

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Petition of

WILLIAM L. STUTH and AQUA TEST,
INC.

For a Declaratory Order Designating a
Public Service Company

DOCKET NO. A-050528

MOTION FOR SUMMARY
DETERMINATION

I. INTRODUCTION

1 This motion for summary determination incorporates by reference Staff's Administrative Statement of Fact and Law (Statement).¹ Based on the facts and arguments contained in the Staff's Statement, as modified and extended by this Motion, Staff requests a determination that no issues of material facts exist as to whether or not the Commission has jurisdiction over large on-site sewage system (LOSS) "operators", as that term is described in Order No. 02, and Staff is entitled to judgment as a matter of law that the Commission does not have jurisdiction.

II. THE SUPERIOR COURT DECISION

2 Since there has been some discussion on the record at the prehearing and in briefing about the significance of the superior court decision, Staff believes it is appropriate to summarize that decision by quoting the operative portions here.

¹ Prehearing Order No. 01 set a deadline of January 4, 2006, for the parties to file motions for summary determination.

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The superior court decision contains a single relevant section to guide the Commission determination of the process it should use to make its decision. The decision states at page 12:

So I would reverse the summary finding by the Commission and remand this matter back to the Commission to hold the statutory mandated fact finding hearing. I have no opinion as to how that 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.

This portion of the decision does three things: 1) it states that, procedurally, the statute mandates a fact finding hearing; 2) it states that the court does not have an opinion about the ultimate outcome; and 3) it states that the Commission will weigh the facts and determine how to apply the law in a fact finding proceeding. Staff urges the Commission to limit its consideration of the court's decision to its operative portion as quoted above.²

II. MODIFICATIONS AND EXTENSIONS

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Staff modifies and extends in its Statement as follows. In paragraph 1 of its Statement, Staff indicates that the question before the Commission is whether a manager of a LOSS may be regulated by the Commission. Since the Statement was filed, the issue in this proceeding has been clarified by Order No. 02, which decided that the Commission would consider whether it has jurisdiction over a LOSS

² The superior transcript contains dicta expressing the policy opinions regarding Commission regulation. However, as the court indicated, the Commission (not the court) must apply the facts to the law. The dicta is not relevant to the Commission's decision.

operator as more fully described in that order. Therefore, Staff requests that in consideration of this Motion, the presiding officer disregard reference to the question of its jurisdiction over solely management of LOSS systems in Staff's Statement and instead consider the arguments in Staff's Statement as they apply to the broader definition of "operator" contained in Order No. 02 that is meant in its broader management sense to encompass activities that may be necessary to provide a service, such as management, maintenance, and ownership.

5 Additionally, Staff requests that the Commission consider its jurisdiction over the broader definition of "operator" as described in Order No. 02 by bifurcating owner-operators from non-owner-operators. Although Staff believes that the Commission does not have jurisdiction over either entity, as a practical matter Staff believes the two entities are different.³ Staff requests that any decision make two distinct determinations of lack of jurisdiction over these entities.

III. PETITIONERS' STATEMENT OF FACT AND LAW

6 Petitioners' Statement of fact and law contains declarations from entities supporting the policy need for regulation. The issue of the policy benefits of regulation is a separate question and is irrelevant in a motion for summary determination. Therefore, Staff will address these issues only in the event that the

³ It would be very unusual for the Commission to regulate such non-owner operators.

Commission determines that it has jurisdiction over LOSS operators as a result of this motion.⁴

IV. CONCLUSION

7 In conclusion, Staff requests a finding that no material issues of fact exist and the Commission, as a matter of law, does not have jurisdiction over owner-operator LOSS and non-owner-operator LOSS.

DATED this 4th day of January, 2006.

ROB MCKENNA
Attorney General

CHRISTOPHER SWANSON
Assistant Attorney General

⁴ Staff believes its Statement adequately addresses the legal arguments made by the Petitioners' Statement. However, Staff would like to address footnote 11 of Petitioner's statement in which WAC 480-80-030 is cited for the proposition that the rule does not bar regulation of LOSS because LOSS are not classified as competitive public service companies. That same rule defines public service companies as including "every gas company, electric company, telecommunications company, or irrigation plant that is subject to the jurisdiction of the commission as to rates and service." It does not include LOSS within its definition of public service company and is consistent with the legal framework describing the extent of the Commission's jurisdiction in Staff's Statement.