

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-110892
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 05
)	
v.)	
)	ORDER REMANDING INITIAL
LOWPER, INCORPORATED,)	ORDER APPROVING AND
)	ADOPTING SETTLEMENT
Respondent.)	AGREEMENT
)	
.....)	

- 1 On May 13, 2011, Lowerper, Incorporated (Lowerper or Company) filed with the Washington Utilities and Transportation Commission (Commission) an initial tariff in Docket UW-110871. On June 14, 2011, the Commission issued Order 01, Complaint Against Rates, in Docket UW-110892.
- 2 On November 30, 2011, Commission Staff (Staff) filed a Settlement Agreement between Staff and the Company (Settlement Agreement). The Settlement Agreement reflects Staff’s determination after reviewing the data provided by Lowerper that the tariff rates and charges do not result in an excessive return and that with certain tax adjustments, Lowerper’s rates are fair, just, reasonable and sufficient.
- 3 On December 8, 2011, Administrative Law Judge Martin Lovinger issued Order 04, Initial Order Approving and Adopting Settlement Agreement (Order 04). Order 04 concludes that the Settlement Agreement is consistent with the public interest and approves that agreement without condition.
- 4 In an electronic communication dated December 26, 2011, John Anderson, apparently a Lowerper customer, expressed strong concerns about the Company’s tariff.¹ Mr. Anderson makes several specific factual allegations to support his contention that

¹ In addition to sending this email to Staff and the Commission’s Records Center, Mr. Anderson copied each of the Commissioners individually. The Commission has separately notified the parties of the ex parte communication and provided an opportunity to respond. In addition, Judge Lovinger has sent a letter to Mr. Anderson explaining the restrictions on such communication and requesting that he not communicate directly with any of the Commissioners on this matter.

Lowerper overstated the costs on which the tariff rates are based and thus those rates are not fair, just, reasonable, and sufficient.

- 5 On December 28, 2011, the Commission issued a notice designating Order 04 for administrative review pursuant to WAC 480-07-825(8) to enable the Commission and the parties to investigate these allegations and concerns. The Commission also reopened the record as authorized under WAC 480-07-830 to receive additional evidence developed as part of its and the parties' investigation.
- 6 The Administrative Law Judge is in the best position to oversee development of the record in this docket that will enable the Commission to determine whether the Settlement Agreement will result in fair, just, reasonable, and sufficient rates. Accordingly, the Commission will remand Order 04 to Judge Lovinger to develop the record and revise that order or make any other appropriate determinations.

ORDER

- 7 THE COMMISSION ORDERS THAT Order 04 is remanded to Administrative Law Judge Martin Lovinger to conduct further proceedings on whether the Settlement Agreement will result in fair, just, reasonable, and sufficient rates and to revise Order 04 or make such other determinations as are necessary to address that issue.

Dated at Olympia, Washington, and effective January 9, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner