

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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|-------------------------------------|---|-------------------------|
| In the Matter of the Application of |) | DOCKET UW-143617 |
| |) | (Consolidated) |
| |) | |
| T & T PROFESSIONAL SERVICE |) | ORDER 03 |
| aka WATER AND WASTEWATER |) | |
| MANAGEMENT SERVICES, LLC, |) | |
| ROBERT THURSTON, and CHERI |) | |
| THURSTON |) | |
| |) | |
| For an Order Approving the Transfer |) | |
| of Piper Water System, Pinewood |) | |
| Water System, and Lightmoor Court |) | |
| Water System |) | |
| |) | |
| WASHINGTON UTILITIES AND |) | Docket UW-150791 |
| TRANSPORTATION COMMISSION, |) | (Consolidated) |
| |) | |
| Complainant, |) | ORDER 03 |
| |) | |
| v. |) | |
| |) | |
| T & T PROFESSIONAL SERVICE |) | INITIAL ORDER DENYING |
| aka WATER AND WASTEWATER |) | APPLICATION; SUSPENDING |
| MANAGEMENT SERVICES, LLC, |) | PENALTY ON CONDITION OF |
| ROBERT THURSTON, and CHERI |) | FUTURE COMPLIANCE |
| THURSTON |) | |
| |) | |
| Respondent. |) | |
| |) | |

BACKGROUND

1 On July 25, 2014, T & T Professional Service aka Water and Wastewater Management Services, LLC (T & T Professional Service or Company), filed with the Washington Utilities and Transportation Commission (Commission) an application to cease operations and transfer ownership of its three water systems – Piper Water System, Pinewood Water

System, and Lightmoor Court Water System – with a proposed effective date of June 17, 2015 (Application).¹ The Application proposed to transfer ownership of each water system to its respective customers.

- 2 On May 20, 2015, the Commission issued a \$1,000 penalty in Docket UW-150791 against T & T Professional Service for failing to file an annual report and pay regulatory fees by the May 1, 2015, deadline. On June 9, the Company filed its annual report with no regulatory fees owed. That same day, the Company filed with the Commission a request for mitigation of the penalty, admitting the violations and requesting a hearing to explain the circumstances that gave rise to the violations.
- 3 On June 11, 2015, the Company’s Application was presented at the Commission’s regularly scheduled open meeting and referred for adjudication. That same day, the Commission issued a Notice of Prehearing Conference on shortened notice, set for June 15, 2015, at 10:30 a.m.
- 4 The Commission convened a prehearing conference on June 15, 2015, during which it consolidated Dockets UW-143617 and UW-150791, granted Robin Moeur’s petition to intervene on behalf of the Piper Water System in Docket UW-143617, and adopted a procedural schedule. On June 25, 2015, the Commission issued Order 02, granting Jason Younker’s Petition to Intervene on behalf of the Lightmoor Court Water System in Docket UW-143617.
- 5 On July 31, 2015, the Commission rescheduled the brief adjudicative proceeding at the parties’ request, conditioned on the Company’s agreement to waive the statutory deadline for the Commission to act on the Application and extend it until January 25, 2016.
- 6 On August 28, 2015, the Commission conducted a brief adjudicative proceeding before Administrative Law Judge Rayne Pearson. At the hearing, the Company offered no testimony or evidence to support its Application, but briefly explained that it is working with the customers of each water system to negotiate transfer agreements.

¹ The three systems serve approximately 22 customers in the Bremerton and Poulsbo areas of Kitsap County. T & T Professional Service is an investor-owned utility that meets the jurisdictional threshold for Commission regulation, as set forth in WAC 480-110-255(1)(b), by charging an average annual revenue of greater than \$557 per connection.

- 7 Commission staff (Staff) witness Jim Ward testified that although the Company is having ongoing discussions with customers of both the Piper and Lightmoor Court Water Systems and has reached a preliminary agreement with Pinewood Water System customers, there are no final agreements to transfer ownership for any of the three water systems. Accordingly, Staff recommends denying the Application.
- 8 Ms. Moeur testified that no final agreement has been reached to transfer the Piper Water System. Vivienne Alpaugh appeared on behalf of Mr. Younker and explained that no final agreement has been reached to transfer the Lightmoor Court Water System.
- 9 With respect to the \$1,000 penalty issued in Docket UW-150791, Staff recommends suspending the penalty for a period of one year, and then waiving it, provided the Company files its 2015 annual report and pays any regulatory fees owed by May 2, 2016.² The Company supports Staff's recommendation.
- 10 Brett P. Shearer, Assistant Attorney General, Olympia, Represents Commission Staff.³ Cheri Thurston and Bob Thurston, Owner/Operator T & T Professional Service, Port Ludlow, represent the Company. Robin Moeur, Bainbridge Island, represents Piper Water System. Jason Younker, Bainbridge Island, represents the Lightmoor Court Water System.

DISCUSSION AND DECISION

Docket UW-143617

- 11 We deny the Company's Application to cease operations and transfer ownership of its three water systems. In addition to raising broader policy concerns, the Application fails to satisfy both statutory requirements and applicable Commission rules.
- 12 First, T & T Professional Service may not, as it proposes to do in its Application, simply cease operations on a date certain. RCW 80.28.010(2) requires regulated water companies to

² Because May 1, 2016, falls on a Sunday, 2015 annual reports and regulatory fees will be due the following business day, May 2.

³ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

“furnish and supply such service ... as shall be safe, adequate and efficient, and in all respects just and reasonable.” In order to relieve the Company of its obligation to serve, the Company must file, and the Commission must approve, an application to transfer ownership pursuant to RCW 80.12.020.⁴

- 13 While the Company’s Application does propose to transfer ownership of its three water systems, the proposed transferees – customer groups associated with each system – have not agreed to accept the transfer. Basic principles of contract law prohibit T & T Professional Service from deeding its water systems to its customers without their consent. Accordingly, and as a general policy, the Commission will not approve any transaction where the proposed transferee is unwilling to accept the transfer. As Staff noted at hearing, the fact that the Company is in negotiations with customers to transfer ownership is a parallel, but separate, matter from the Application at issue here. If and when those agreements are finalized, the Company may submit a new application for the Commission’s consideration.
- 14 Finally, WAC 480-143-170 provides that the Commission will not approve a property transfer unless doing so is in the public interest. Here, approving the Company’s Application would be contrary to the public interest not only because the respective customer groups are unwilling to accept the transfer, but also because no evidence was offered to demonstrate that the customer groups are in any way fit or able to manage the water systems. In fact, the Company presented no evidence at hearing to support its request to cease operations and transfer ownership of its systems. For these reasons, we deny the Company’s Application.

Docket UW-150791

- 15 At hearing, Staff recommended the Commission suspend the \$1,000 penalty assessed in Docket UW-150791 for a period of one year, and then waive it, provided the Company files its 2015 annual report and pays any regulatory fees owed by May 2, 2016. The Company agrees with Staff’s recommendation.

⁴ RCW 80.120.20(1) provides, in part: “No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so.”

- 16 The Commission may consider a number of factors when entertaining a request for mitigation, including a company's history of compliance and the likelihood the violation will recur.⁵ T & T Professional Service received and paid a reduced penalty of \$300 for failing to timely file its annual report in 2013. Despite the Company's recent violations, we agree with Staff's recommendation to suspend the \$1,000 penalty conditioned on future compliance. Suspending the penalty – rather than imposing it now – creates an incentive for the Company to ensure subsequent filings are received by the deadline.
- 17 The Commission will therefore exercise its discretion to suspend the entire penalty conditioned on the Company timely filing its 2015 annual report and paying any regulatory fees owed by May 2, 2016. If the Company fails to file its 2015 annual report and pay any regulatory fees due by that date, the entire \$1,000 penalty will immediately become due and payable without further action by the Commission.

FINDINGS AND CONCLUSIONS

- 18 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including water companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 19 (2) T & T Professional Service is a water company subject to Commission regulation.
- 20 (3) On July 25, 2014, T & T Professional Service filed with the Commission an Application to transfer ownership and cease operations of its three water systems – Piper Water System, Pinewood Water System, and Lightmoor Court Water System – with a proposed effective date of June 17, 2015. The Company proposes to transfer ownership of each system to its respective group of customers.
- 21 (4) Under RCW 80.28.010(2), T & T Professional Service has an obligation to serve its customers, and may not cease operations without first effecting a transfer of a given system.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

- 22 (5) Under RCW 80.12.020, no public service company may transfer its property without a Commission order authorizing it to do so.
- 23 (6) Under WAC 480-143-170, the Commission will not approve a transfer of property unless doing so is consistent with the public interest.
- 24 (7) Approving the Application would not be in the public interest because the customer groups identified in the Application as the transferees are not willing, fit, or able to receive the transfer. Accordingly, the Commission should deny the Application.
- 25 (8) On May 20, 2015, the Commission assessed a \$1,000 penalty against T & T Professional Service for violations of WAC 480-110-505, which requires water companies to file annual reports and pay regulatory fees each year by May 1.
- 26 (9) On June 9, 2015, T & T Professional Services responded to the penalty assessment, admitting the violations and requesting a hearing to explain the circumstances.
- 27 (10) Staff and the Company agree that the \$1,000 penalty should be suspended for one year, and then waived, conditioned on the Company filing its 2015 annual report and paying any regulatory fees due no later than May 2, 2016. The parties agree that if the Company fails to file its annual report and pay regulatory fees by that date, the entire penalty will immediately become due and payable without further action by the Commission.

ORDER

28 THE COMMISSION ORDERS That

- 29 (1) T & T Professional Service aka Water and Wastewater Management Services, LLC's application in Docket UW-143617 to transfer ownership and cease operations of its three water systems – Piper Water System, Pinewood Water System, and Lightmoor Court Water System – is DENIED.
- 30 (2) The \$1,000 penalty assessed in Docket UW-150791 is suspended until May 3, 2016, and then waived, conditioned on T & T Professional Service aka Water and Wastewater Management Services, LLC filing its 2015 annual report and paying any regulatory fees due by than May 2, 2016. If T & T Professional Service aka Water

and Wastewater Management Services, LLC fails to file its annual report and pay regulatory fees by that date, the entire penalty will immediately become due and payable on May 3, 2016, without further action by the Commission.

Dated at Olympia, Washington, and effective September 22, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
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