

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UW-110892
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 06
	)	
v.	)	
	)	ORDER AFFIRMING INITIAL
LOWPER, INCORPORATED,	)	ORDER
	)	
Respondent.	)	
	)	
.....	)	

**BACKGROUND**

- 1 On May 13, 2011, Lowper, Incorporated (Lowper 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 Lowper that the tariff rates and charges do not result in an excessive return and that with certain tax adjustments, Lowper’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 Lowper customer, expressed strong concerns about the Company's tariff.<sup>1</sup> Mr. Anderson made several specific factual allegations to support his contention that Lowper 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 On January 9, 2012, the Commission issued Order 05 remanding Order 04 "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."
- 7 On January 9, 2012, Staff filed a response to the communication from Mr. Anderson in the form of copies of email correspondence with Mr. Anderson in which Staff addressed each of Mr. Anderson's concerns. The email correspondence indicates that Staff considered the information set forth by Mr. Anderson before reaching their conclusion that the rates reflected in the Settlement Agreement with Lowper are fair, just, reasonable, and sufficient.
- 8 On January 23, 2012, Lowper sent a letter responding to the claim by Mr. Anderson that Lowper was not taking action to turn control of this water system over to the Clallam PUD.

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<sup>1</sup> 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.

**DISCUSSION AND DECISION**

- 9 Mr. Anderson is not a party in this docket. The Commission values public comment, but such comment alone does not warrant a hearing or other evidentiary proceeding. Rather, the Commission's primary concern upon receipt of Mr. Anderson's comments was to determine the extent to which Staff had considered the allegations Mr. Anderson makes and to provide an opportunity for the Commission and the parties to investigate those allegations if necessary.
- 10 The emails between Staff and Mr. Anderson demonstrate that Staff investigated the substance of those allegations before entering into the Settlement Agreement with Lowper. Accordingly, no further investigation is warranted at this time, and Mr. Anderson's comments do not provide a basis on which the Commission should determine that the Settlement Agreement is not in the public interest. If Mr. Anderson nevertheless believes he has a sufficient factual and legal basis to challenge the Company's rates, terms, and conditions of service, it is incumbent upon him to seek to initiate a complaint consistent with applicable statutes and Commission rules.

**ORDER**

- 11 THE COMMISSION AFFIRMS the findings and conclusions in Order 04 that the Settlement Agreement attached to and incorporated into Order 04 is in the public interest and is approved and adopted.

Dated at Olympia, Washington, and effective February 13, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARTIN LOVINGER  
Administrative Law Judge

## NOTICE TO THE 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 (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 eight (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250