

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

In the Matter of Determining the Proper)	DOCKET UW-091006
Carrier Classification of:)	(consolidated)
)	
)	ORDER 05
LOWPER, INC. D/B/A LOWPER)	
CORPORATION, A/K/A LOWPER)	
WATER COMPANY AND ILIAD INC.)	
D/B/A LOWPER WATER SYSTEM)	
.....)	
In the Matter of the Penalty Assessment)	DOCKET UW-110213
Against)	(consolidated)
)	
LOWPER, INC.)	ORDER 04
)	
In the Amount of \$10,500)	
)	
.....)	

**ORDER REOPENING THE RECORD ON COMMISSION’S OWN MOTION
AND GRANTING LOWPER’S REQUEST FOR PAYMENT PLAN**

1 **Nature of Proceeding.** On February 14, 2011, the Washington Utilities and Transportation Commission (Commission) instituted a proceeding to determine whether Lowper, Incorporated (Lowper or the Company) is subject to regulation under Chapter 80.28 RCW and is performing any act requiring approval of the Commission without securing such approval. This matter has been designated as Docket UW-091006. Specifically, the Commission alleged that Lowper is a water company, as defined in RCW 80.04.010 and WAC 480-110-255, and has failed to file a tariff pursuant to RCW 80.28.050 and WAC 480-110-433(3).¹

¹ WAC 480-110-433(3) requires:
Initial tariffs – when a company becomes jurisdictional.

2 Also on February 14, 2011, the Commission assessed a penalty against Lowerper in the amount of \$10,500 for violations of WAC 480-110-433(3) requiring a water company to file an initial tariff when it becomes subject to the Commission's jurisdiction. This matter has been designated as Docket UW-110213. On February 23, 2011, Lowerper responded to the penalty assessment with a request for hearing. The Commission consolidated Dockets UW-091006 and UW-110213 on March 24, 2011.

3 **Background and Procedural History.** On May 18, 2011, the Commission entered an Initial Order approving and adopting the Stipulation and granting Lowerper's mitigation request (Initial Order). The Commission mitigated the Company's penalty by 20% or \$2,100 based on the following factors: (1) The Company's representation that its water business does not make a profit and that a substantial portion of Lowerper's revenues are pass-through costs for the water it supplies to customers, and (2) Lowerper's good faith in filing its tariff and supporting documentation as agreed on May 13, 2011.² The Commission directed Lowerper to remit the penalty assessment in the amount of \$8,400 immediately.

4 On September 16, 2011, Lowerper filed a request for a payment plan because the Company is currently unable to pay the full penalty amount. Lowerper explains that it is negotiating with the Clallam County Public Utility District to transfer control of the Lowerper Water System. The Company states that it expects to have the penalty

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- (a) An initial tariff must be filed in a standard tariff format. The commission will provide illustrations of the standard format upon request.
 - (b) The tariff must be accompanied by a cover letter describing the filing as an initial tariff.
 - (c) Customers must be notified before the commission receives the filing.
 - (d) The filing must be accompanied by supporting financial data justifying the proposed rates. See WAC 480-07-530 (General Rate Proceedings – Water Companies).

² Initial Order, ¶ 21. On June 6, 2011, the Commission's regulatory staff (Staff) filed a Motion to Reopen the Record, Motion for Clarification of Initial Order, and Motion for Reconsideration of Initial Order (Staff's Motions). The Commission denied Staff's Motions in an order entered on June 23, 2011. Notice of Finality was entered on July 15, 2011.

monies once the transaction closes, and Lowerper pledges to pay \$500 per month on the assessment until that time. Staff takes no position on Lowerper's request.

5 **Discussion and decision.** Pursuant to WAC 480-07-830, the Commission may, on its own motion, reopen the record in a contested proceeding to allow receipt of evidence for good and sufficient cause.³ The Company has demonstrated good and sufficient cause to reopen the record for the limited purpose of evaluating Lowerper's payment plan request.

6 Lowerper is unable to satisfy the Commission's penalty assessment. Staff, the only other party to the proceeding, has not voiced its opposition to the request. The Commission finds that the public interest is served by collecting as much of the penalty assessment as possible until such time as Lowerper fulfills its obligation.

7 Pursuant to RCW 80.04.210, the Commission concludes that the Initial Order should be altered to allow the Company to satisfy its penalty assessment by remitting to the Commission \$500 per month beginning October 1, 2011 and continuing thereafter until such time as the Company has paid its \$8,400 balance in full. If the Company fails to make timely monthly payments consistent with the payment plan established in this Order for any two consecutive months, the entire unpaid balance of the penalty immediately will become due and payable to the Commission. The Commission also reserves the right to enforce this payment plan in court pursuant to RCW 80.04.400.

ORDER

THE COMMISSION ORDERS THAT:

- 8 (1) Lowerper's request for a penalty assessment payment plan is granted.
- 9 (2) Lowerper shall remit \$500 per month, beginning on October 1, 2011, until it has satisfied the \$8,400 penalty assessment.

³ WAC 480-07-830.

- 10 (3) The entire unpaid balance of the penalty will become immediately due and payable to the Commission if Lowerper fails to make timely monthly payments consistent with the payment plan established in this Order.
- 11 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective September 20, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge