

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the matter of the Petition of)	
)	DOCKET A-050528
)	
WILLIAM L. STUTH and AQUA)	ORDER 05
TEST, INC.,)	
)	DENYING SUMMARY
For a Declaratory Order)	DETERMINATION MOTIONS;
)	
)	NOTICE OF PREHEARING
)	CONFERENCE
)	(Set for April 17, 2006, 1:30 p.m.)
)	
.....)	

- 1 Docket A-050528 involves a petition for a declaratory order filed by William L. Stuth and Aqua Test, Inc.
- 2 The Washington the Washington Utilities and Transportation Commission (Commission) held a prehearing conference in this matter before Administrative Law Judge C. Robert Wallis on November 21, 2005. The administrative law judge entered Order 01, Prehearing Conference Order, on November 22, 2005.
- 3 Among other things, and at the request of the parties, Order 01 set forth a procedural schedule that set times for the parties to file cross-motions for summary determination, and answers, and for oral argument. It also provided for a hearing date, if the motions were denied.
- 4 The cross-motions, answers and oral argument have been filed. The undersigned heard oral argument, and has reviewed the transcript of oral argument, the cross-motions and answers, and the supporting documents filed and referenced by the parties. Because parties presented additional pleadings following oral argument, the tentative schedule for determination was not met and the hearing date was canceled.
- 5 Based on the review of filed materials, I find that certain facts or factual areas pertinent to this matter, as identified below in the list of factual issues to explore, remain unclear or incomplete. The result is that I believe there is an inadequate

record to support either motion for summary determination. Consequently, the cross-motions for summary determination will be denied, and this matter will be set for hearing, following a prehearing conference to establish the scope of the issues to be addressed at the hearing and related procedural matters.

- 6 To assist the parties in focusing on the areas where a hearing will be necessary for a full evaluation of the issues, we offer the following non-exclusive list of issues to explore. Each issue relates to activities in this state, and not elsewhere:
- 1) The nature and characteristics of the sewer systems at issue, such as: a) a physical description of the facilities employed; b) approximately how many such systems exist in the state; c) how the sewer systems charge customers for sewer system services; d) the nature of the customers to whom sewer services are provided; e) for how long such systems have been in existence; f) where the ownership of such facilities currently lies, g) what is actually done to operate, manage and oversee the systems, and h) who actually performs each of those activities.
 - 2) The nature of “public entity,” such as: a) what constitutes a “public entity” as the Department of Health (DOH) has interpreted its rules (*e.g.*, WAC 246-272B-08001(2)) and the basis for that interpretation; b) for what types of sewer facilities does DOH require that a “public entity” be a back-up manager, and why does DOH distinguish between sewer systems that require such a “public entity” and sewer systems that do not; c) whether the term “public entity” means “municipal corporation” only, or whether is it more inclusive, and if so, what entities it includes; and d) whether, and if so, why, this “public entity” issue has led the William L. Stuth and Aqua Test, Inc. to file their declaratory ruling petition.
 - 3) The nature of the William L. Stuth and Aqua Test, Inc.’s services, including: a) the specific activities they are actually currently conducting in their roles as providers of operation and management services to sewer systems; b) how they are compensated for their activities; c) for whom William A. Stuth and Aqua Test Inc. conduct these activities; d) whether they have any ownership interest in any sewer system or are under contract or other arrangement to own any sewer system; and e) if the declaratory order were granted as requested, exactly what activities would they perform as regulated public service companies, for whom, how would they

charge for the activities and who would pay those charges. What and whom, exactly, with reference to the petitioners and their activities, do petitioners propose that the Commission would regulate?

- 4) Has the Commission ever regulated sewer systems? Has the Commission ever regulated services or commodities as public utilities that were not at the time of regulation identified by statute as public utilities or public service companies subject to regulation?
 - 5) What is the status of the DOH rulemaking mentioned in the parties' statements? What coordination has been undertaken, in conjunction with the Commission, with regard to any conclusions or recommendations relating to Commission action? What is the position of the DOH with regard to whether the Commission should grant the petition for declaratory order, and, if it has a position, why does it desire that result?
- 7 This list of factual issues is not intended to be exclusive. At the prehearing conference, set herein, these and other issues may be discussed. The goal is to prepare a rather complete list of issues, a list of witnesses or potential witnesses to address the issues, a determination whether a subpoena may be needed and a hearing schedule, including the expected length of the hearing. Other procedural matters related to the conclusion of the proceeding may also be discussed and resolved.

ORDER

- 8 The Motion for Summary Determination filed by William L. Stuth and Aqua Test, Inc. on January 4, 2006, and the Motion for Summary Determination filed by Commission Staff on January 4, 2006, are each hereby denied.

NOTICE OF PREHEARING CONFERENCE

- 9 **NOTICE IS HEREBY GIVEN That a prehearing conference in this matter will be held at 1:30 p.m., on Monday, April 17, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**

- 10 By April 7, 2006, the parties shall file with the Commission: a) a list containing factual issues (if any) in addition to those listed above that they deem appropriate to inquire into at the hearing; and b) identify by name, position and address each witness or witnesses that you propose to present testimony on your behalf regarding each issue listed by you and on each issue listed above.
- 11 If you object to any of the potential factual issues listed in this Order, your filing should state your objection, by issue, and explain the basis for the objection.
- 12 At the prehearing conference, parties may object to issues listed by other parties. It is also possible that issues other than those listed in this Order and by the parties in their filings will be identified and discussed at the prehearing conference. The parties should be prepared to address such issues as they arise or to state specific reasons why they are not prepared and any harm that might result.
- 13 The prehearing conference will afford parties the opportunity to assist in defining the elements that are either necessary or will be helpful in responding to the court's direction that the commission conduct a fact-finding hearing in furtherance of its obligation to consider whether to enter a declaratory order. The purpose of the prehearing conference is to prepare a list of factual issues, a list of witnesses or potential witnesses to address the issues, a determination whether a subpoena will be needed and a schedule for subsequent proceedings.

Dated at Olympia, Washington, and effective March 27, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS
Administrative Law Judge

NOTICE TO PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-07-810.