

Hearing Date Aug 18, 2014, 1:30 p.m.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
against,

WASHINGTON WATER SUPPLY, INC.

NO.: UW-140598

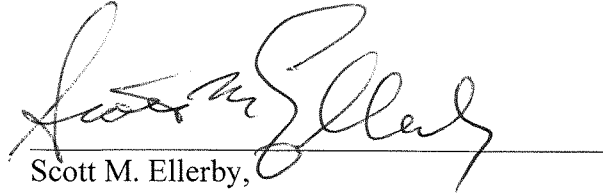
DECLARATION OF SCOTT M. ELLERBY
IN SUPPORT OF WASHINGTON WATER
SUPPLY, INC.'S MOTION FOR SUMMARY
JUDGMENT

Scott M. Ellerby, declares and says:

1. I am an attorney with Mills Meyers Swartling P.S., counsel of record for Washington Water Supply, Inc. ("WWS"). I am over the age of 18, am competent to testify, and make this declaration based upon personal knowledge.
2. Attached hereto as Exhibit A is a true and correct copy of the UTC's May 22, 2014 response to WWS' Public Records Act request of May 12, 2014.
3. Attached hereto as Exhibit B is a true and correct copy of the following portions of the UTC's production of documents responsive to the Public Records Act request, namely emails consisting of pages 56, and 60 – 65, and the letter dated May 2, 2014 from WWS to the UTC.
4. Attached hereto as Exhibit C is a true and correct copy of the UTC's letter to me dated July 11, 2014 attaching the previously withheld email dated October 25, 2014 from Jim Ward to Gene Eckhardt.
5. Attached hereto as Exhibit D is a true and correct copy of the UTC's May 20, 2014 letter to Steven K. King, Executive Director and Secretary.

Signed under the penalty of perjury under the laws of the United States of America
this 15th day of July 2014, at Seattle, Washington.

By:

A handwritten signature in black ink, appearing to read "Scott M. Ellerby", written over a horizontal line.

Scott M. Ellerby,
WSBA No. 16277

DECLARATION OF SERVICE

I, Anna Armitage, declare that I am an employee of Mills Meyers Swartling, am over the age of eighteen and am competent to testify to the matters stated herein.

On this date I caused to be served a true and correct copy of the within and foregoing Motion for Summary Judgment on the following, in the manner indicated:

Counsel for Washington Utilities and Transportation Commission Staff:

Jennifer Cameron-Rulkowski
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128

- Via first class mail, postage prepaid
- Via facsimile
- Via Legal Messengers
- Email:
jcameron@utc.wa.gov

Kippi Walker
UTC-Administrative Law Division
P.O. Box 47250
Olympia, WA 98504-7250

- Via first class mail, postage prepaid
- Via facsimile
- Via Legal Messengers
- Email:
kwalker@utc.wa.gov

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 15th day of July 2014.



 Anna Armitage

EXHIBIT A

"Wyse, Lisa (UTC)" <lwyse@utc.wa.gov>
To: Scott M. Ellerby
Request for Public Records ID#179 - Response

May 22, 2014 4:29 PM

Mr. Ellerby:

On May 12, 2014, you submitted a request for public records to the commission, in which you requested, **"All correspondence between Washington Water Supply, Inc. ("WWS") and WUTC from 1/1/12 to 4/14/14, including but not limited to emails, telephone notes, and any record of conversations between James Ward and WWS. All internal staff memos, notes, emails or other communications of any kind concerning WWS."**

The commission has reviewed its records and, due to the size of the overall attachments, has downloaded all responsive documents onto a CD as responsive to your request. The CD is being mailed today via First Class Mail. There is a charge of \$5.00 (no tax) for the CD, which will be billed to you under separate cover after the end of May.

The breakdown of documents is as follows:

- 1) RFPR Response – Jim Ward
- 2) RFPR Response – Eugene Eckhardt
- 3) RFPR Response – Amy White
- 4) Attachments to Emails are posted as individual postings on the CD.

NOTE: I have numbered the emails (top right corner) to assist in knowing when each email begins and ends.

This email completes your request for public records. If you have difficulties with the CD or have any further questions on this subject, please reply to this email or contact me directly at the number listed below.

Sincerely,

Lisa Wyse, Manager
Records Management
UTC
360-664-1259

EXHIBIT B

The Washington Utilities and Transportation Commission

It is a pleasure to send you the enclosed material
in response to your recent request.



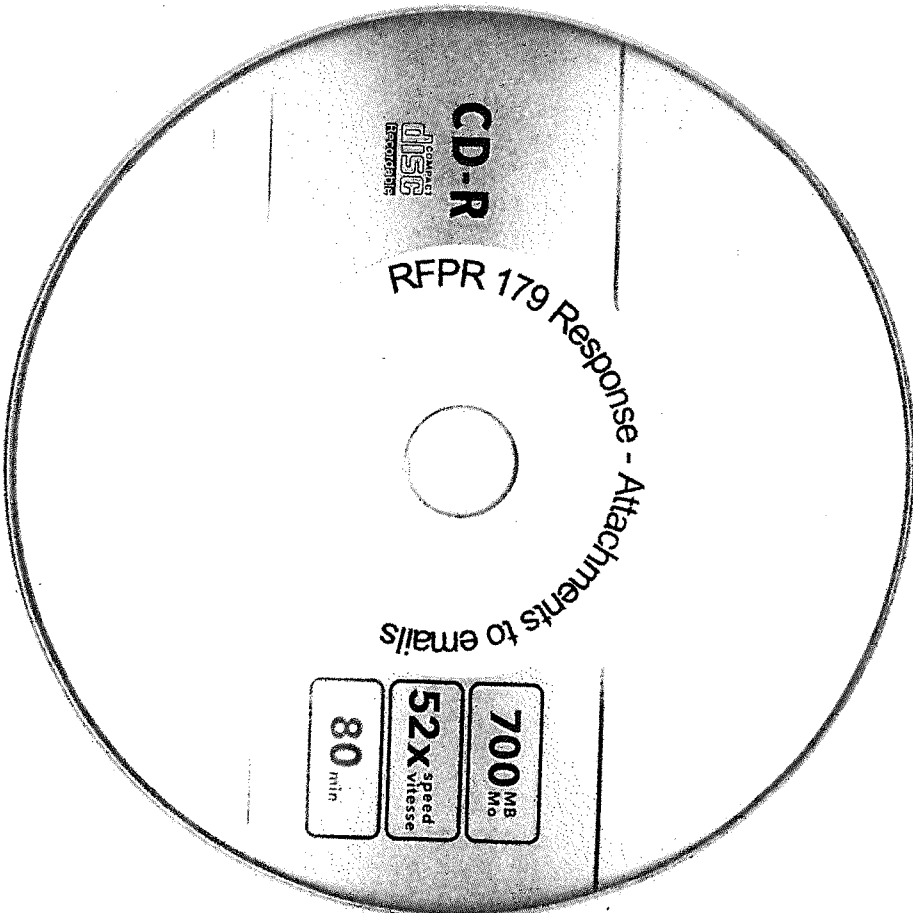
Lisa Wyse
Records Center Manager

Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

360/664-1259
FAX 360/586-1150
e-mail: lwys@uttc.wa.gov



WASHINGTON
UTTC
UTILITIES AND TRANSPORTATION
COMMISSION



56

Ward, Jim (UTC)

From: John Poppe <poppe.john@gmail.com>
Sent: Wednesday, January 08, 2014 9:25 AM
To: Ward, Jim (UTC)
Cc: Pearson, Rayne (UTC)
Subject: Re: Transfer of Property

Good Morning Again,

This is one of the "transfer of property" problems with these small systems. The owners wanted out and were just walking away.

Technically WWSI doesn't own the systems, but we have been taking care of the system(s) .

This is one of the reasons I did not file for ownership / transfer of property / tariff revisions. Technically WWSI doesn't own the systems and we would be more than willing to back out and hand them over to the homeowners or Kitsap County PUD.

Based on what's in the best interest of the water system and its customers, it would be best to turn them over to the local PUD? What do you think?

On Wed, Jan 8, 2014 at 8:02 AM, Ward, Jim (UTC) <jward@utc.wa.gov> wrote:

Mr. Poppe

Thank for the quick turn around and the updates. I think the document is much clearer. I have attached a new one with a few simple suggestions.

I noticed in paragraph 6 'instrument of transfer', that you put "Not Available". Is there was no transfer document or bill of sale or agreement, and if not, what give you the legal right to own and operate and collect money from customers for this water system?

This package, along with the notice and tariff pages should work for the transfer of Silent Sky water system.

Previously, you had also listed Bainbridge 1 (ID# 95625F) as a new water system. Will you be filing a separate transfer package (with the same type of documents) for that purchase and adoption into your tariff?

Please remember that all tariff changes and transfer applications MUST be filed with the records center at records@utc.wa.gov for official receipt and distribution. The package must include a cover letter and must be complete to allow for processing.

Thank you.

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

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.

From: John Poppe [<mailto:poppe.john@gmail.com>]

Sent: Tuesday, January 07, 2014 4:56 PM

To: Ward, Jim (UTC)

Subject: Transfer of Property

Good afternoon Jim,

I have made some significant changes to the original DRAFT document to reflect the transfer of property.

Add, change ,delete

60

Ward, Jim (UTC)

From: John Poppe <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> 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

Fax: 360-586-1150

E-mail: jward@utc.wa.gov

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From: John Poppe [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

61

Ward, Jim (UTC)

From: Ward, Jim (UTC)
Sent: Friday, January 17, 2014 7:50 AM
To: 'John Poppe'
Cc: Pearson, Rayne (UTC)
Subject: RE: Transfer of Property Documents

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
Fax: 360-586-1150
E-mail: jward@utc.wa.gov

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From: John Poppe [<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> 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

Fax: 360-586-1150

E-mail: jward@utc.wa.gov

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From: John Poppe [<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,

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Thanks

John

62

Ward, Jim (UTC)

From: Ward, Jim (UTC)
Sent: Tuesday, January 21, 2014 7:49 AM
To: 'John Poppe'
Cc: Pearson, Rayne (UTC)
Subject: RE: Transfer of Water Systems

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
Fax: 360-586-1150
E-mail: jward@utc.wa.gov

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From: John Poppe [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

63

Ward, Jim (UTC)

From: John Poppe <poppe.john@gmail.com>
Sent: Tuesday, February 18, 2014 8:44 AM
To: Ward, Jim (UTC)
Subject: Update

Good Morning Jim,

I waiting for a response from KPUD about taking ownership of the water systems. Their main person who takes the lead is on vacation until March 1.

Still moving forward.

John Poppe

64

Ward, Jim (UTC)

From: Eckhardt, Gene (UTC)
Sent: Thursday, April 17, 2014 1:56 PM
To: Ward, Jim (UTC); White, Amy (UTC)
Subject: FW: UTC Courtesy Email: \$11,600 Penalty Assessment for violations of 480-110-433 UTC:0001412
Attachments: UW-140598 Washington Water Supply 2014 Penalty Assessment RP.pdf; UW-140598 Washington Water Supply Inc 2014 Investigation Report.pdf
Importance: High

Yikes.

This e-mail 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.

Eugene K. Eckhardt
Assistant Director of Water and Transportation
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250
Tel: (360) 664-1249
FAX: (360) 586-1150
E-mail: geckhard@utc.wa.gov

From: Document Service Queue [mailto:recordscenter@utc.wa.gov]
Sent: Thursday, April 17, 2014 11:48 AM
To: Eckhardt, Gene (UTC)
Subject: UTC Courtesy Email: \$11,600 Penalty Assessment for violations of 480-110-433 UTC:0001412
Importance: High

The Washington Utilities and Transportation Commission (UTC) served the following document(s), regarding Docket Number(s) 140598, on 4/17/2014 11:46 AM:

\$11,600 Penalty Assessment for violations of 480-110-433

We attach a courtesy copy of the above document(s). Please do not reply to this e-mail. If you have any questions regarding this e-mail, please contact the UTC Records Center, at records@utc.wa.gov.

Thank you.

Ward, Jim (UTC)

From: Ward, Jim (UTC)
Sent: Thursday, May 08, 2014 11:02 AM
To: Tinnerstet, Darren (UTC)
Subject: RE: UW-140598 Washington Water Supply
Attachments: Washington Water Supply.pdf

As you requested

Jim Ward
Regulatory Analyst
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250
Tel: 360-664-1250
Fax: 360-586-1150
E-mail: 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.

From: Tinnerstet, Darren (UTC)
Sent: Thursday, May 08, 2014 9:59 AM
To: Ward, Jim (UTC)
Subject: UW-140598 Washington Water Supply

Jim,

Could you send me a copy of Washington Water Supply's current Tariff? I don't currently have access to the Tariff section on the SharePoint site so I am unable to retrieve it. I was able to locate an older one, WN U-2 effective 1/1/2001, but I wasn't sure if that was their most recent one.

Thank You!

Darren Tinnerstet
Compliance Investigator
Consumer Protection & Communications
Washington Utilities & Transportation Commission
☎ 360.664.1108
☎ 360.664.1289
🌐 www.utc.wa.gov



WASHINGTON WATER SUPPLY, INC

"Water Supply and Distribution"

May 2, 2014

Washington Utilities and Transportation Commission

1300 S. Evergreen Park DR SW

Olympia, WA 98504-7250

Penalty Assessment: UW-140598

Dear Mr. Gregory Kopta,

April 18, 2014 Washington Water Supply, Inc. received the Penalty Assessment: UW-140598 document with a stamped "SERVICE DATE APR 17 2014". There are two documents that we received to include "NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES" and "INVESTIGATION REPORT Washington Water Supply, Inc."

The following is Washington Water Supply, Inc.'s (WWSI) understanding of the topics discussed in the "Investigation Report":

1. Silent Sky and Bainbridge 1 are Class B systems and are regulated by Kitsap County Health Department.
2. There are no regulatory records of the two water systems change in ownership. The previous managers of the two systems removed themselves, leaving no one qualified entity to operate and maintain. WWSI opted to operate and maintain the systems with the customer current monthly fee until a qualified entity stepped forward.
3. The two systems were operated by WWSI, but no "Bill of Sale" or transfer of "Title" was completed because UTC approval was needed to own the new system.
4. August 2, 2013 John Poppe completed the Silent Sky Questionnaire knowing that UTC approval had to be completed prior to ownership and Tariff modification were necessary. At the Questionnaire time, WWSI thought it a good time to include Silent Sky into the Tariff, answering the questionnaire as if WWSI were the owner. Again the questionnaire response was an intent to own.
5. The Whidbey West Water System change in ownership was completed in September, 2012 and was not sold to "for profit" company. It was understood the Assn had an elected Board, non-profit, had their own business rules, and contracted with a licensed Water Distribution Manager. Notice to customers was provided by the Whidbey West Water Assn. via US Mail. Subsequently, a public meeting was held inviting all customers in which DOH Regional office attended the meeting. Washington Water Supply, Inc. financed the mailing(s) because of limited Assn funds. UTC was aware of the intent to transfer ownership and had knowledge of the final act. The Assn stated their intent to formalize paperwork with regulators. Washington Water Supply, Inc. understood that since UTC was informed of intent and final action, that all requirements had been met.

2014 MAY -2 AM 9:32
STATE OF WASHINGTON
UTIL. AND TRANS.
COMMISSION
RECEIVED

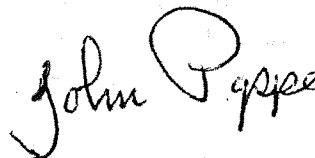
6. UTC provided sample copies to formalize the Transfer process and we found them difficult to use. There were email questions and telephone conversation about the sample forms because there was no "BILL OF SALE" or clear "TITLE". WWSI was aware of the need to receive UTC approval prior to transfer of ownership and inclusion into our Tariff, therefore WWSI was not the owner.
7. UTC and WWSI communication occurred where WWSI opted not to own the two water systems. There were two options since WWSI did not own the systems, immediately cease operation and maintenance or be responsible and make certain actions were in the best interest of the water users. WWSI wanted to protect the water system customers by making a systematic/seamless transfer of responsibility to the Kitsap Public Utility District. Contact was made with KPUD early in 2014 about their interest assuming the operation and maintenance of the water systems. Since the water systems were functional, no water quality problems, and no customer complaints KPUD did not place the assumption as a high priority.
8. The system customers have been afforded the same Tariff considerations with maintenance of existing monthly rates, water quality, emergency response, etc.

In summary, Washington Water Supply, Inc. does not own the two water systems, but has operated and maintained the systems as a professional courtesy. Once UTC notified WWSI needed to include the two systems into the Tariff, the company started to complete the paperwork, and finalized a decision to not seek ownership and transfer the systems to the local PUD. Since the systems have no immediate crisis, the transfer will not move fast.

UTC was aware of the 2012 Transfer of the Whidbey West Water System, and can be supported by emails, conversations, and testimony. WWSI understood that no correspondence from the regulators resulted in the approval of the Transfer.

Washington Water Supply, Inc. is most anxious to resolve the issues presented in the documents served April 17, 2014. If the UTC and WWSI are not able to resolve the issue(s), we will need extra time for discovery of communications, documents, and actions.

Respectfully,

A handwritten signature in black ink that reads "John Poppe". The signature is written in a cursive style with a large, looped "P" and "e".

John Poppe

Washington Water Supply, Inc.

EXHIBIT C



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

July 11, 2014

Scott Ellerby
Mills Meyers Swartling
1000 2nd Avenue, Suite 3000
Seattle, Washington 98104
sellerby@millsmeyers.com

RE: Public Records Request: Scott Ellerby 179

Dear Mr. Ellerby:

On May 22, 2014, the Commission responded to your Public Records Request, and included with its response a Log of Documents Withheld (Log). The Log referenced four documents. Two were withheld from disclosure citing the Deliberative Process exemption found in RCW 42.56.280, and two were withheld citing the Attorney-Client Privilege or specific exemption for Attorney Work Product set forth in RCW 42.56.290. In your letter dated June 27, 2014, you seek reevaluation of the Commission's decision to withhold the documents referenced in the Log. This letter responds to your request.

I have reviewed the withheld documents and concluded that with one exception, the Commission's action to withhold disclosure was supported by the exemptions set forth in the Log. My review was supported by Mr. Patrick Oshie, an Assistant Attorney General assigned to the Utilities and Transportation Division.

Your letter questions the application of the Deliberative Process exemption to two documents – the email from Jim Ward to Darren Tinnerstet dated May 13, 2014, and the email from Jim Ward to Gene Eckhardt dated October 25, 2013. The Tinnerstet email had attached a draft letter that included Mr. Ward's opinion as to certain matters related to the actions taken in the Washington Water Supply matter. The Eckhardt email had attached a memorandum that provided factual details specific to Washington Water Supply.

The Eckhardt email and its attachment are provided to you with this letter. Upon further review, I now conclude that the factual information it contains is not protected from disclosure under the Public Records Act.



However, the Tinnerstet email attachment contains Mr. Ward's opinions and comments and those of another Commission employee. The exemption from disclosure provided for in RCW 42.56.210(1)(i) is applicable to this document. Specifically, the attachment contains a preliminary draft of a letter from the Commission to Washington Water Supply. It includes Mr. Ward's comments and opinions. As a "preliminary draft" containing opinions and comments, the letter falls within the exemption set forth above.

Your letter also requests a more detailed explanation of the application of the Attorney-Client Privilege or Attorney Work Product protections from disclosure to the two remaining documents referenced in the Log. I have again reviewed the documents in question, which are communications between Donald T. Trotter, acting in his capacity as an Assistant Attorney General assigned to the Utilities and Transportation Division, and Jim Ward and Gene Eckhardt. The emails contain Mr. Trotter's legal advice or opinions. Having reviewed these emails with the assistance of Mr. Oshie, I believe these emails are clearly protected by Attorney-Client Privilege and the Attorney Work Product exemption from disclosure.

In closing, I have reevaluated the documents in question and the Commission's decision to withhold certain documents from disclosure. With the exception of the email from Jim Ward to Gene Eckhardt dated October 25, 2013, the Commission's decision to withhold the remaining documents in the Log remains in effect.

Very truly yours,



LISA WYSE
Public Records Officer

cc: Patrick Oshie, AAG

Ward, Jim (UTC)

From: Ward, Jim (UTC)
Sent: Friday, October 25, 2013 2:43 PM
To: Eckhardt, Gene (UTC); McCloy, Lauren (UTC)
Subject: Review of corp papers October 2013
Attachments: Review of corp papers October 2013.docx

Initial thoughts on review.

Washington Water Supply, Inc. transfer of Whidbey West water system.

The effective date of transfer is September 1, 2012. The new owner is Whidbey West Water Association (WWWA) (UBI# 603 194 565). This is a regular corporation listed as a non-profit with the Secretary of state. WWWA serves about 175 connections. Members are property owners and members elect a board of directors (7) that elect officers to run corporation.

The corporation is owned by members of the community served. The corporation purpose is

1. "To acquire and operate a water system that will provide potable water to the owners and occupants of properties owned by members of the corporation and to other parties, all as determined by the corporation's Board of Directors; and ,
2. To engage in any other lawful activity which may hereafter be authorized, from time to time, by the Board of Directors."

This corporation shall have no capital stock and no part of the net earnings of this corporation shall inure in whole or in part to the benefit of, or be distribute to, any officer, director or other individuals having a personal or private interest in the activates of the corporation. . .

All of its assets remaining on dissolution shall go to the entity continuing to provide water service. "In no event shall any of the corporation's assets by distributed to the officers, directors, or members of the corporation."

Summary: all customers are not necessary members. All members have one vote and no member has capital stock and no financial interest in net earnings or dissolution of corporation.

EXHIBIT D

SERVICE DATE

MAY 20 2014



Rec'd
MAY 23 2014
JP

STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

May 20, 2014

FAX'd
206-494-7412

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Washington Water Supply, Inc.*
Commission Staff's Response to Request for Hearing
Docket UW-140598

Dear Mr. King:

On April 17, 2014, the Washington Utilities and Transportation Commission assessed a penalty in the amount of \$11,600 against Washington Water Supply, Inc. (WWSI) for failing to file either an application for a transfer of property or revisions to the company's tariff as required by WAC-480-110-433 for at least 116 days after the company began operating two additional water systems. The two non-regulated water systems are Silent Sky and Bainbridge 1.

On May 2, 2014, WWSI notified the Commission via mail of its intent to request a hearing in this matter. The company did not check the box requesting a hearing, but made a notation under the "Request for a hearing" heading which stated, "See Attached Letter Dated May 2, 2014. Note: Resolution may occur before hearing date is defined." The company attached a letter addressed to Gregory Kopta with detailed responses to the alleged violations contained in the investigation report.

In the letter, WWSI owner John Poppe provided responses to eight issues discussed in the investigation report. Staff provides a response to each issue addressed by Mr. Poppe, below. The bolded sections represent Mr. Poppe's original responses, with staff's response immediately following:

1. “Silent Sky and Bainbridge 1 are Class B systems and are regulated by Kitsap County Health Department.”

Silent Sky and Bainbridge 1 are both Class B systems that are regulated by the Washington State Department of Health’s Office of Drinking Water (DOH) and the local health jurisdiction (Kitsap County Health Department). DOH allows local health jurisdictions to adopt their own regulations as long as the locally adopted requirements are not less stringent than the state rules. The Kitsap County Health Department is responsible for the quantity and quality of both the Bainbridge 1 and Silent Sky water systems., while the commission’s responsibility lies with the setting of rates and customer service.

2. “There are no regulatory records for the two water systems change in ownership. The previous managers of the two systems removed themselves, leaving no one qualified entity to operate and maintain. WWSI opted to operate and maintain the systems with the customer current monthly fee until a qualified entity stepped forward.”

Staff was unable to locate the two water systems in WWSI’s tariff on file with the commission. In Novcmber 2013, Regulatory services staff provided WWSI with the application forms and rules for adding the two water systems to their tariff. Staff also provided information on the documentation which would be required to initiate the transfer process. This documentation included providing proof of ownership via a bill of sale or transfer of property. WWSI did not provide proof of ownership or a transfer of property at that time.

3. “The two systems were operated by WWSI, but no “Bill of Sale” or transfer of “Title” was completed because UTC approval was needed to own the new system.”

Commission approval was not needed for WWSI to acquire ownership of the new systems, but proof of ownership was required to add the water systems to WWSI’s current tariff. Mr. Poppe has repeatedly stated that WWSI does not own the two water systems, but the company continues to operate and charge customers for using water on the two systems.

4. **“August 2, 2013 John Poppe completed the Silent Sky Questionnaire knowing that UTC approval had to be completed prior to ownership and Tariff modification were necessary. At the Questionnaire time, WWSI thought it a good time to include Silent Sky into the Tariff, answering the questionnaire as if WWSI were the owner. Again the questionnaire response was an intent to own.”**

On the Water System Questionnaire, Mr. Poppe declared that WWSI was the owner of the Silent Sky Water system (See Attachment A) Additionally, on the DOH Water Facilities Inventory (WFI) form, ownership for both the Bainbridge 1 and Silent Sky water systems was reported as WWSI by Mr. Poppe (See Attachment B). This information is user submitted, and DOH only documents the information reported from the owner of the water system. Mr. Poppe also stated in a letter to the commission dated Sept. 1, 2013, that WWSI was the current owner and operator of both the Bainbridge 1 and Silent Sky water systems (See Attachment C).

5. **“The Whidbey West Water System change in ownership was completed in September, 2012 and was not sold to ‘for profit’ company. It was understood the Assn had an elected Board, non-profit, had their own business rules, and contracted with a licensed Water Distribution Manager. Notice to customers was provided by Whidbey West Water Assn. via US Mail. Subsequently, a public meeting was held inviting all customers in which DOH Regional office attended the meeting. Washington Water Supply, Inc. financed the mailing(s) because of limited Assn funds. UTC was aware of the intent to transfer ownership and had knowledge of the final act. The Assn stated their intent to formalize paperwork with regulators. Washington Water Supply, Inc. understood that since UTC was informed of intent and final action, that all requirements had been met.”**

WWSI had multiple communications, via email and telephone, with Regulatory Services staff and was fully aware of the reporting requirements for the sale of Whidbey West Water System. WWSI was notified that tariffs are required to be kept up to date by the company. The company was also notified that in the case of selling a water system to another non-regulated utility, commission notification and review is required.

To date, WWSI’s tariff still lists Whidbey West Water System as one of its service areas (See Attachment D). WWSI is responsible for keeping their tariff up to date and they have failed to file the required paperwork in order to remove the system from their tariff. WWSI stated that because the Commission was “informed of their intent and final action” to sell the water system, that the company believed it had fulfilled its regulatory reporting requirements. The company was advised, via email from Regulatory Services staff in September of 2013, of the regulatory requirements pertaining to the sale of a water system to a non-regulated utility, and was provided technical assistance about the appropriate steps to bring its tariff into compliance. The company has not taken the necessary steps to update its tariff.

6. **“UTC provided sample copies to formalize the Transfer process and we found them difficult to use. There were email questions and telephone conversation about the sample forms because there was no “BILL OF SALE” or clear “TITLE”. WWSI was aware of the need to receive UTC approval prior to transfer of ownership and inclusion into our Tariff, therefore WWSI was not the owner.”**

Staff provided WWSI with the appropriate forms to initiate the transfer process of the two water systems that were claimed to be owned by WWSI in several documents listed above. When asked to provide documentation of the transfer of property, such as a bill of sale or a title, the company stated that there was no proof of ownership that it could provide. Staff advised the company that in order to obtain approval from the Commission to add the two water systems to the existing tariff, the company would be required to show evidence of the legal transfer of the property. WWSI was unable to provide any evidence of ownership, and proceeded to continue running and claiming ownership of both Bainbridge 1 and Silent Sky water systems without Commission approval.

The argument the company makes here is that once they were asked to provide proof of ownership, and were made aware that they needed to in order to obtain commission approval, the company decided it was not the actual owner. WWSI continues to provide maintenance, billing support, customer service, and payment collections for the two water systems it is running but allegedly does not own (See Attachment E).

7. **“UTC and WWSI communication occurred where WWSI opted not to own the two water systems. There were two options since WWSI did not own the systems, immediately cease operation and maintenance or be responsible and make certain actions were in the best interest of the water users. WWSI wanted to protect the water systems customers by making a systematic/seamless transfer of responsibility to the Kitsap Public Utility District. Contact was made with KPUD early in 2014 about their interest assuming the operation and maintenance of the water systems. Since the water systems were functional, no water quality problems, and no customer complaints KPUD did not placed the assumption as a high priority.”**

The two options available to WWSI were to either cease operations of the non-regulated water systems, or file the necessary documentation to properly add them to the company's tariff. Staff never presented the company with the option of taking responsibility for the water systems in order to protect the best interests of the water users. In September 2013, Regulatory Services staff advised Mr. Poppe via email of the requirements needed in order to add the new water systems to the company's existing tariff. An alternative could have been for WWSI to provide services under a contract for operations.

Attachment A



WASHINGTON WATER SUPPLY, INC

"Water Supply and Distribution"

August 2, 2013

Sharon Wallace

Washington Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

RECEIVED
AUG 09 2013
WASH. UT. & TP. COMM

Dear Ms. Wallace,

July 26, 2013 you composed a letter to Washington Water Supply, Inc. requesting information about the Silent Sky Water System near Seabeck, WA.

July 29, 2013 the letter was postmarked

August 1, 2013 we received the letter at two locations

As you requested, please find the "WATER SYSTEM QUESTIONNAIRE" completed. Please contact Washington Water Supply, Inc. if we can answer any other questions.

Respectfully,

John Poppe

Washington Water Supply, Inc.

8. “The system customers have been afforded the same Tariff considerations with maintenance of existing monthly rates, water quality, emergency response, etc.”

While this statement may be true, the fact remains that WWSI is operating two water systems that are not included in its lawfully filed tariff. By not including the two systems in its tariff, the company is depriving its customer base of the regulatory protections of the Commission.

Staff recommends that WWSI be afforded the opportunity to present its case in a formal hearing. The main issues in this case are: determining who owns the two water systems, and whether the company has violated commission rules by failing to maintain its tariff and report the sale or acquisition of additional water systems. Additionally, when WWSI sold Whidbey West Water System again the tariff was not updated.

Staff believes that negotiations with the company, in lieu of a hearing, will be unsuccessful because the company is not willing to follow the regulatory requirements necessary to resolve this matter. Staff has advised the company on multiple occasions that there are only two acceptable outcomes that will satisfy the commission: provide proof of ownership and include the two water systems in the company’s existing tariff, or discontinue operating the water systems altogether unless a contract for operations can be produced. The company was provided with an enforcement deadline of Sept. 6, 2013, to accomplish either outcome and failed to do so.

Sincerely,



Sharon Wallace, Assistant Director
Consumer Protection and Communications

Attachments (5)

Silent Sky
ID: 17721

WATER SYSTEM QUESTIONNAIRE

The following assumes that the water systems are in operation and serving one or more customers. If a question is not applicable, so state. Add any information you feel will help provide a better understanding of the situation.

1. For each water system owned, operated or controlled by you or the utility, please list by Washington State Department of Health ID # each water system and whether you own, operate or control the water system. OWN

2. Is (are) the water system(s) owned, operated and controlled by a proprietorship (individual), partnership or corporation?
Corporation

3. Are the water system(s) owned, operated or controlled by a homeowner's association, cooperative, mutual corporation or similar entity?
Not Applicable
 - a. Must all customers also be members?

 - b. Is there any language in the articles of incorporation or the bylaws that would indicate any intention to dedicate the property to public use?

4. If owner is a nonprofit organization, registered with the office of the Washington Secretary of State, please provide full name, address and registration number (UBI#).
Not Applicable

5. For each water system owned, operated, or controlled by you, is control exercised directly by the owner or owners of the utility?
OWNER

6. Does the utility reserve the right to serve particular individuals of its own choice?
NO

7. How many customers of each system actually receive water or whose application to receive water has been accepted by the utility?
NONE
Are all customers listed above using water and have houses on the property? (Yes) No
What number of customers actually uses water? 6

8. For each water system, please list the maximum number of connections allowed by Department of Health or other government agency.
6

9. Does the utility have any service applications that it cannot connect at this time?
NO

10. What are the rates/charges for each system? (If multiple rates/systems use additional sheets)

Monthly Flat Rate \$ 15.00 (No meter) Number of Customers _____
Monthly Meter Basic Rate \$ _____ Number of Customers _____

Water Allowance with basic charge _____ (gallons/cubic feet)

Usage Block _____ (gallons/cubic feet) Rate \$ _____ per _____ (gallons/cubic feet)

Usage Block _____ (gallons/cubic feet) Rate \$ _____ per _____ (gallons/cubic feet)

Usage Block _____ (gallons/cubic feet) Rate \$ _____ per _____ (gallons/cubic feet)

Billing Frequency: Monthly Bi-monthly _____ Other: _____

Irrigation Services: Rate \$ _____ Monthly _____ Bi-monthly _____ Other: _____

Any larger than normal size meters? NO If so what size(s)? _____

Ancillary Charges: Service connection charge (new customer)	\$ _____
Reconnection charge (customer caused disconnection)	\$ _____
Account Set Up charge (new customer, not a new connection)	\$ _____
Other charge(s) _____	\$ _____
Other charge(s) _____	\$ _____
Other charge(s) _____	\$ _____

11. What is the average yearly revenue per customer for each water system? \$ 180

What is the average monthly water consumption per customer for each water system?
186 Gallons Is this Gallons or Cubic feet?

12. If any of the water systems serve only a subdivision in which it has an interest or with which it is associated, is there a covenant in the land contract or deed obligating the utility to provide water for each lot or purchaser of each lot?

NO

13. Under what name(s) is the system(s) or utility being operated?
Silent SKY ID: 17721

14. Does the water company own all the assets used to provide water service?
YES

15. Please provide a contact phone number and e-mail address if the Commission has additional questions.
360-308-8330

Signature John Poppe Date August 2, 2013
John Poppe

WATER FACILITIES INVENTORY (WFI) FORM - Continued

1. SYSTEM ID	2. SYSTEM NAME	3. COUNTY	4. GROUP	5. TYPE
17721 D	SILENT SKY	KITSAP	B	

	ACTIVE SERVICE CONNECTIONS	DOH USE ONLY! CALCULATED ACTIVE CONNECTIONS	DOH USE ONLY! APPROVED CONNECTIONS
25. SINGLE FAMILY RESIDENCES (How many of the following do you have?)	0	7	6
A. Full Time Single Family Residences (Occupied 180 days or more per year)	7		
B. Part Time Single Family Residences (Occupied less than 180 days per year)	0		
26. MULTI-FAMILY RESIDENTIAL BUILDINGS (How many of the following do you have?)			
A. Apartment Buildings, condos, duplexes, barracks, dorms	0		
B. Full Time Residential Units in the Apartments, Condos, Duplexes, Dorms that are occupied more than 180 days/year	0		
C. Part Time Residential Units in the Apartments, Condos, Duplexes, Dorms that are occupied less than 180 days/year	0		
27. NON-RESIDENTIAL CONNECTIONS (How many of the following do you have?)			
A. Recreational Services and/or Transient Accommodations (Campsites, RV sites, hotel/motel/overnight units)	0	0	0
B. Institutional, Commercial/Business, School, Day Care, Industrial Services, etc.	0	0	0
28. TOTAL SERVICE CONNECTIONS		7	6

29. FULL-TIME RESIDENTIAL POPULATION
A. How many residents are served by this system 180 or more days per _____ 18

30. PART-TIME RESIDENTIAL POPULATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. How many part-time residents are present each month?												
B. How many days per month are they present?												

31. TEMPORARY & TRANSIENT USERS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. How many total visitors, attendees, travelers, campers, patients or customers have access to the water system each month?												
B. How many days per month is water accessible to the public?												

32. REGULAR NON-RESIDENTIAL USERS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. If you have schools, daycares, or businesses connected to your water system, how many students/daycare children and/or employees are present each month?												
B. How many days per month are they present?												

33. ROUTINE COLIFORM SCHEDULE	Take one sample every 12 months
--------------------------------------	---------------------------------

34. NITRATE SCHEDULE (One Sample per source by time period)	QUARTERLY	ANNUALLY	ONCE EVERY 3 YEARS
			S01

35. Reason for Submitting WFI:

- Update - Change
 Update - No Change
 Inactivate
 Re-Activate
 Name Change
 New System
 Other _____

<p>36. I certify that the information stated on this WFI form is correct to the best of my knowledge.</p> <p>SIGNATURE: _____</p> <p>DATE: _____</p> <p>PRINT NAME: _____</p> <p>TITLE: _____</p>
--

WATER FACILITIES INVENTORY (WFI) FORM - Continued

1. SYSTEM ID 95625 F	2. SYSTEM NAME BAINBRIDGE #1	3. COUNTY KITSAP	4. GROUP B	5. TYPE
--------------------------------	--	----------------------------	----------------------	----------------

	ACTIVE SERVICE CONNECTIONS	DOH USE ONLY CALCULATED ACTIVE CONNECTIONS	DOH USE ONLY APPROVED CONNECTIONS
25. SINGLE FAMILY RESIDENCES (How many of the following do you have?)	0	8	8
A. Full Time Single Family Residences (Occupied 180 days or more per year)	8		
B. Part Time Single Family Residences (Occupied less than 180 days per year)	0		
26. MULTI-FAMILY RESIDENTIAL BUILDINGS (How many of the following do you have?)			
A. Apartment Buildings, condos, duplexes, barracks, dorms	0		
B. Full Time Residential Units in the Apartments, Condos, Duplexes, Dorms that are occupied more than 180 days/year	0		
C. Part Time Residential Units in the Apartments, Condos, Duplexes, Dorms that are occupied less than 180 days/year	0		
27. NON-RESIDENTIAL CONNECTIONS (How many of the following do you have?)			
A. Recreational Services and/or Transient Accommodations (Campsites, RV sites, hotel/motel/overnight units)	0	0	0
B. Institutional, Commercial/Business, School, Day Care, Industrial Services, etc.	0	0	0
28. TOTAL SERVICE CONNECTIONS		8	8

29. FULL-TIME RESIDENTIAL POPULATION
A. How many residents are served by this system 180 or more days per year 18

30. PART-TIME RESIDENTIAL POPULATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. How many part-time residents are present each month?												
B. How many days per month are they present?												

31. TEMPORARY & TRANSIENT USERS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. How many total visitors, attendees, travelers, campers, patients or customers have access to the water system each month?												
B. How many days per month is water accessible to the public?												

32. REGULAR NON-RESIDENTIAL USERS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
A. If you have schools, daycares, or businesses connected to your water system, how many students daycare children and/or employees are present each month?												
B. How many days per month are they present?												

33. ROUTINE COLIFORM SCHEDULE	Take one sample every 12 months
--------------------------------------	---------------------------------

34. NITRATE SCHEDULE (One Sample per source by time period)	QUARTERLY	ANNUALLY	ONCE EVERY 3 YEARS
			S01

35. Reason for Submitting WFI:

Update - Change Update - No Change Inactivate Re-Activate Name Change New System Other _____

36. I certify that the information stated on this WFI form is correct to the best of my knowledge.	
SIGNATURE: _____	
DATE: _____	
PRINT NAME: _____	
TITLE: _____	

Attachment C



WASHINGTON WATER SUPPLY, INC

"Water Supply and Distribution"

September 1, 2013

Jim Ward

Utilities and Transportation Commission

PO Box 47250

Olympia, WA 98504-7250

RECEIVED

SEP 05 2013

WASH. UT. & TP. COMM

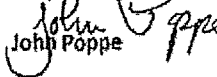
Dear Mr. Ward,

The following summarizes the water systems that Washington Water Supply, Inc. currently owns and operates:

Crystal Creek	474214
Bainbridge 1	95625F
Deer Trail	314649
Echo Glen	275100
Hinkley Hills	30406P
Maple Haven	51150M
MPVK	473128
Noll Rd	367730
Salmon Drive	028340
Silent Sky	17721D
Wolf	304014

Since Washington Water Supply, Inc. made a mistake and did not notify the UTC of our Silent Sky Water System, it is a good time to compare notes and make any necessary Tariff changes at one time.

Respectfully,


John Poppe

Washington Water Supply, Inc.

Attachment D

Original Sheet No. 20
WN U-2

Washington Water Supply, Inc.

RECEIVED

NOV 17 2000

WASH. UT. & TRANS. COMM.

ORIGINAL

001796

For Commission's Receipt Stamp

SERVICE AREA

Water System List:

<u>System Name</u>	<u>County</u>	<u>DOH WFI#</u>
Whidbey West	Island	363146
Deer Trail	Kitsap	314649
Crystal Creek	Kitsap	474214
Echo Glen	King	275100
Hinkley Hills	Kitsap	30406P
Maple Haven	Clallam	51150M
MPVK	Kitsap	473128
Noll Road	Kitsap	367730
Salmon Drive	Clallam	028340
Wolf	Kitsap	304014

Issued Nov. 15, 2000 Effective Jan. 1, 2001
 Issued by WA. WATER SUPPLY, INC.
 By John R. Gagne Title President

Attachment E

Washington Water Supply
Inc
PO Box 2985
Silverdale, WA 98383

Acct: SS4002-01
HEILAND, LOREN
Due: \$15.00

Washington Water Supply Inc

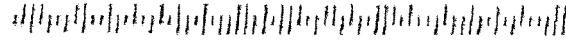
Date: 7/02/2013
Account No: SS4002-01
Service Dates: 06-01-through 06-30
Terms: 2/10
Pmts Rcvd: Payment due by-15th
15.00 - Last Pmt Date: 6/13/2013
WATER-EMERGENCY NUMBER 1-866-658-6662
Service Addr: [REDACTED]

Date	Description	Amount
5/03/2013	Previous Balance	15.00
6/13/2013	Payment: System Check #10010708	-15.00
7/02/2013	Silent Sky Water - Schedule 1.1	15.00

TOTAL AMOUNT DUE: \$15.00

DUE 07-15-2013

HEILAND, LOREN
[REDACTED]
SEABECK, WA 98380



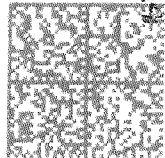
Washington Water Supply Inc Washington Water Supply Inc



State of Washington
 WASHINGTON UTILITIES &
 TRANSPORTATION COMMISSION
 1300 S Evergreen Park Dr SW
 PO Box 47250 Olympia WA 98504-7250

POSTAGE
 SINGLE PIECE

16 MAY 19
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 FIRST CLASS



UNITED STATES POSTAGE
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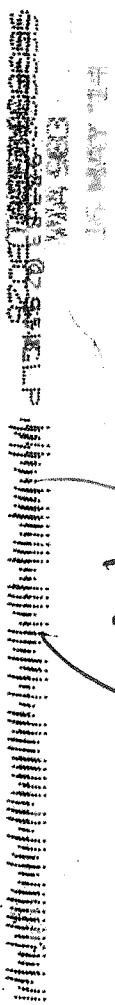
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MAY 23 2014

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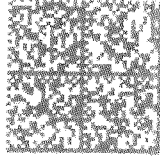
not at this address

FWD





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0004282947 APR 23 2014
MAILED FROM ZIP CODE 98501



WASHINGTON



UTILITIES AND TRANSPORTATION COMMISSION

Second Notice INVOICE

Rec'd MAY 23, 2014 JRP

Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504-7250
(360) 664-1349 Accounts Receivable
(360) 664-1289 Fax
Federal Tax ID: 91-6001121

DATE: April 23, 2014

AGENCY NO: 2150

INVOICE NO: 2041 - 3

TO: Accounts Payable
WASHINGTON WATER SUPPLY INC
PO Box 2958
Silverdale, WA, 98383

Wrong address? JRP

Table with 3 columns: Reference, Docket Number, Due Date. Rows include penalty assessment, payment due, and balance due.

Detach here

Please return this portion with your payment

INVOICE NO: 2041 - 3

Name: WASHINGTON WATER SUPPLY INC

TOTAL DUE: \$11,600.00

Please remit payment to: Utilities and Transportation Commission
Attn: Financial Services
PO Box 47250
Olympia WA 98504-7250

Type of payment: (Do not send cash in the mail.)

Check Money order Credit card: AMEX Discover VISA Mastercard Exp date: Mo/Yr

Card number input fields

Certification: I, the undersigned, under penalty for false statement, certify that the information is true, valid, and correct, that I am authorized to execute on behalf of the applicant, and that I agree to pay the total amount due according to the card issuer agreement.

Name, printed *For information about online payments, see above.

Customer's signature Date

AGENCY USE ONLY table with rows for Receipt ID, Payment ID, Supplemental Info, Amount Received, Date Received.

If you have any questions concerning this invoice please call Accounts Receivable at 360-664-1349

Go Green! Pay your invoices online @ payments.utc.wa.gov

