

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

In the Matter of the Petition of	)	
	)	DOCKET A-050528
	)	
WILLIAM L. STUTH and AQUA	)	ORDER 07
TEST, INC.,	)	
	)	
For a Declaratory Order	)	ORDER ACCEPTING
	)	STIPULATION, IN PART;
	)	DISMISSING PETITION, ON
	)	CONDITION
.....	)	

1 ***Synopsis:** The Commission grants, in part, a request by the parties to dismiss a petition for declaratory order, to allow the petitioners to seek a legislative solution to their concerns. Petitioners will not be barred from filing a future petition for declaratory order. The Commission conditions dismissal on parties' consent to rejection of their proposal to allow petitioners to revive the docket at will, with its current record, in its current procedural posture.*

2 Petitioners petitioned for a declaratory ruling on March 16, 2005. The Commission declined to consider the petition by letter of April 8, 2005, which the petitioners appealed. The court remanded the matter to us with instructions to hold a fact-finding hearing.<sup>1</sup> On May 9, 2006, counsel for Stuth and Aqua Test and Commission Staff filed a joint stipulation and proposal for an order dismissing the petition for declaratory order without prejudice. On May 10, 2006, the Administrative Law Judge suspended the procedural schedule pending decision on the stipulation and proposed order.<sup>2</sup>

3 **STIPULATION:** Petitioners and Commission Staff jointly present a stipulated motion to dismiss the petition. Petitioners want to work cooperatively with affected interests to seek UTC regulation of the owners, operators, and managers of large on-site sewage systems as public service companies under an amendment to Title 80 RCW.

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<sup>1</sup> See, RCW 34.05.241(5)(d). A brief procedural history of the docket is set out in Appendix A.

<sup>2</sup> The parties waived an initial order by separate filings on May 12, 2006.

Petitioners want to consult with the Commissioners and Staff to pursue Commission support for a legislative proposal.

4 The stipulated order of dismissal acknowledges petitioners' right to file a later petition for declaratory order if their legislative effort fails to produce the results they desire.

5 **RIGHT OF REVIVAL.** The stipulated order would also grant petitioners the right to revive this docket at any time, in full, with all correspondence, orders, discretionary rulings, judicial review, argument, and filings intact.<sup>3</sup>

6 **DISCUSSION AND DECISION.** We accept the result of the proposed stipulation, dismissal without prejudice, on condition that parties accept complete closure of this docket. We think the parties have demonstrated good cause for dismissal. Petitioners seek to work with many different interests to achieve a result that is acceptable to all by a means—legislation—that is appropriate to the perceived problem they want to solve. This is preferable to litigation and consistent with the statutory preference in the Administrative Procedure Act for settlement of disputes.<sup>4</sup>

7 The proposal allowing revival, however, is not dismissal, but an indefinite continuance. Indefinite continuances are prohibited by our rules for good reasons reflected in this case.<sup>5</sup>

8 It will be about a year before the conclusion of the 2007 legislative session. Extensive effort has been expended on this docket, but it is entirely possible that events over the next year may change the posture of the current record. Some of what has transpired in the record may be irrelevant or moot or take on a new or different meaning. Whatever is of value in the current docket can be preserved as appropriate to the circumstances at the time, if and when the petition is refiled. For example, relevant evidence and briefs in this docket can be resubmitted in whole or in part, and proceedings can be expedited if appropriate.

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<sup>3</sup> The requested order reads, in part:

Pursuant to the above Stipulation, should Stuth and Aqua Test, Inc. deem it appropriate to refile their Petition for Declaratory Order, it is further ORDERED that upon such refiling the pending adjudicative proceeding will be revived and continue from its current procedural and substantive stage (i.e., under Order No. 6 in final preparation for the court ordered fact-finding hearing).

<sup>4</sup> RCW 34.04.060.

<sup>5</sup> WAC 480-07-385(4).

9 If a declaratory order is the proper means to pursue a Commission decision,<sup>6</sup> all of the interests may be better served by consideration of a revised proposal. A later proposal could be shaped by the legislative process petitioners propose to pursue and based on evidence focused on that future proposal. And it could be reviewed with a full opportunity to consider the proper application of procedural and substantive law.<sup>7</sup>

10 We conclude that a continuance is not consistent with the public interest and we reject the portion of the stipulation that would entitle petitioners to reinstate the existing docket.

11 The parties will have ten days from the service of this order to accept the denial of the proposed indefinite continuance. If any party fails to accept this result, we will return the docket to the administrative law judge to reinstate the procedural schedule with new dates for filing and for hearing.

### ORDER

12 The Commission accepts the result of the stipulation and dismisses the petition without prejudice subject to the condition noted below. This action does not bar petitioners or others from presenting another petition covering the same subject, to be considered on its own merits.

13 The Commission rejects the parties' proposal to allow petitioners to revive the pending proceeding at will, restored to its current procedural and substantive stages. Dismissal is conditioned upon all parties accepting this rejection.

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<sup>6</sup> Eligibility for a declaratory order is a threshold matter for decision with each petition. RCW 34.05.240(1).

<sup>7</sup> Commission Staff's brief of February 13, 2006, identifies legal issues that could require resolution in the current proceeding.

- 14 If parties fail to accept this condition in writing, within ten days after service of this order, the terms of this order granting dismissal will become void and the docket will be returned to the administrative law judge to establish a new procedural schedule to resume the matter.

Dated at Olympia, Washington, and effective May 23, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

**NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850.**

## Appendix A

### PROCEDURAL HISTORY

- 1 On March 16, 2005, William L. Stuth and Aqua Test, Inc. filed with the Washington Utilities and Transportation Commission (Commission) a petition for a declaratory order asserting jurisdiction over Aqua Test, Inc., as a public service company.
- 2 On April 8, 2005, the Commission notified the petitioner by letter that it would not enter a declaratory order in response to its request and declined to begin a declaratory order proceeding because it believes, as a matter of law, that it has no jurisdiction over companies providing such services.
- 3 On April 21, 2005, William L. Stuth and Aqua Test, Inc. filed a petition for judicial review with Thurston County Superior Court.<sup>8</sup> The court determined that the Commission should hold a hearing on the issues presented in the petition for a declaratory order and remanded the matter to the Commission so the hearing may be held.
- 4 On November 21, 2005, The Commission convened a prehearing conference in this docket before Administrative Law Judge C. Robert Wallis, and held oral argument on January 27, 2006.
- 5 On February 13, 2006, Commission Staff filed its closing brief. On February 17, 2006, counsel for Stuth and Aqua Test filed a reply to Staff's closing brief.
- 6 On February 21, 2006, Commission Staff filed with the Commission a Motion for Leave to File Reply to the response. Counsel for Stuth and Aqua Test were given until February 23 to file its answer to Staff's motion.
- 7 On March 27, 2005, the Commission entered Order 05—Denying Summary Determination Motions setting a prehearing conference for April 17, 2006.

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<sup>8</sup> No. 05-2-00782-3.

- 8 On April 24, 2006, the Commission entered Order 06—Prehearing Conference Order; Notice of Hearing (Set for June 29, 2006, 9:30 a.m.).
- 9 On May 9, 2006, counsel for Stuth and Aqua Test and Commission Staff filed a joint stipulation and proposal for an order dismissing the petition for declaratory order without prejudice.
- 10 On May 10, 2006, the Commission suspended the procedural schedule pending action on the stipulation and proposed order.
- 11 On May 12, 2006, parties waived an initial order and consented to a Commissioner decision on their proposal to dismiss the matter.