

1
2
3
4
5 BEFORE THE
6 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

7 In the Matter of Determining the Proper
8 Carrier Classification of:

9 LOWPER, INC. d/b/a LOWPER
10 CORPORATION, a/k/a "LOWPER WATER
11 COMPANY" and "ILIAD, INC. d/b/a
12 LOWPER WATER SYSTEM"

and

13 In the Matter of the Penalty Assessment
14 Against LOWPER, INC., in the Amount of
\$10,500

DOCKET NOS. UW-091006 AND UW-110213

REPLY TO COMMISSION STAFF'S MOTION
TO REOPEN THE RECORD; MOTION FOR
CLARIFICATION OF INITIAL ORDER; AND
MOTION FOR RECONSIDERATION OF
INITIAL ORDER

15 This Reply to Commission Staff's Motion to Reopen the Record; Motion for Clarification of
16 Initial Order; and Motion for Reconsideration of Initial Order ("Motion") is filed on behalf of Lowerper,
17 Inc., d/b/a Lowerper Corporation ("Lowerper"). This Reply is being filed pursuant to the Notice of
18 Opportunity to Respond dated June 7, 2011.
19

20 BASIS FOR STAFF MOTION

21 The entire basis for all of Staff's parts to its Motion is one simple event. That simple event is that
22 Lowerper did not file an income statement and balance sheet for its affiliate, Iliad, Inc. As explained in
23 the letter dated May 18, 2011, attached to the Declaration of Mr. Ward, the reason it was not filed is that
24
25
26

REPLY TO COMMISSION STAFF'S MOTION
TO REOPEN THE RECORD- 1

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 it does not exist. How can one file what does not exist? Staff's Motion is ill-conceived and, quite
2 frankly, vindictive.

3 The reason that the balance sheet and income statement do not exist is that Iliad, Inc. is in the
4 construction business. With the financial sector fiasco, with several banks failing, and the downturn in
5 the construction economy, bonding companies have become much more demanding in terms of the
6 requirements that must be met as a precondition to issuing bonding for construction projects. One of
7 those requirements is that the balance sheet and income statement for a company that is going to request
8 bonding for construction projects must be a "reviewed" financial statement.

9 This means that one accountant, Iliad, Inc.'s normal outside certified public accountant, prepares
10 the income statement and balance sheet as a draft. That draft is submitted to a second accounting firm
11 for a review to determine if it meets certain standards.

12 That is the process that is being followed. As previously stated, as soon as that material is
13 available, it will be filed for Commission Staff availability. All of this is set forth in Mr. Dorland's
14 Declaration, which is attached.

15 Hypothetically, Iliad, Inc. may have been able to provide a draft income statement and balance
16 sheet. However, can you imagine what Commission Staff would argue if there were changes between
17 the draft and what is finally approved as the true income statement and balance sheet? The charges
18 would be that Lowper was attempting to deliberately mislead Commission Staff. Providing a draft does
19 not do anyone any good.


20 Commission Staff makes the absolute absurd statement that they cannot conduct a review of the
21 material filed by Lowper without the affiliate's income statement and balance sheet. On its face, that is a
22 failing argument. Commission Staff has all of the financial information they need to analyze the tariff
23

1 filed by Lowper. Indeed, if that were the case, it would have been impossible for Staff to recommend
2 that a complaint be issued against Lowper's rates. See, Paragraph 4 of Order 01 in Docket UW-110892.
3 Staff was able to perform an initial financial analysis and reach a tentative conclusion. Staff's argument
4 in this proceeding does not make sense.

5 The relationship between Lowper and its affiliate is a matter of contract, a copy of which the
6 Commission Staff has. Given the size of Lowper compared to the size of Iliad, Inc., Commission Staff
7 will not learn a single thing that will be of any value in analyzing the Lowper financials from the income
8 statement and balance sheet of Iliad, Inc. As stated in Mr. Dorland's Declaration, Iliad, Inc. had
9 revenues of \$3,400,222.00 in 2010. Lowper made payments to Iliad, Inc. in the amount of \$1,000.00.

10 Lowper respectfully requests that Commission Staff's Motion be denied. Further, Lowper
11 respectfully requests that the penalty in this matter be further mitigated by an additional \$1,000.00 to
12 cover the costs and inconvenience of responding to Staff's Motion.
13

14 Dated this 17th day of June, 2011.

15
16
17 
18 _____
19 RICHARD A. FINNIGAN, WSB #6443
20 Attorney for Lowper, Inc.
21
22
23
24
25
26

1
2
3
4
5 **BEFORE THE**
6 **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

7 In the Matter of Determining the Proper
8 Carrier Classification of:

DOCKET NOS. UW-091006 AND UW-110213

9 LOWPER, INC. d/b/a LOWPER
10 CORPORATION, a/k/a "LOWPER WATER
11 COMPANY" and "ILIAD, INC. d/b/a
12 LOWPER WATER SYSTEM"

DECLARATION OF DAVID K. DORLAND

and

13 In the Matter of the Penalty Assessment
14 Against LOWPER, INC., in the Amount of
\$10,500

15 I, David K. Dorland, hereby declare under penalty of perjury under the laws of the State of
16 Washington that the following statements are true and correct.

17 1. I am the President of Iliad, Inc. and make this Declaration in that capacity. The income
18 statement and balance sheet do not exist for Iliad, Inc. for the year 2010 at the present time.

19 2. The reason it does not exist, is that Iliad, Inc. is primarily a construction company.
20 Bonding companies are now being far more demanding in what they require of a company seeking
21 construction bonding given recent events in the financial industry and in the construction industry. One
22 of the new requirements is the submission of a "reviewed" income statement and balance sheet. This
23 means that Iliad, Inc.'s certified public accountant must prepare a draft income statement and balance
24 sheet.
25

26 **DECLARATION OF DAVID K. DORLAND- 1**

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001

1 sheet. That is then sent to a separate accounting firm and that firm does a review of the income
2 statement and balance sheet. The same firm did Iliad, Inc. 2009 compilation statement. The income
3 statement and balance sheet are not considered final until that review has been completed and the
4 "independent" accounting firm has submitted its analysis.

5 3. Iliad, Inc.'s income statement and balance sheet will be provided as soon as it is available.

6 4. The income statement and balance sheet of Iliad, Inc. will be of little use to Commission
7 Staff, even when it is provided. Iliad, Inc. had revenues in 2010 of \$3,400,222.00. Lower, Inc. paid
8 Iliad, Inc. the sum of \$1,000.00 in 2010. I can see no way in which Iliad, Inc.'s income statement and
9 balance sheet will provide any useful information to Commission Staff. Nonetheless, it will be provided
10 when it is available.

11 Dated this 14th day of June, 2011.

12 
13
14
15 DAVID K. DORLAND

16
17
18
19
20
21
22
23
24
25
26
DECLARATION OF DAVID K. DORLAND- 2

Law Office of
Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
(360) 956-7001