

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
Against
WASHINGTON WATER SUPPLY, INC.
In the Amount of \$11,600

DOCKET UW-140598
ANSWER TO WASHINGTON
WATER SUPPLY, INC.'S MOTION
FOR SUMMARY JUDGMENT
ON BEHALF OF COMMISSION
STAFF

I. INTRODUCTION

1 Pursuant to WAC 480-07-380(2)(c), Staff of the Washington Utilities and Transportation Commission (Commission) files this Answer to Washington Water Supply, Inc.'s Motion for Summary Judgment (Motion) filed on July 16, 2014, by Washington Water Supply, Inc. (Washington Water). Washington Water's Motion should be treated as a motion for summary determination as described in WAC 480-07-380. Because the law supports the Commission's penalty, Washington Water's Motion should be denied.

II. STATEMENT OF FACTS

2 Washington Water has operated the Silent Sky and Bainbridge 1 water systems for some period of time and never included the water systems in its tariff. The Commission's Consumer Protection staff learned that Washington Water was operating the Silent Sky water system when a customer served by the Silent Sky water system, and billed by Washington Water, filed an informal complaint with the Commission.¹ Commission Staff (Staff) contacted Washington Water by letter dated July 26, 2013, and requested that the company return a questionnaire regarding Silent Sky. On August 9, 2013, Staff received the completed water system questionnaire from Washington Water, signed by John Poppe,

¹ Staff Investigation Report regarding Washington Water Supply, dated April 2014, on file in Docket UW-140598 (Staff Investigation Report), p. 4.

regarding the Silent Sky water system. On the questionnaire, Mr. Poppe stated that Washington Water owned the Silent Sky water system, including all the assets used to provide water service.²

3 Commission Staff sent Mr. Poppe a technical assistance letter dated August 19, 2013, advising him that Washington Water must revise its tariff to reflect the Silent Sky water system and warning him that failure to initiate the tariff filing process by August 26, 2013, would result in enforcement action.³

4 Subsequently, Mr. Poppe provided a list to Commission Staff of all of the water systems that Washington Water “currently owns and operates.”⁴ Two water systems, Silent Sky and Bainbridge 1, appeared on that list but were not reflected in Washington Water’s tariff.⁵ A comparison of the list of currently owned and operated water systems with Washington Water’s tariff revealed another inconsistency between the two: one of the water systems, the Whidbey West water system, appeared in the tariff but not on the list of currently owned and operated water systems. Staff obtained copies of a quit claim deed and bill of sale documenting the transfer of the Whidbey West water system from Washington Water to the Whidbey West Water Association in September 2012. Washington Water had not requested Commission approval prior to selling the Whidbey West Water system.

5 On September 6, 2013, Staff explained in an email to Washington Water that, when a water company acquires a new water system, the company must revise the tariff to include the additional service areas and update rate schedules for the newly acquired water systems,

² Investigation Report at pp. 14–15.

³ Investigation Report at p. 16.

⁴ Investigation Report at pp. 15–16.

⁵ Investigation Report at p. 4.

and that, when a water company sells a water system, Commission review is required.⁶ Early in 2014, while assisting Mr. Poppe in preparing filings to bring Washington Water into compliance with regard to Silent Sky and Bainbridge 1, Regulatory Staff discovered that documentation of the transfer did not exist for the Silent Sky and Bainbridge 1 water systems. Regulatory staff asked Mr. Poppe, “If there was no transfer document or bill of sale or agreement, . . . what give[s] you the legal right to own and operate and collect money from customers for this water system?”⁷ Mr. Poppe admitted that he did not have any documentation to show that Washington Water legally owned the two water systems.⁸ He now repudiates Washington Water’s ownership of Silent Sky and Bainbridge 1. He has expressed an intent to transfer Silent Sky and Bainbridge 1 to the Kitsap Public Utility District,⁹ but Washington Water apparently continues to operate the two water systems.

6 As of the date that the Commission served the penalty assessment, April 17, 2014, Washington Water still had not updated its tariff and had not filed for approval of the transfer of the Whidbey West water system. Washington Water finally filed an application for approval of the sale of the Whidbey West water system on June 18, 2014.¹⁰

III. STATEMENT OF ISSUES

7 Whether a water company that operates a water system to which it does not hold legal title must include that system in its tariff.

⁶ Investigation Report at pp. 18–19.

⁷ Exhibit B to the Declaration of Scott M. Ellerby In Support of Washington Water Supply, Inc.’s Motion for Summary Judgment, dated July 15, 2014.

⁸ *Id.*

⁹ *Id.*

¹⁰ Docket UW-141307. The Commission granted the application on July 24, 2014.

IV. EVIDENCE RELIED UPON

8 Staff Investigation Report regarding Washington Water Supply, Inc., dated April 2014, on file in Docket UW-140598, and attached to the Declaration of Darren Tinnerstet; and Exhibit B to the Declaration of Scott M. Ellerby In Support of Washington Water Supply, Inc.'s Motion for Summary Judgment, dated July 15, 2014.

V. ARGUMENT

9 As discussed below, Washington Water was required to revise its tariff to reflect its acquisition of Silent Sky and Bainbridge 1, regardless of how the company acquired the water systems. Furthermore, Washington Water was required to apply and obtain approval for its transfer of the Whidbey West water system before the transfer occurred.

A. Washington Water is a Water Company Subject to Regulation by the Commission With Respect to Silent Sky and Bainbridge 1 Because “Operating a Water System for Hire” Meets the Statutory Definition of “Water Company”

10 Persons engaging in this state in the business of supplying any utility service or commodity to the public for compensation are subject to regulation by the Commission. RCW 80.01.040. Such public service companies include water companies. RCW 80.04.010(23). A water company includes every corporation, company, or person owning, controlling, operating, or managing any water system for hire within this state. RCW 80.04.010(30)(a).

11 Washington Water has been operating the Silent Sky and Bainbridge 1 water systems since at least July 2013 and September 2013, respectively, and is, therefore, subject to the jurisdiction of the Commission with respect to these two water systems. Moreover, Washington Water held itself out as the owner of the systems not only by provisioning water from the systems to customers but by billing and collecting rates from the customers of the

Silent Sky and Bainbridge 1 water systems and, initially, asserting to the Commission that Washington Water owned the two systems. Regardless of whether the company is deemed an *owner* or an *operator* of the two water systems, Washington Water meets the definition of a “water company” subject to the Commission’s regulation, pursuant to RCW 80.04.010(30)(a).

B. Washington Water “Acquired” Silent Sky and Bainbridge 1 and, Therefore, Must Include the Two Systems in Washington Water’s Tariff

12 Pursuant to WAC 480-110-433, “[a] water company must file revisions to its filed tariff within thirty days of its acquisition of new service area.” Webster’s Third New International Dictionary (unabridged) defines “acquire” as “[t]o come into possession, control, or power of disposal of often by some uncertain or unspecified means.”¹¹ This definition captures exactly the nature of how Washington Water came to be operating the Silent Sky and Bainbridge 1 water systems. To wit, Washington Water came into possession of these two water systems by undocumented means and has continued to exercise control over them ever since. Moreover, the dictionary definition, which does not limit the concept of acquisition to a legal sale, accords with the statutory definition of “water company,” which encompasses “owning, controlling, operating, or managing any water system.”

13 Because Washington Water “acquired” Silent Sky and Bainbridge 1, the company is required to include the two water systems in its tariff. Washington Water violated WAC 480-110-433 when it failed to timely revise its tariff to reflect the Silent Sky and Bainbridge 1 water systems. Following technical assistance from Staff, which directed Washington Water to revise its tariff, months passed, and still Mr. Poppe did not file a revised tariff.

¹¹ Webster’s Third New International Dictionary (Philip Babcock Gove et al. eds., 1968).

Given the violation of the thirty-day deadline for filing a revised tariff combined with the explicit direction from Staff and Mr. Poppe's ongoing failure to make the filing, the penalty is legal and justified and should not be dismissed.

C. Legal Authority Supports the Penalty Based Also on Washington Water's Failure to Seek and Obtain Approval of its Transfer of the Whidbey West Water System

14 Under State law, a public service company is prohibited from selling or otherwise disposing of necessary or useful facilities without first obtaining authorization from the Commission. RCW 80.12.020; WAC 480-143-120. It is uncontroverted that Washington Water sold the Whidbey West water system in 2012 but neglected to file a request for approval of the transfer until last month.

15 After learning of the transfer, Commission Staff advised Washington Water in September 2013 that such transfers require Commission approval. Seven months later Washington Water still had not filed for approval of the transfer. Only after the Commission served the penalty assessment did Washington Water finally make the required filing. Ordering Washington Water to pay a penalty is appropriate given the company's failure to timely apply for and obtain approval to transfer the Whidbey West water system and given that, even following technical assistance from Staff, months passed and the company still chose not to file. Washington Water's Motion does not discuss the violation associated with the Whidbey West transfer. Accordingly, the Commission should deem the Motion a motion for partial summary determination. Even if the Commission were to grant Washington Water's motion with respect to the alleged violations associated with failing to add Silent Sky and Bainbridge 1 to Washington Water's tariff, the company's failure to

timely seek and obtain approval for the Whidbey West transfer is sufficient to support the assessed penalty.

VI. CONCLUSION


16

Washington Water is not entitled to judgment as a matter of law. The law requires a water company to incorporate new service areas into its tariff within thirty days of their acquisition. It is uncontroverted that Washington Water did not revise its tariffs to include the Silent Sky and Bainbridge 1 water systems. In addition, Washington Water failed to apply for and obtain approval from the Commission before the company transferred the Whidbey West water system. Based on either of these failures, the laws and regulations enforced by the Commission support the penalty, and it should not be dismissed.

Dated this 5th day of August, 2014.

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General


JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff