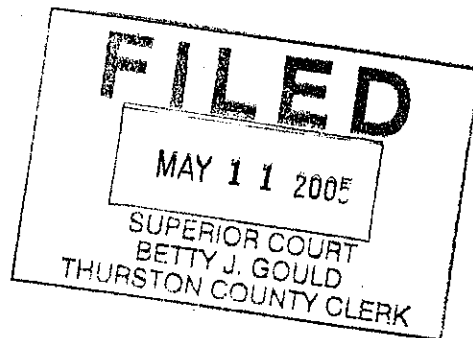
1  EXPEDITE

2  Hearing is set:

3 Date: July 22, 2005

4 Time: 9:00 a.m.

5 Judge: Honorable Richard D. Hicks



6  
7  
8  
9 STATE OF WASHINGTON  
10 THURSTON COUNTY SUPERIOR COURT

11  
12 WILLIAM L. STUTH, Sr., individually; and  
13 AQUA TEST, INC., a Washington  
Corporation,

14 Petitioners,

15 v.

16 WASHINGTON UTILITIES AND  
17 TRANSPORTATION COMMISSION,

18 Respondent.

CASE NO. 05-2-00782-3

ANSWER TO PETITION FOR  
JUDICIAL REVIEW OF AGENCY  
ACTION UNDER THE  
ADMINISTRATIVE PROCEDURE  
ACT, OR IN THE ALTERNATIVE,  
APPLICATION FOR ISSUANCE  
OF WRIT OF CERTIORARI FOR  
JUDICIAL REVIEW

19 Respondent Utilities and Transportation Commission answers the Petitioner Stuth,  
20 Aqua Test, Inc. as follows:<sup>1</sup>

21 Respondent admits that the Washington Utilities and Transportation Commission  
22 (WUTC) by its Executive Secretary entered or served a final decision on April 8, 2005.

23 Respondent denies the WUTC denied Petitioner's Petition for Declaratory Order. Respondent  
24

25 <sup>1</sup> An answer to a petition for judicial review is not normally required under the Administrative Procedure  
26 Act (APA), 34.05 RCW. However, Petitioner seeks relief under RCW 34.05.570(4)(b) which requires the Agency  
to file and serve and answer.

1 affirmatively asserts the WUTC declined to enter a declaratory order in response to Petitioner's  
2 Petition for Declaratory Order. Respondent has insufficient information to either admit or  
3 deny the remainder of paragraph 1 of the Petition for Judicial Review, and therefore denies the  
4 same.

5  
6 **I. IDENTITY OF THE PETITIONER**

7 Respondent has insufficient information to either admit or deny paragraph 2 of the  
8 Petition for Judicial Review, and therefore denies the same.

9 **II. PETITIONER'S ATTORNEY**

10 Respondent has insufficient information to either admit or deny paragraph 3 of the  
11 Petition for Judicial Review, and therefore denies the same.

12 **III. IDENTITY OF STATE AGENCY**

13 Respondent admits paragraph 4 of the Petition for Judicial Review.

14 **IV. AGENCY ACTION AT ISSUE**

15 Respondent admits the final action is subject to review under the APA. Respondent  
16 denies the action is subject to review under a writ of certiorari. Respondent admits the  
17 remainder of paragraph 5 of the Petition for Judicial Review.

18 **V. IDENTIFICATION OF PARTIES IN  
19 UNDERLYING PETITION FOR DECLARATORY ORDER**

20 Respondent admits paragraph 6 of the Petition for Judicial Review.

21 **VI. PETITIONER'S STANDING**

22 Respondent admits paragraph 7 of the Petition for Judicial Review

23 Respondent has insufficient information to either admit or deny paragraph 8 of the  
24 Petition for Judicial Review, and therefore denies the same.  
25  
26

1 Paragraphs 9 and 10 of the Petition for Judicial Review constitute legal argument  
2 and/or conclusions and for that reason an answer is not required. To the extent an answer is  
3 required, Respondent denies the allegations.  
4

5 **VII. REASONS FOR GRANTING RELIEF**

6 Respondent denies that it failed to perform its statutory mandate. Respondent denies  
7 that it denied Petitioner's Petition for a Declaratory Order. Respondent affirmatively asserts  
8 the WUTC declined to enter a declaratory order in response to Petitioner's Petition for  
9 Declaratory Order. Respondent denies that its action is a violation of the statutes listed in  
10 points 1 through 5 of paragraph 13 of the Petition for Judicial Review. The remainder of  
11 Paragraphs 11, 12, and 13 of the Petition for Judicial Review constitute legal argument or  
12 conclusions and for that reason Respondent does not answer. To the extent an answer is  
13 required, Respondent denies the allegations.  
14

15 **VIII. ALTERNATIVE RELIEF BY WRIT OF CERTIORARI**

16 Respondent denies paragraph 15 of the Petition for Judicial Review. The remainder of  
17 Paragraphs 14 through 21 constitute legal argument or conclusions and for that reason  
18 Respondent does not answer. To the extent an answer is required, Respondent denies the  
19 allegations.  
20

21 **IX. REQUEST FOR RELIEF**

22 Respondent denies any and all allegations contained in paragraph 22 of Petition for  
23 Judicial Review. Respondent affirmatively asserts that Petitioner is not entitled to the relief  
24 requested in paragraph 22 of the Petition for Judicial Review.  
25  
26

1 **X. AFFIRMATIVE DEFENSES**

2 **A. FIRST AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM**

3 Respondent’s Petition fails to state a claim upon which relief can be granted.

4 **B. THIRD AFFIRMATIVE DEFENSE – EXCLUSIVE MEANS OF REVIEW**

5 The APA constitutes the exclusive means of review of agency action. RCW 34.05.510.

6 **C. FOURTH AFFIRMATIVE DEFENSE – CONVERSION OF PROCEEDINGS**

7 The decision whether or not to convert a declaratory order proceeding to an  
8 adjudicative proceeding is solely with the discretion of the agency and is not subject to judicial  
9 review. RCW 34.05.070(1), WAC 480-07-930(4).  
10

11 **XI. RELIEF SOUGHT**

12 Respondent requests that an order be entered as follows:

- 13 1. Dismissing the Petitioner’s Petition for Judicial Review with prejudice.
- 14 2. Affirming the agency action.
- 15 3. Awarding Petitioner any additional or further relief which the courts finds equitable,  
16 appropriate or just.  
17

18 DATED this 11<sup>th</sup> day of May, 2005.

19   
20 **ROB MCKENNA**  
21 Attorney General

22  
23 **CHRISTOPHER G. SWANSON**  
24 WSBA No. 30507  
25 Assistant Attorney General  
26 Washington Utilities and  
Transportation Commission  
(360) 664-1220

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

EXPEDITE  
 Hearing is set:  
Date: July 22, 2005  
Time: 9:00 a.m.  
Judge: Honorable Richard D. Hicks

**FILED**  
MAY 11 2005  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

WILLIAM L. STUTH, Sr., individually; and  
AQUA TEST, INC., a Washington  
Corporation,  
  
Petitioners,  
  
v.  
  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
  
Respondent.

CASE NO. 05-2-00782-3  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Answer to Petition for Judicial Review  
of Agency /Action Under the Administrative Procedure Act, or in the Alternative, Application  
for Issuance of Writ of Certiorari for Judicial Review upon the persons and entities listed on  
//  
//  
//

1 the Service List below by depositing a copy of said document in the United States mail,  
2 addressed as shown, with first class postage prepaid.

3 DATED at Olympia, Washington this 11<sup>th</sup> day of May, 2005.

4  
5   
6 CHRISTOPHER SWANSON

7 *For Aqua Test:*

8 Rhys A. Sterling  
9 Attorney at Law  
10 P.O. Box 218  
11 Hobart, WA 98025-0218  
12 Fax: (425) 391-6689  
13 Phone: (425) 391-6650  
14 E-mail: [RhysHobart@aol.com](mailto:RhysHobart@aol.com)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26