

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the Petition of)	DOCKET NO. A-050528
)	
WILLIAM L. STUTH and AQUA)	ORDER NO.01
TEST, INC.,)	
)	PREHEARING CONFERENCE
For a Declaratory Order)	ORDER
)	(Notice of Motion Deadline, set
)	for January 4, 2006; Notice of
)	Hearing, Set for March 3, 2006)
.....)	

1 **NATURE OF PROCEEDING.** Docket No. A-050528 involves the request for a declaratory order, posed by William L. Stuth and Aqua Test, Inc.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on January 21, 2005, before Administrative Law Judge C. Robert Wallis.

3 **APPEARANCES.** Rhys A. Sterling, attorney, Hobart, Washington, represents petitioners William L. Stuth and Aqua Test, Inc. Christopher Swanson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).¹ Contact information for the parties’ representatives is attached as Appendix A to this order.

¹ In formal proceedings, such as this matter, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from independent contact about non-procedural issues in the proceeding with all parties, including Staff. RCW 34.05.455.

4 **PETITIONS FOR INTERVENTION.** No person petitioned in writing or asked orally during the prehearing conference to intervene.

5 **DISCOVERY.** No party asked that the discovery rules be invoked at this time. The parties agreed to cooperate in informal discovery and agreed that they would ask that the discovery rule be invoked only if necessary.

6 **PROTECTIVE ORDER.** No party anticipated need for a protective order for the resolution of the issues in this matter.

7 **DEFINITION OF THE MATTER AT ISSUE.** The parties agreed that the ultimate question for Commission determination is whether the operator of a large on-site sewage system is a public service company as defined in the public service laws of the State of Washington, and thereby subject to Commission regulation as a public service company. The answer to that question is to be determined as a matter of fact (i.e., what activities the petitioners engage in) with reference to the applicable law defining public service companies and the authority of the Commission.

8 The superior court, in returning the matter to the Commission, indicated that it had not resolved more than the issue of remand for a fact-finding hearing:²

I have no opinion as to how [the] fact finding hearing should resolve itself. That would have to be determined by the Commission based on the facts it finds and the law it applies. But I do rule that the petitioners in this case have set out a prima facie case that requires the commission to hold a fact finding hearing and make a determination as to whether or not this kind of company can be a public utility.

² Ruling of the Court, September 2, 2005, page 12, attachment to the Court's Order filed September 16, 2005, in this matter under Superior Court docket No. 05-2-00782-3.

9 **PROCEDURAL SCHEDULE.** The Commission adopts the following procedural schedule:

<u>Event</u>	<u>Date</u>
Informal discovery	As needed
Cross motions for summary determination	January 4, 2006
Answers to motions	January 11, 2006
Oral argument on motions	January 27, 2006
Hearing date, if both motions are denied	March 3, 2006

10 **MATTERS TO ADDRESS.** Counsel for petitioners invited the bench to identify matters for the parties to address. The presiding ALJ indicated that he would ask parties to address certain points, which will be identified in a letter to the parties.

11 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file with the Commission an original plus five (5) copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials must conform to the format and publication guidelines in WAC 480-07-395 and 480-07-460, and must be three-hole punched with oversized holes to allow easy handling. The Commission may require a party to refile any document that fails to meet these standards.

12 All filings must be mailed to the Commission Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered to the Commission Secretary at the Commission's Records Center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

- 13 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, Parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). Parties in this proceeding who have not already done so are specifically asked to supply copies of documents in a MS Word-compatible file to assist the administrative law judge in using the documents most fully in resolving the issues in the proceeding. Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 14 **ELECTRONIC FILING.** Parties may only file documents electronically with the Commission in this proceeding with the permission of the administrative law judge. Under WAC 480-07-145(6), electronic filing of documents provides a one-day extension of the paper-filing requirement. If, at any time during this proceeding, parties are authorized to file documents with the Commission electronically under WAC 480-07-145(6), parties must submit the document to records@wutc.wa.gov, and file an original, plus five (5) copies, of the document with the Commission by the following business day.
- 15 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission does have limited ability to provide dispute resolution services; if you wish to explore those services, please call the Director, Administrative Law Division, at 360-664-1142.
- 16 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.

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Dated at Olympia, Washington, and effective this 22nd day of November, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

APPENDIX A

**PARTIES' REPRESENTATIVES
DOCKET NO. A-050528**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Stuth, Aqua Test	Rhys A. Sterling, P.E., J.D. Attorney at Law P.O. Box 218 Hobart, WA 98025-0218	(425) 391-6650	(425) 391-6689	RhysHobart@aol.com
Commission Staff	Christopher Swanson Assistant Attorney General 1400 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250	(360) 664-1220	(360) 664-2654	cswanson@wutc.wa.gov

APPENDIX B
PROCEDURAL SCHEDULE
DOCKET NO. A-050528

EVENT	DATE	INTERVAL
Informal discovery	As needed	
Cross motions for summary determination	January 4, 2006	
Answers to motions	January 11, 2006	7 days
Oral argument on motions	January 27, 2006	16 days
Hearing date, if both motions are denied	March 3, 2006	35 days