

1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION

3	WASHINGTON UTILITIES AND)	
4	TRANSPORTATION COMMISSION,)	DOCKET NO. UW-060343
)	
	Complainant,)	Volume II
5)	Pages 9 to 98
	vs.)	
6)	
	ILIAD WATER SERVICE, INC.,)	
7)	
	Respondent.)	
8	_____)	

9
10 A hearing in the above matter was held on
11 November 8, 2006, from 9:30 a.m to 11:45 a.m., at 1300
12 South Evergreen Park Drive Southwest, Room 108, Olympia,
13 Washington, before Administrative Law Judge PATRICIA
14 CLARK.

15
16 The parties were present as follows:

17 THE COMMISSION, by MICHAEL FASSIO, Assistant
18 Attorney General, 1400 South Evergreen Park Drive
19 Southwest, Post Office Box 40128, Olympia, Washington
98504, Telephone (360) 664-1192, Fax (360) 586-5522,
E-Mail mfassio@wutc.wa.gov.

20 ILIAD WATER SERVICE, INC., by RICHARD A.
21 FINNIGAN, Attorney at Law, 2112 Black Lake Boulevard
22 Southwest, Olympia, Washington 98512, (360) 956-7001,
Fax (360) 753-6862, E-Mail rickfinn@localaccess.com.

23
24 Joan E. Kinn, CCR, RPR
25 Court Reporter

0010

1 -----

2 INDEX OF EXAMINATION

3 -----

4 WITNESS: PAGE:

5 DEREK DORLAND

6 Direct Examination by Mr. Finnigan 24

7 Cross-Examination by Mr. Fassio 25

8 Examination by Judge Clark 36

9 Redirect Examination by Mr. Finnigan 48

10 Examination by Judge Clark 50

11 Examination by Judge Clark 95

12 Recross-Examination by Mr. Fassio 96

13 Examination by Judge Clark 97

14 DANNY P. KERMODE

15 Direct Examination by Mr. Fassio 52

16 Cross-Examination by Mr. Finnigan 54

17 Examination by Judge Clark 69

18 Cross-Examination by Mr. Finnigan 73

19 DEREK M. PELL

20 Direct Examination by Mr. Fassio 75

21 Cross-Examination by Mr. Finnigan 77

22 Examination by Judge Clark 81

23 Cross-Examination by Mr. Finnigan 90

24 Redirect Examination by Mr. Fassio 93

25

0011

1 -----

2 INDEX OF EXHIBITS

3 -----

4	EXHIBIT:	MARKED:	ADMITTED:
5	DEREK DORLAND		
6	1	15	Vol. 1 - 7
7	2	15	Vol. 1 - 7
8	3	15	Vol. 1 - 7
9	4	15	Vol. 1 - 7
10	5	15	Vol. 1 - 7
11	6	15	Vol. 1 - 7
12	7	15	Vol. 1 - 7
13	8	15	Vol. 1 - 7
14	9	15	Vol. 1 - 7
15	10	15	Vol. 1 - 7
16	11	15	Vol. 1 - 7
17	12	15	Vol. 1 - 7
18	13	15	Vol. 1 - 7
19	14	16	Vol. 1 - 7
20	15	16	Vol. 1 - 7
21	16	16	Vol. 1 - 7
22	17	16	Vol. 1 - 7
23	18	16	Vol. 1 - 7
24	19	16	Vol. 1 - 7
25	76	16	33

0012

1		DANNY P. KERMODE		
2	20		16	Vol. 1 - 7
3	21		16	Vol. 1 - 7
4	22		16	Vol. 1 - 7
5	23		16	Vol. 1 - 7
6	24		17	Vol. 1 - 7
7	25		17	Vol. 1 - 7
8	26		17	Vol. 1 - 7
9	27		17	Vol. 1 - 7
10	28		17	Vol. 1 - 7
11	29		17	Vol. 1 - 7
12	30		17	Vol. 1 - 7
13	31		17	Vol. 1 - 7
14	74		17	Vol. 1 - 7
15	75		17	Vol. 1 - 7
16	77		65	67
17		DEREK M. PELL		
18	32		18	Vol. 1 - 7
19	33		18	Vol. 1 - 7
20	34		18	Vol. 1 - 7
21	35		18	Vol. 1 - 7
22	36		18	Vol. 1 - 7
23	37		18	Vol. 1 - 7
24	38		18	Vol. 1 - 7
25	39		18	Vol. 1 - 7

0013

1	40	18	Vol. 1 - 7
2	41	18	Vol. 1 - 7
3	42	18	Vol. 1 - 7
4	43	18	Vol. 1 - 7
5	44	19	Vol. 1 - 7
6	45	19	Vol. 1 - 7
7	46	19	Vol. 1 - 7
8	47	19	Vol. 1 - 7
9	48	19	Vol. 1 - 7
10	49	19	Vol. 1 - 7
11	50	19	Vol. 1 - 7
12	51	19	Vol. 1 - 7
13	52	19	Vol. 1 - 7
14	53	20	Vol. 1 - 7
15	54	20	Vol. 1 - 7
16	55	20	Vol. 1 - 7
17	56	20	Vol. 1 - 7
18	57	20	Vol. 1 - 7
19	58	20	Vol. 1 - 7
20	59	20	Vol. 1 - 7
21	60	20	Vol. 1 - 7
22	61	20	Vol. 1 - 7
23	62	20	Vol. 1 - 7
24	63	20	Vol. 1 - 7
25			

0014

1		RICHARD SARVER		
2	64		21	Vol. 1 - 7
3	65		21	Vol. 1 - 7
4	66		21	Vol. 1 - 7
5	67		21	Vol. 1 - 7
6	68		21	Vol. 1 - 7
7	69		21	Vol. 1 - 7
8	70		21	Vol. 1 - 7
9	71		21	Vol. 1 - 7
10	72		21	Vol. 1 - 7
11	73		21	Vol. 1 - 7
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

0015

1 ILIAD WATER

2 DEREK DORLAND

3 1 Prefiled Direct Testimony of Derek Dorland
4 (11 pp.) (DD-1T)

5 2 DOH Letter dated December 19, 2000 (2 pp) DD-2

6 3 DOH Letter dated January 31, 2002 (1 p.) DD-3

7 4 Aerie Construction Letter dated August 23,
8 2004 (2 pp.) DD-4

9 5 Alderlake Water Co. Letter dated August 18,
10 2004 (4 pp.) DD-5

11 6 Richard A. Finnigan Letter dated October 11,
12 2004 (2 pp.) DD-6

13 7 Richard A. Finnigan Letter dated November 5,
14 2004 (3 pp.) DD-7

15 8 WUTC Letter dated October 20, 2004 (9 pp.)
16 DD-8

17 9 Alderlake Water Company Capital Improvements
18 (51 pp.) DD-9

19 10 WUTC Letter dated January 25, 2005 (2 pp.)
20 DD-10

21 11 Richard A. Finnigan Letter dated March 22,
22 2005 (3 pp.) DD-11

23 12 WUTC Letter dated May 6, 2005 (2 pp.) DD-12

24 13 Richard A. Finnigan Letter dated May 24, 2005
25 (1 p.) DD-13

0016

1 14 Richard A. Finnigan Letter dated February 22,
2 2006 (16 pp.) DD-14
3 15 Richard A. Finnigan Letter dated March 1, 2006
4 (3 pp.) DD-15
5 16 WUTC Letter dated March 28, 2006 (10 pp.)
6 DD-16
7 17 Richard A. Finnigan Letter dated August 15,
8 2006 (2 pp.) DD-17
9 18 Iliad Water Services, Inc. Letter dated May 3,
10 2006 (9 pp.) DD-18
11 19 Prefiled Reply Testimony of Derek Dorland
12 (4 pp. including cover) DD-19T

13 CROSS-EXAMINATION EXHIBITS

14 76 WUTC Staff Data Request No. 1 (2 pp.)

15

16 COMMISSION STAFF

17 DANNY P. KERMODE

18 20 Prefiled Responsive Testimony of Danny P.
19 Kermode (30 pp. including cover sheet and
20 table of contents) DPK-1T
21 21 Witness Qualifications (2 pp.) DPK-2
22 22 Resume of Regulatory Experience (1 p.) DPK-3
23 23 Company Schedule - Costs Included in 2004
24 Assessment (1 p.) DPK-4

25

0017

1 24 Staff Schedule of Costs of 2004 Chlorination
2 Project in Docket UW-041830 (1 p.) DPK-5
3 25 Letter dated 6/6/2006 from Iliad to Staff re:
4 Response to Data Request 3 (2 pp.) DPK-6
5 26 Letter dated 5/3/05 from Iliad to Staff re:
6 Response to Data Request 2 (2 pp.) DPK-7
7 27 DWSRF Financing Including Estimated Additional
8 Project Costs (1 p.) DPK-8
9 28 Amortization Schedule with Present Value for
10 Private Lender Loan (1 p.) DPK-9
11 29 Amortization Schedule with Present Value for
12 DWSRF Loan (1 p.) DPK-10
13 30 Schedule to Compute DWSRF Loan - Monthly
14 Surcharge (1 p.) DPK-11
15 31 Staff Recommended Project Costs (1 p.)
16 DPK-12

17 CROSS-EXAMINATION EXHIBITS

18 74 Agenda Date: August 16, 2006, Item Number: A1,
19 Docket: UW-060343, Company Name: Iliad Water
20 Service, Inc., Staff: Danny Kermode,
21 Regulatory Analyst (7 pp.)
22 75 Class C - Water Companies Annual Report, Derek
23 Dorland, President, Iliad Water Service, Inc.,
24 2005 (8 pp.)

25

0018

1 DEREK M. PELL

2 32 Prefiled Direct Testimony of Derek M. Pell
3 (24 pp. including cover) DMP-1T

4 33 Education and Employment History DMP-2

5 34 Letter dated 1/19/01 from David Dorland,
6 attached Invoice No. 18308 and Survey Notes
7 (5 pp.) DMP-3

8 35 Letter dated 12/19/00 from DOH to David
9 Dorland (2 pp.) DMP-4

10 36 Letter dated 1/12/01 from David Dorland to DOH
11 (14 pp.) DMP-5

12 37 Letter dated 3/12/01 from David Dorland to DOH
13 (1 p.) DMP-6

14 38 Letter dated 1/18/01 from DOH to David Dorland
15 (2 pp.) DMP-7

16 39 Letter dated 7/9/01 from DOH to David Dorland
17 (1 p.) DMP-8

18 40 Letter dated 11.5.01 from DOH to David Dorland
19 (2 pp.) DMP-9

20 41 Letter dated 5/23/01 from Western Engineer,
21 Inc. to Pell, DOH (1 p.) DMP-10

22 42 Letter dated 6/27/01 from DOH to Derek Dorland
23 (1p.) DMP-11

24 43 Letter dated 12/14/01 from Western Engineers,
25 Inc. to Pell, DOH (1 p.) DMP-12

0019

1 44 Letter dated 1/31/02 from DOH to Derek Dorland
2 (1 p.) DMP-13
3 45 DOH Strategic Directions, Compliance Matrix,
4 GWI Program Compliance Strategy dated 7/6/06
5 (12 pp.) DMP-14
6 46 Letter dated 12/12/01 from David Dorland to
7 DOH (1 p.) DMP-15
8 47 Letter dated 5/5/03 from DOH to David Dorland
9 w/ attached Bilateral Compliance Agreement
10 (2 pp.) DMP-16
11 48 Letter dated 5/5/03 from DOH to David Dorland
12 w/attached Bilateral Compliance Agreement
13 (2 pp.) DMP-17
14 49 Letter dated 9/11/033 from David Dorland to
15 DOH (1 p.) DMP-18
16 50 DOH Memorandum of Conversation dated 9/29/03
17 re: Telephone Call from David Dorland (1 p.)
18 DMP-19
19 51 DOH Memorandum of Conversation dated 10/20/03
20 re: Telephone Call to David Dorland (1 p.)
21 DMP-20
22 52 Letter dated 3/19/04 from DMP to David Dorland
23 (1 p.) DMP-21
24
25

0020

1 53 DOH Memorandum of Conversation dated 4/29/04
2 re: Telephone Call to David Dorland (1 p.)
3 DMP-22
4 54 Letter dated 5/14/04 from David Dorland to DOH
5 (1 p.) DMP-23
6 55 Letter dated 5/21/04 from DOH to David Dorland
7 (1 p.) DMP-24
8 56 Letter dated 7/9/04 from David Dorland to DOH
9 (1 p.) DMP-25
10 57 Letter dated 9/27/04 from David Dorland to DOH
11 (1 p.) DMP-26
12 58 Letter dated 1/19/05 from DOH to David Dorland
13 (1 p.) DMP-27
14 59 Letter dated 5/19/05 from David Dorland to DOH
15 (1 p.) DMP-28
16 60 Letter dated 4/3/06 from DOH to David Dorland
17 (1 p.) DMP-29
18 61 Letter dated 9/22/06 to Iliad from DOH and
19 State Department Order (10 pp.) DMP-30
20 62 DOH Coliform Summary dated 10/2/06 (5 pp.)
21 DMP-31
22 63 Letter dated 1/22/05 (2006) from Tacoma/Pierce
23 County Health Department to David Dorland
24 (1 p.) DMP-32
25

0021

1 RICHARD SARVER

2 64 Prefiled Responsive Testimony of Richard
3 Sarver (21 pp.) RS-1T

4 65 DOH CWater Tap0 Newsletter, February 2006
5 (6 pp.) RS-2

6 66 DOH CWater Tap0 Newsletter, February 2001
7 (12 pp.) RS-3

8 67 DOH CWater Tap0 Newsletter, January 2002
9 (4 pp.) RS-4

10 68 DOH "Water Tap" Newsletter, January 2003
11 (4 pp.) RS-5

12 69 DOH "Water Tap" Newsletter, February 2004
13 (4 pp.) RS-6

14 70 DOH "Water Tap" Newsletter, February 2005
15 (6 pp.) RS-7

16 71 DOH Drinking Water State Revolving Fund 2006
17 Funding Cycle Application Guidelines (46 pp.)
18 RS-8

19 72 DOH Small Water System Management Program
20 Guide, January 2000 (revised) (74 pp.
21 including cover) RS-9

22 73 Washington State Drinking Water State
23 Revolving Fund Loan Pre-Application Form
24 submitted for Y Bar S Water System,
25 Application Number 1997-014 (7 pp.) RS-10

0022

1 P R O C E E D I N G S

2 JUDGE CLARK: Good morning, it's
3 approximately 9:30 a.m., November 8th, 2006, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for hearing in the matter
6 of Washington Utilities and Transportation Commission,
7 Complainant, versus Iliad Water Service, Incorporated,
8 Respondent, given Docket Number UW-060343, Patricia
9 Clark, Administrative Law Judge for the Commission
10 presiding.

11 This matter was scheduled for hearing by
12 Order Number 2 issued in these proceedings on August
13 23rd, 2006. The purpose of today's hearing is to
14 determine whether or not Iliad Water Service,
15 Incorporated should be permitted to fund an assessment
16 for the chlorination system required by the Department
17 of Health.

18 At this time I will take appearances on
19 behalf of the parties. Appearing on behalf of the
20 Commission.

21 MR. FASSIO: Michael Fassio, Assistant
22 Attorney General, appearing on behalf of Commission
23 Staff.

24 JUDGE CLARK: Thank you, Mr. Fassio.

25 And appearing on behalf of Iliad Water

0023

1 Service, Incorporated?

2 MR. FINNIGAN: Richard Finnigan.

3 JUDGE CLARK: Thank you, Mr. Finnigan.

4 Are there any preliminary matters that we
5 need to address before we commence taking testimony from
6 the parties?

7 Mr. Fassio.

8 MR. FASSIO: There is one preliminary matter
9 that I addressed to Your Honor as well as Mr. Finnigan a
10 couple of days ago regarding Mr. Sarver's appearance
11 here, he has told me that he will be unable to appear
12 today because of a family medical situation. His young
13 daughter has an appointment with a doctor in Bellevue,
14 and Mr. Sarver said it would be unlikely that he could
15 return today in time to appear, so he asked that he be
16 allowed to appear tomorrow, November 9th, and he has
17 told me that he is available at any time after 9:30 in
18 the morning when it is convenient for the parties and
19 the Commission, and he has cleared that on his calendar.

20 JUDGE CLARK: All right, thank you,
21 Mr. Fassio.

22 Mr. Finnigan?

23 MR. FINNIGAN: I have no objection, I would
24 request that the hearing start at 10:00, however,
25 instead of 9:30.

0024

1 JUDGE CLARK: That request is granted, and
2 the hearing will reconvene tomorrow at 10:00 a.m.

3 Any other preliminary matters we need to
4 address?

5 All right, Mr. Finnigan, would you call your
6 first witness, please.

7 MR. FINNIGAN: Yes, we call Mr. Dorland.

8 (Witness Derek Dorland was sworn.)

9 JUDGE CLARK: Mr. Finnigan.

10 MR. FINNIGAN: Thank you.

11

12 Whereupon,

13 DEREK DORLAND,

14 having been first duly sworn, was called as a witness

15 herein and was examined and testified as follows:

16

17 D I R E C T E X A M I N A T I O N

18 BY MR. FINNIGAN:

19 Q. Mr. Dorland, please state your business
20 address for the record and give us your full name,
21 please.

22 A. Business address is P.O. Box 20429, Seattle,
23 Washington 98102, and Derek Dorland.

24 Q. Mr. Dorland, do you have before you your
25 exhibits in this proceeding, which for the record were

0025

1 marked as Exhibit 1 through 19?

2 A. Yes.

3 Q. And were those exhibits prepared by you or at
4 your direction?

5 A. Yes.

6 Q. And if you were asked the questions that
7 appear in your testimony and rebuttal testimony today,
8 would you your responses be the same?

9 A. Yes, they would.

10 MR. FINNIGAN: Since everything has been
11 admitted, Mr. Dorland is available for
12 cross-examination.

13 JUDGE CLARK: Thank you.

14 Mr. Fassio.

15 MR. FASSIO: Thank you.

16

17 C R O S S - E X A M I N A T I O N

18 BY MR. FASSIO:

19 Q. Good morning, Mr. Dorland. I would like to
20 begin with just a few questions about yourself. In your
21 direct testimony you state that you are the principal
22 owner of Iliad Water Services, and the direct testimony
23 is Exhibit 1 here, are there other owners of Iliad Water
24 Services?

25 A. No.

0026

1 Q. And how long have you owned Iliad Water?

2 A. It was incorporated I believe in 1992.

3 Q. So you have owned it as long as it's been
4 incorporated?

5 A. Yes.

6 Q. And I just want to clarify something for the
7 record going forward, the correct legal company name is
8 Iliad Water Services, Inc. plural, not Iliad Water
9 Service?

10 A. Correct.

11 Q. Thank you.

12 And in your direct testimony, you stated that
13 you are the President of Iliad Water, what are your
14 duties as President?

15 A. I actually for Iliad Water Services I
16 oversee, I mean I rely on my, you know, engineers,
17 Iliad, Inc., to do the maintenance and everything, but,
18 you know, I oversee what is done.

19 Q. By what is done, can you explain?

20 A. As in maintenance. I used to do all the
21 sampling, all the testing and actual day-to-day
22 maintenance on the system, so I don't do that any more,
23 we hired -- I have two people that do that now.

24 Q. Thank you. And how long have you held the
25 position of President?

0027

1 A. Since it was incorporated.

2 Q. Are there any other employees of Iliad Water
3 Services?

4 A. No.

5 Q. I would like to turn to Exhibit Number 14 at
6 this time, specifically page 7, I would like to ask you
7 a couple of questions about the bid.

8 JUDGE CLARK: If I may interrupt, Mr. Fassio.

9 Mr. Finnigan, is Mr. Dorland's copy of the
10 exhibits marked in accordance with the exhibit list, and
11 if not, if you could aid him in finding that.

12 MR. FINNIGAN: Okay, it doesn't appear that
13 they bear the markings.

14 JUDGE CLARK: Because Mr. Dorland is the
15 first witness, it should track the markings.

16 MR. FINNIGAN: Right. For some reason we've
17 got different stuff interspersed in there.

18 Okay, we'll work on the same copy.

19 JUDGE CLARK: Thank you.

20 BY MR. FASSIO:

21 Q. Do you have exhibit page 7 in front of you?

22 A. Yes.

23 Q. And this is the bid from Iliad, Inc. to build
24 the chlorination system in this docket; is that correct?

25 A. Yes.

0028

1 Q. And it was the lowest of the bids that was
2 submitted with the invitation to bid; is that correct?

3 A. Correct.

4 Q. And this invitation to bid precedes it on
5 page 3 if I could refer to that, and this -- it's your
6 testimony that it's Iliad Water Services that issued
7 this invitation to bid?

8 A. That's correct.

9 Q. Was Iliad, Inc. also involved in the issuance
10 or sending out of the invitation to bid?

11 A. Yes, they were.

12 Q. Can you explain how they were involved?

13 A. Again, Iliad, Inc. has a maintenance contract
14 to maintain it, they -- so they, you know, any time
15 there's -- if we shut down the system for maintenance,
16 whatever, they send out the -- I have them do all the
17 actual paperwork for sending anything out for
18 correspondence to the customers or whoever. So being
19 that they're more of a contracting company that they're
20 familiar with the ins and outs of construction.

21 Q. Okay, so they were also responsible for the
22 receiving of the bids?

23 A. That's correct.

24 Q. And this Sondra LeBaron, she is an employee
25 of Iliad, Inc.?

0029

1 A. That's correct.

2 Q. Thank you.

3 MR. FINNIGAN: Excuse me just for -- I want
4 to interject something.

5 I will take care of it on redirect.

6 MR. FASSIO: Thank you.

7 BY MR. FASSIO:

8 Q. I would like to turn now to your testimony,
9 page 4, I would like to ask you some questions
10 concerning the financing that the company has sought.

11 MR. FINNIGAN: You're in his direct
12 testimony?

13 MR. FASSIO: In his direct testimony, Exhibit
14 1, page 4.

15 BY MR. FASSIO:

16 Q. And beginning on line 7, you indicate in your
17 testimony that the company sought financing to complete
18 the improvements beginning in February of 2002. Did you
19 personally seek those commitments for financing on
20 behalf of the company?

21 A. No. Well, how should I say it. Again, it's
22 a small company, and, you know, at that time I was -- I
23 actually work for Iliad, Inc. as a superintendent on one
24 of the projects, so I rely on -- I have relied heavily
25 on Iliad, Inc. to, you know, which they maintain, you

0030

1 know, several other systems to do that, so I personally
2 as in myself, no.

3 Q. Who on behalf of -- who with Iliad --

4 A. Dave Dorland.

5 Q. Who on behalf of Iliad, Incorporated was
6 involved in seeking the financing for this project --

7 A. It was --

8 Q. -- beginning in February of 2002?

9 MR. FINNIGAN: Just for the record, the
10 correct legal name is Iliad, Inc.

11 Q. Iliad, Inc.

12 A. Dave Dorland would be the answer to that.

13 Q. And the company did not file any testimony by
14 Dave Dorland in this docket, correct?

15 A. I'm sorry, I didn't hear that.

16 Q. There was no testimony in this docket filed
17 by Mr. Dave Dorland in this docket; is that correct to
18 your knowledge?

19 A. To my knowledge, no, there's not.

20 Q. On page 4 of your direct testimony, line 12,
21 you testified that the company had commitments for
22 financing in January of 2003; did the company get
23 commitments from more than one source?

24 A. That I'm not sure of. I believe -- I believe
25 there's just one, one company that --

0031

1 Q. Was BHL Investment --

2 A. Yes.

3 Q. -- the source that it would have been?

4 A. Yes.

5 Q. To your knowledge, were other private lenders
6 approached to seek funding?

7 A. I believe they were approached, but because
8 it's a small company with, you know, very little assets,
9 that the others actually -- it was turned down.

10 Q. To your knowledge, are you aware of the names
11 of the private lenders --

12 A. No, I'm not.

13 Q. -- that would have been approached?

14 A. No.

15 JUDGE CLARK: Okay, you need to make sure you
16 let Mr. Fassio finish the question before you answer so
17 that --

18 THE WITNESS: Sorry.

19 JUDGE CLARK: -- the court reporter can get
20 an accurate transcript.

21 THE WITNESS: I'm sorry.

22 BY MR. FASSIO:

23 Q. In addition to a loan for the purchase of
24 Alder Lake Water System, has BHL Investment provided the
25 source of financing for other projects of Iliad Water

0032

1 Services?

2 A. Not of Iliad Water Services, no.

3 Q. Have they --

4 A. That I'm aware of. I can not remember at all
5 any of -- anything from Iliad Water Services.

6 Q. As a former superintendent for Iliad, Inc.,
7 and please clarify if you were not superintendent, I
8 think I understood your testimony earlier that you were.

9 A. Mm-hm.

10 Q. To your knowledge, did BHL Investment provide
11 any loans for Iliad, Inc. in the past?

12 A. Yes.

13 Q. If we could turn now to the cross-exhibit
14 labeled Number 76 for a moment.

15 MR. FINNIGAN: Can you provide a copy,
16 please.

17 JUDGE CLARK: I have an additional copy of
18 that.

19 BY MR. FASSIO:

20 Q. This is a response to formal Staff Data
21 Request Number 1 of Iliad Water Service, Inc. On the
22 second page this includes a letter from BHL dated August
23 3rd, 2004. You stated in your response that this is a
24 -- this is the commitment letter from the financing bid
25 for this project; is that correct?

0033

1 A. Yes.

2 JUDGE CLARK: Mr. Fassio, this is the sole
3 exhibit for which the parties have not reached a
4 stipulation regarding the admission, so it's necessary
5 for either the parties to agree to its admission or to
6 have you lay an appropriate foundation before you elicit
7 testimony.

8 MR. FASSIO: Staff wishes to submit Exhibit
9 Number 76, which is the WUTC Staff Data Request Number 1
10 response of Iliad Water Service. This was received on
11 November 6th from Mr. Dorland, and it came into the
12 record after previous exhibits, cross-exhibits, at the
13 prehearing conference came in, and Staff wishes to
14 submit this as a cross-exhibit.

15 JUDGE CLARK: Do you have objection,
16 Mr. Finnigan?

17 MR. FINNIGAN: Well, other than that was not
18 a foundation.

19 JUDGE CLARK: I understand that, we're not
20 there yet.

21 MR. FINNIGAN: We won't have an objection.

22 JUDGE CLARK: Okay, you're willing to
23 stipulate to its admission?

24 MR. FINNIGAN: Yes.

25 JUDGE CLARK: Then we won't get to the

0034

1 foundation.

2 All right, you may proceed, Mr. Fassio.

3 MR. FASSIO: Thank you.

4 BY MR. FASSIO:

5 Q. I believe you have already stated that this
6 is the commitment letter from the financing company for
7 this project?

8 A. Yes.

9 Q. Now this letter does not contain any
10 expiration date or time frame for BHL's offer of
11 financing; is that your understanding?

12 A. I would have to check on it; I mean it's
13 three years old.

14 Q. The letter itself does not --

15 A. Correct.

16 Q. -- contain one?

17 A. No.

18 Q. There were follow-up letters from BHL further
19 describing the terms of financing based on the estimated
20 costs of capital improvements and the number of
21 customers; to your understanding, is that right?

22 A. Mm-hm.

23 MR. FINNIGAN: You need to say yes or no.

24 A. Sorry, yes.

25 Q. So although your testimony is that the

0035

1 company got a commitment for financing from BHL
2 Investment in January of 2003, the earliest commitment
3 letter that is in the record dates from this August 3rd,
4 2004; am I right?

5 A. I believe so, yes.

6 Q. Now the revised tariff by this company in
7 this docket would have the company incur the debt
8 itself, not the customers; is that your understanding?

9 A. That's correct.

10 Q. So in reading your response to the data
11 request, would it be correct to say that the loan
12 proposed here would not fund until the company approves
13 a surcharge or assessment the Commission has requested?

14 MR. FINNIGAN: Excuse me, I think you
15 reversed Commission and company in that sentence in both
16 locations, so I will object to the form of that
17 question.

18 JUDGE CLARK: Mr. Fassio, could you restate
19 the question, please.

20 MR. FASSIO: Certainly.

21 BY MR. FASSIO:

22 Q. As I read your response to the Staff Data
23 Request, would it be correct to say that the loan from
24 BHL Investment with the company would not fund until the
25 Commission approves the surcharge or assessment that the

0036

1 company has requested?

2 A. Correct.

3 Q. And this financing instrument will not be
4 completed or signed until that occurs?

5 A. Correct.

6 Q. So there is no binding financial instrument
7 in place unless the surcharge is approved?

8 A. Yes.

9 MR. FINNIGAN: I would ask just for the
10 record, I would ask Mr. Fassio to not indicate which
11 form of answer he would like by his shaking of his head.

12 MR. FASSIO: Do I need to rephrase the
13 question?

14 THE WITNESS: No.

15 JUDGE CLARK: No.

16 MR. FINNIGAN: No, you don't need the
17 question rephrased, or the answer yes or no to the
18 question, just so the record is clear?

19 THE WITNESS: No to the rephrasing.

20 MR. FASSIO: Okay, thank you, Mr. Dorland, I
21 have no further questions.

22

23 E X A M I N A T I O N

24 BY JUDGE CLARK:

25 Q. I have a few questions for you, Mr. Dorland.

0037

1 And just so you understand, the purpose of my questions
2 is just to make sure that I understand what the
3 testimony is of the company.

4 Taking a look -- have you had an opportunity
5 I assume from your reply testimony to review the
6 testimony that was submitted by Mr. Kermode, Mr. Pell,
7 and Mr. Sarver?

8 A. Yes.

9 Q. All right. My understanding is that the
10 Alder Lake Water Company is part of the Iliad Water
11 Services, Incorporated system; is that correct?

12 A. Yes.

13 Q. So it's one of three companies?

14 A. Correct.

15 Q. All right. And I understand that you are
16 both the President and the owner of this particular
17 water system; is that correct?

18 A. Yes.

19 Q. All right. There is a Mr. Dave Dorland that
20 is mentioned in a number of these documents; could you
21 explain to me who that gentleman is?

22 A. That is my father.

23 Q. All right. And in some of the testimony of
24 Mr. Pell, there was an indication that there may be
25 other water companies that are also owned in the state

0038

1 of Washington; is that correct?

2 A. By Iliad, Inc. or Water Services?

3 Q. That's my question, I do not understand. I
4 understand there are approximately, according to
5 Mr. Pell's testimony, there are approximately 12 other
6 companies, but I do not understand --

7 A. From what I -- Water Services, Iliad Water
8 Services, Inc., my company, is Alder Lake, Cascade
9 Crest, and Western Stavis. Iliad, Inc. does own I
10 believe Kayak Water System and I believe the Sunwood
11 Water System. Other than that, they maintain for other
12 owners. So I believe Iliad only owns -- Iliad, Inc.
13 only owns two systems, one is the Kayak Water System and
14 the Sunwood Water System.

15 Q. All right, and Iliad --

16 A. The rest of those other 12 I believe are
17 they're maintenance, they have maintenance contracts
18 with -- for other owners.

19 Q. I understand, okay.

20 And Iliad, Inc. is the company that you
21 formerly worked as the superintendent of?

22 A. I still do actually, I still work for Iliad,
23 Inc.

24 Q. Okay, so you still hold the title of
25 superintendent; is that correct?

0039

1 A. Correct.

2 Q. Of Iliad, Inc.?

3 A. Correct.

4 Q. And could you explain to me the corporate
5 structure of Iliad, Inc. in conjunction with Iliad Water
6 Services, Inc.?

7 A. Dave Dorland Senior is President of Iliad
8 Incorporated, the construction side, the construction
9 company, with Dave Dorland Junior. And as in the
10 finances or -- I mean that I don't -- I'm basically as
11 -- I'm no different than what a laborer would be for
12 Iliad, Inc.

13 Q. All right. And does Iliad, Inc. have a
14 business relationship with Iliad Water Services, Inc.?

15 A. We have a contract where they do all our
16 maintenance, they do the maintenance for my systems.

17 Q. But Iliad, Inc. is not a holding company --

18 A. No.

19 Q. -- for Iliad Water Services?

20 A. No.

21 Q. All right. And do you communicate with Dave
22 Dorland Senior regarding the operation of the water
23 system?

24 A. Daily.

25 Q. Daily, that was the next question.

0040

1 A. Yes.

2 JUDGE CLARK: All right, could Mr. Dorland be
3 provided with a copy of Exhibit 61, please.

4 MR. FINNIGAN: The letter of September 22nd,
5 2006?

6 JUDGE CLARK: That is the first page, yes, of
7 a multipage exhibit.

8 BY JUDGE CLARK:

9 Q. And what I'm interested in, Mr. Dorland, is
10 page 5 of that exhibit. There aren't any line numbers
11 on this, but this is a copy of the Department of Health
12 order, and if you look under Section 1.4, which is
13 entitled violation of duty to have a certified water
14 works operator, the last line of that paragraph
15 indicates that as of the date of the order, there was no
16 operator designated for this system. Who is conducting
17 the operations of this system today?

18 A. Jarod, I can not think of his last name, I
19 can not think of his last name, he works for Iliad, Inc.

20 Q. All right, it's an employee of Iliad, Inc.?

21 A. Correct.

22 Q. All right.

23 I would like you to refer, if you could,
24 please, to Exhibit Number 3. That exhibit is a letter
25 from the State of Washington Department of Health dated

0041

1 January 31st, 2002, and according to this letter the
2 project report and revised construction for this
3 particular project was approved as of January 31, 2002;
4 is that correct?

5 A. Yes.

6 Q. And it does not appear that any action was
7 taken to obtain financing or other steps to proceed
8 toward completion of the project until 2004; is that
9 correct?

10 A. I would have to say no in the sense -- no,
11 that we actually did take steps to try to find
12 financing. I mean there was --

13 Q. So the company, in between when you obtained
14 approval of this system as designed and 2004, the
15 company was engaged --

16 A. Yes.

17 Q. -- in trying to find financing for the
18 project; is that correct?

19 A. That is correct, yes.

20 Q. All right. And it took approximately two
21 years for you to obtain that financing?

22 A. Yes, in short.

23 Q. All right. Now I'm looking at Exhibit 5, and
24 it's the front page of that exhibit. That is a letter
25 from Alder Lake Water Company dated August 18th, 2004,

0042

1 and was sent to the Alder Lake Water System customers.
2 I'm interested in knowing where the estimated cost came
3 from of the \$116,770.

4 A. From our engineer, John McDonald.

5 Q. All right, there's an estimate in here also,
6 and I don't have the exhibit number noted, and it
7 appears that the low bid the first time this was bid was
8 for \$68,020.

9 A. If you actually go into the bids, there was
10 -- there are two completely different bids. One, the
11 first one left out all of the clearing, grubbing, there
12 was a big difference in what the bids were on. And
13 we're actually glad that we were able to -- we went back
14 and rebid it, because out of the -- I'm not -- I don't
15 know if you're familiar with the area, but there's quite
16 extensive trees and clearing all the right-of-way that
17 has to be done before any of this work can be done
18 present as of today. So the first bid did not include
19 any of the -- any of that or rock contingencies or --
20 and I believe some of the pump house as well.

21 Q. My recollection of the first bid was it also
22 included connections, water connections to 35 customers;
23 is that approximately --

24 A. (Nodding head.)

25 Q. And the answer is yes?

0043

1 A. There's actually 30, there's -- I believe
2 there's 5 non-users, so I believe they provide for the
3 connections but not connect, for future.

4 Q. Okay. And was the 35 connection part of the
5 chlorination project?

6 A. It was all under, yes, under one bid.

7 Q. Okay, I understand it's under one bid, but is
8 that a requirement from the Department of Health in
9 order to install the chlorination system?

10 A. I believe there's, yes, I believe there's the
11 Department of Health required for everything to be
12 metered and, you know, we're running all new lines, so
13 they have to be new connections. I believe yes would be
14 the answer to that.

15 Q. All right. Could you explain to me why
16 you're running all new lines?

17 A. Size for the capacity for the size of the
18 lines. There has to be -- it's a different -- between
19 the flow of the hydraulics, the flow of the water
20 between the wells to the storage tank for contact time
21 for the chlorine, and that's the way it was engineered,
22 it would have to have new lines, different size, larger
23 line, and also for I believe Department of Health wanted
24 fire flow in part of that.

25 Q. Okay, so it would increase the capacity of

0044

1 the lines from what to what?

2 A. From the well to the storage tank.

3 Q. No, not the location, the size, from what
4 diameter?

5 A. Oh, right now there's 2 inch and 2 1/2 inch,
6 and it would go up to a 3 inch main line.

7 Q. All right. If you could turn now to Exhibit
8 9, and the top of the page I'm looking at is page 44 of
9 51. It appears that there is a customer count here for
10 the 2 other water systems that are part of Iliad Water
11 Services Incorporated, and that is a total of 41
12 customers; is that correct?

13 A. Yes.

14 Q. What I'm trying to understand is the total
15 number of customers in the 3 water systems operated by
16 Iliad Water Services, there appear to be several
17 different numbers in the testimony.

18 A. What I -- from what my understanding is that
19 Alder Lake is approved for 35, there's 30 users, 5
20 non-users. Cascade Crest there's 22 users, that it's
21 approved for 23. And, I'm sorry, and then Western
22 Stavis is approved for 33 and 19 users. That's what I
23 have.

24 Q. And that's what I'm interested in.

25 A. Okay.

0045

1 Q. So if the Commission approves the assessment
2 for the chlorination system, would the cost of that be
3 distributed among 30 users or 35 users?

4 A. I believe it would be above the 35 users, no,
5 30 users and then 5 would be -- I'm sorry, say it one
6 more time.

7 Q. I'm just trying to understand if the
8 Commission approves the assessment that Iliad Water
9 Services would like to fund this chlorination system,
10 how many customers would the cost of that assessment be
11 distributed among?

12 A. I believe 30.

13 Q. Thank you.

14 MR. FINNIGAN: Could I confer with my witness
15 for just a second?

16 JUDGE CLARK: You may.

17 MR. FINNIGAN: Thank you.

18 JUDGE CLARK: Why don't we take a moment off
19 record.

20 (Recess taken.)

21 JUDGE CLARK: Mr. Finnigan, have you had an
22 adequate opportunity to confer with your client?

23 MR. FINNIGAN: Yes, we have, and I think
24 Mr. Dorland is ready to proceed.

25 JUDGE CLARK: All right, thank you.

0046

1 BY JUDGE CLARK:

2 Q. Are Iliad, Inc. and Iliad Water Services,
3 Inc. affiliated companies?

4 MR. FINNIGAN: As a matter of clarification,
5 Your Honor, could you let this witness know what you
6 mean by affiliated, because there's a number of
7 different definitions of what that means.

8 Q. Do Iliad Water Services, Inc. and Iliad, Inc.
9 share any form of corporate structure?

10 A. No.

11 Q. So individuals who are employed by Iliad,
12 Inc. are employed by a company that is totally separate
13 and distinct from the individuals who are employed by
14 Iliad Water Services, Inc.?

15 A. That's true, that is correct.

16 Q. And am I correct in assuming that some of the
17 employees, some individuals are employees of both
18 corporations?

19 A. Correct.

20 Q. Okay, I guess my last question is related to
21 some documents that were attached to Mr. Sarver's
22 testimony, and these are pamphlets or booklets that are
23 distributed by the State of Washington, and they're
24 called Water Tap; are you familiar with those
25 publications?

0047

1 A. Yes, I am.

2 Q. And in your capacity as President of Iliad
3 Water Services, have you received copies of these
4 documents?

5 A. Yes.

6 Q. And do you know how long you have received
7 copies of these documents?

8 A. The Water Tap magazine or --

9 Q. Yes.

10 A. Periodically, not regularly.

11 Q. Okay, since?

12 A. Oh, since.

13 Q. Since Iliad Water Services was formed --

14 A. I'm sorry, yes.

15 Q. -- and you became the President?

16 A. Correct.

17 Q. Since 1992?

18 A. Yes.

19 JUDGE CLARK: All right, thank you, I don't
20 think I have any further questions, thank you,
21 Mr. Dorland, you did help clarify some of the testimony
22 for me, and I appreciate that.

23 THE WITNESS: Thank you.

24 JUDGE CLARK: Mr. Finnigan, do you have
25 redirect?

0048

1 MR. FINNIGAN: Yes, I do, thank you.

2

3 R E D I R E C T E X A M I N A T I O N

4 BY MR. FINNIGAN:

5 Q. Mr. Dorland, I want to start with some of
6 Judge Clark's questions. You were asked about what
7 systems Iliad, Inc. might own, and you identified Kayak
8 Water System as one of those, isn't it correct that
9 Kayak Water System is actually owned by Snohomish County
10 PUD as of today?

11 A. That's correct, yes.

12 Q. And isn't it correct that prior to that time
13 it was owned by Kayak Estates LLC as opposed to -- other
14 than -- rather than Iliad, Inc.?

15 A. Actually you're correct on that, yes.

16 Q. Isn't it also correct that the Sunwood Water
17 System of Pierce County is owned by an investor separate
18 and apart from Iliad, Inc.?

19 A. Actually you're correct, yes.

20 Q. When you were asked a question about the
21 Alder Lake, excuse me, about Iliad Water Systems, you
22 identified three systems that are owned by Iliad Water
23 Systems; is that correct?

24 A. Yes.

25 Q. Are those three separate companies, or are

0049

1 they three separate systems?

2 A. They're three separate systems.

3 MR. FASSIO: If I could clarify your
4 question, you said Iliad Water Systems, did you mean
5 Iliad Water Services?

6 MR. FINNIGAN: I'm sorry, thank you, Iliad
7 Water Services, thank you.

8 BY MR. FINNIGAN:

9 Q. Judge Clark asked you about the time period
10 from 2002 when the design for the project was approved
11 by the Department of Health to 2004, and you responded
12 that the company had been looking for financing; do you
13 remember that line of questioning?

14 A. Yes, I do.

15 Q. During that period of time, was the company
16 also working with its engineer to develop cost estimates
17 for the project?

18 A. Yes.

19 Q. Then now turning to some questions that you
20 were asked earlier by Mr. Fassio, in part you were asked
21 at the beginning of his line of questions about your
22 duties as President; do you remember those --

23 A. Yes, I do.

24 Q. -- questions?

25 Who has the final decisionmaking authority

0050

1 for Iliad Water Services?

2 A. I do.

3 Q. You were also asked a series of questions
4 concerning the commitment letter from BHL; do you
5 remember those questions?

6 A. Yes.

7 Q. And you were asked to identify that the date
8 of the commitment letter was August of 2004. Since that
9 time, have you received verbal assurance that the
10 commitment is still in place?

11 A. You know, I don't know, I don't know, I'm not
12 sure.

13 MR. FINNIGAN: Thank you, that completes my
14 redirect.

15 JUDGE CLARK: Well, Mr. Finnigan, one of your
16 questions prompted yet another one from me.

17

18 E X A M I N A T I O N

19 BY JUDGE CLARK:

20 Q. So I just need a little more clarification
21 from you about -- I understand that final decisionmaking
22 authority for Iliad Water Services, Inc. is held by you
23 as President, correct?

24 A. Correct.

25 Q. And you hold the title of superintendent for

0051

1 Iliad, Inc.?

2 A. Iliad, Inc. has many superintendents, but,
3 you know, there are several.

4 Q. Who holds final decisionmaking authority for
5 Iliad, Inc.?

6 A. Dave Dorland Senior.

7 JUDGE CLARK: Thank you.

8 Does that prompt any additional inquiry,
9 Mr. Finnigan?

10 MR. FINNIGAN: No, it does not.

11 JUDGE CLARK: Okay, thank you for your
12 testimony, Mr. Dorland.

13 THE WITNESS: Thank you.

14 JUDGE CLARK: I think this would be an
15 appropriate time to take a short recess, and then we
16 will resume with the presentation of the Commission
17 Staff's case.

18 We're at recess for approximately 15 minutes.

19 (Recess taken.)

20 JUDGE CLARK: Mr. Finnigan, does that
21 conclude the presentation of Iliad Water Services,
22 Incorporated's direct case?

23 MR. FINNIGAN: It does.

24 JUDGE CLARK: Thank you.

25 Mr. Fassio, would you call your first

0052

1 witness, please.

2 MR. FASSIO: Thank you, Your Honor.

3 Staff calls Mr. Danny Kermode.

4 (Witness Danny P. Kermode was sworn.)

5 JUDGE CLARK: Mr. Fassio.

6

7 Whereupon,

8 DANNY P. KERMODE,

9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. FASSIO:

14 Q. Good morning, Mr. Kermode. Would you please
15 state your full name for the record and spell your last
16 name for the record.

17 A. My name is Danny Kermode, K-E-R-M-O-D-E.

18 Q. Are you testifying on behalf of Commission
19 Staff?

20 A. Yes, I am.

21 Q. And is Commission Staff your employer?

22 A. Yes.

23 Q. What is your position with the Commission?

24 A. I'm a regulatory analyst.

25 Q. In your duties as a regulatory analyst, did

0053

1 you prepare the responsive testimony numbered as Exhibit
2 20 in this docket?

3 A. Yes, I did.

4 Q. Did you prepare the Exhibits numbered 21
5 through 31?

6 A. I prepared most of them. Some of them are
7 information from my files.

8 Q. But these exhibits make up your responsive
9 testimony in this case?

10 A. Yes.

11 Q. If I asked you the questions that appear in
12 your responsive testimony, would you give the answers
13 that appear there?

14 A. Yes.

15 Q. Is the testimony true and accurate to the
16 best of your knowledge and belief?

17 A. Yes, it is.

18 MR. FASSIO: Since we have already stipulated
19 to the admittance of the testimony and the exhibits, the
20 witness is available for cross-examination.

21 JUDGE CLARK: Thank you, Mr. Fassio.

22 Mr. Finnigan.

23 MR. FINNIGAN: Thank you.

24

25

0054

1 C R O S S - E X A M I N A T I O N

2 BY MR. FINNIGAN:

3 Q. Good morning, Mr. Kermode.

4 A. Good morning.

5 Q. You were here in the hearing room while
6 Mr. Dorland testified?

7 A. Yes, I was.

8 Q. Would you turn to page 3 of your testimony,
9 please.

10 A. I'm there.

11 Q. And would you go to line 17.

12 A. Yes.

13 Q. Your statement there is that the company,
14 referring to Iliad Water Services, is operated by a
15 separate corporation, Iliad, Inc.; do you see that?

16 A. Yes, I do.

17 Q. Would you agree that that statement is not
18 technically 100% accurate?

19 A. I would agree that it's not 100% accurate,
20 mostly.

21 Q. Okay. You heard Mr. Dorland testify that
22 there is an operation agreement between Iliad Water
23 Services and Iliad, Inc.; is that correct?

24 A. That's correct.

25 Q. And is that what you meant to refer to by

0055

1 that statement?

2 A. Yes, I think that's what that statement
3 reflects, correct, yes.

4 Q. Thank you.

5 Going to page 4 of your testimony and
6 continuing over for a period of time, you talk about
7 what constitutes a notice; is that correct?

8 A. That's correct.

9 Q. Okay. Would you agree that the term notice
10 can have more than one definition?

11 A. Yes.

12 Q. And that as a technical definition there is a
13 Commission notice that's spelled out in the Commission
14 rules; is that correct?

15 A. That's correct.

16 Q. And that in a more general sense, a notice is
17 a way of providing information can also be something
18 that is -- I will start that question all over again.

19 Would you also agree that a document that
20 provides information in a general sense can also be a
21 notice as that term is used in common definitions?

22 A. Yes.

23 Q. And would you understand that when
24 Mr. Dorland is talking about the information that was
25 provided to customers that he's referring to providing

0056

1 the customers a notice in the more common definition of
2 that term?

3 A. And that was one of my concerns when I wrote
4 this part of the testimony. I agree with you, and what
5 I wanted to avoid was any type of confusion where a
6 reader would read my testimony and get confused as to
7 what we were looking at. So yes, I agree.

8 Q. And you don't criticize the company for
9 providing its customers with general information about
10 things that might be happening; is that correct?

11 A. No, I do not.

12 Q. And you were just trying then, as I
13 understand it, to make sure that there was a careful
14 distinction between a technical Commission notice and
15 information that might be provided generally?

16 A. Well said, yes.

17 Q. At page 8 and I believe other areas of your
18 testimony, you talk about the fact that there were a
19 relatively low number of bids received by the company;
20 is that correct?

21 A. That's correct.

22 Q. Are you aware of the general condition for
23 construction projects in Pierce County in this time
24 period, 2004 through 2006?

25 A. When you say condition, I don't understand

0057

1 what you mean.

2 Q. Would you agree that in Pierce County there
3 is a construction boom going on in 2004, 2006?

4 A. No, I wasn't aware of that.

5 Q. Okay. So you did not take that into
6 consideration in determining whether it would be
7 surprising or not surprising to find a low number of
8 bidders?

9 A. If I remember my testimony correctly, I think
10 it was mainly a concern that there was a low number of
11 bids. I don't think I implied, I didn't mean to imply
12 that there was some reason for those low amount of bids.
13 What I was -- I think what I was trying to focus on is
14 when you have a large amount of bids, usually you have a
15 smoothing of the amounts. A small amount of bids, my
16 confidence in the final number is not as strong.

17 Q. Okay. So by that I assume you're not meaning
18 to imply a criticism of the company by the fact that it
19 received a low number of bids?

20 A. No.

21 Q. And you say that you are not aware of the
22 housing boom in Pierce County in this time period?

23 A. No, I wasn't. I think with hindsight I'm
24 aware there is in general in this state, at least in
25 Western Washington, there is a large amount of

0058

1 construction in the last couple of years.

2 Q. And would you agree that this project as a
3 construction project is a relatively small project?

4 A. Relative to what? I think --

5 Q. Let me ask it a different way.

6 Are you familiar with the size of projects
7 that are generally put out to bid in the construction
8 industry?

9 A. Yeah, my father was in construction all my
10 life, and so in general there's small projects, there's
11 large projects, there's huge projects. So in my mind,
12 what crossed my mind when you asked the question was I
13 guess this fits within the spectrum of projects.

14 There's small contractors, medium contractors, large
15 contractors, and each one seems to have their own niche.

16 Q. On the scale of things, a \$100,000
17 construction project in general terms is considered a
18 small construction project; is that correct?

19 A. For a small water company, I would say --
20 see, we're talking relatives, so in a small water
21 company, I think small water company this is a -- it's a
22 good size project.

23 Q. Okay, that --

24 A. Maybe as to contractors, it depends on the
25 contractors that you contact, and that's what I mean

0059

1 about each construction firm having different niches.
2 There's smaller construction firms that look at smaller
3 projects, and for them it would be a large project. So
4 it's a relative sense. It's hard for me to answer I
5 guess is what I'm saying.

6 Q. If you were a contractor and were looking at
7 projects to bid on, generally would you agree that your
8 return in terms of absolute dollars of profit are higher
9 the larger the project is?

10 A. Yes, I would agree.

11 Q. So would you also agree that if you had your
12 choice between bidding on a \$200,000 project and a
13 \$100,000 project, you would rather bid on the \$200,000
14 project as a contractor?

15 MR. FASSIO: I'm going to object to that
16 question because it calls for speculation, and I would
17 ask counsel to be more specific with his question.

18 JUDGE CLARK: Response, Mr. Finnigan.

19 MR. FINNIGAN: It was simply a follow up to
20 the preceding question where Mr. Kermode identified that
21 a contractor would make more money on a larger project
22 than a smaller project.

23 JUDGE CLARK: All right, the objection is
24 sustained, you need to rephrase.

25 BY MR. FINNIGAN:

0060

1 Q. Are you familiar with the availability of
2 contractors in Pierce County?

3 A. No.

4 Q. So you would not be aware of whether the two
5 and three bids received during the two proposals would
6 constitute the entire universe of available contractors
7 or not?

8 A. No, I would not.

9 Q. In the same area in your testimony, pages 8
10 and 9 and 10, you also have a general discussion about
11 the differences in the level of bids received in 2004
12 and 2006; is that correct?

13 A. That's correct.

14 Q. You heard Mr. Dorland's testimony this
15 morning in response to Judge Clark's question about the
16 change in the scope of the request or the invitation to
17 bid?

18 A. Yes, I did.

19 Q. And the company has provided the Commission
20 Staff with the invitation to bid documents both for 2004
21 and 2006; is that correct?

22 MR. FASSIO: Can I ask counsel if you're
23 referring to particular exhibits in the docket?

24 MR. FINNIGAN: I am not, I am referring to
25 the Staff's general requests for information from the

0061

1 company, both in 2004, in the 2004 filing, and recently
2 from the 2006.

3 A. If I recall correctly, the 2004 request for
4 bid was, and I'm running off memory, it was fairly
5 scanty. The 2006 was a, or 2005, the second bid was a
6 lot more detailed and what I would expect. The first
7 one was, like I say, a little scanty and hazy, so. But
8 I do recall both.

9 BY MR. FINNIGAN:

10 Q. Would you concur with Mr. Dorland's
11 description that the 2006 invitation to bid included
12 items that had been omitted in the 2004, if you know?

13 A. I believe there -- I would say I -- I would
14 hesitate to say yes, I agree. I believe there was
15 grubbing on the first bid, I believe there was clearing.
16 The second bid did not include the service lines that
17 were in the first bid, and the second bid I believe I
18 don't recall installation of distribution main. I
19 believe there was costs in both of them of a
20 transmission main to the main tank from the chlorination
21 system or the pump house, but I don't remember resizing
22 of the distribution main for fire flow.

23 Q. Would it help your memory if you had an
24 opportunity to review the revised engineering report?

25 A. There was only one engineering, one revised,

0062

1 I believe we only had one. What is the date of the
2 report?

3 Q. December 23rd, 2004.

4 A. And I believe that was the engineering report
5 that the first bid relied on also.

6 Q. It was revised December 23rd, 2004, which
7 would have been after the date of the 2004 filing.

8 A. Yeah, I would like to look at that if I may.

9 MR. FINNIGAN: May I?

10 JUDGE CLARK: You may show it to Mr. Fassio.

11 MR. FASSIO: Is counsel proposing to include
12 this as an exhibit for Mr. Kermode or for illustrative
13 purposes only?

14 JUDGE CLARK: I have no idea.

15 Mr. Finnigan.

16 MR. FINNIGAN: It depends on whether it
17 refreshes his memory or not. If he looks at it and
18 says, yes, now I understand, and wants to testify about
19 it, then we probably ought to make it an exhibit. If he
20 looks at it and says it doesn't help his memory, then it
21 doesn't help the record.

22 MR. FASSIO: I think Staff would be amenable
23 to showing it to Mr. Kermode to refresh his memory.

24 JUDGE CLARK: All right, you may hand the
25 document to Mr. Kermode, please.

0063

1 MR. FINNIGAN: And, Your Honor, it might take
2 a few minutes, may we go off the record for a couple of
3 minutes to allow him to look through?

4 JUDGE CLARK: Well, why don't you ask the
5 question first, and we'll see if he's familiar with it
6 and whether or not he needs to do that.

7 MR. FINNIGAN: Okay, thank you.

8 BY MR. FINNIGAN:

9 Q. Mr. Kermode, have you seen what I have handed
10 you as the engineering report which on the cover page
11 says it's revised December 23, 2004?

12 A. Yes, I have.

13 Q. Okay.

14 JUDGE CLARK: Do you need an opportunity to
15 review that document, Mr. Kermode?

16 THE WITNESS: I think I -- I remember seeing
17 this, so I'm scanning this real quickly, so I don't
18 believe we need a recess.

19 MR. FASSIO: Can I ask a question of the
20 witness, that is has this document been provided in this
21 docket, in the course of the filing of this docket?

22 JUDGE CLARK: Mr. Kermode.

23 THE WITNESS: Quite frankly, the two dockets
24 merge in my head. I believe it was in this docket, but
25 I can't be sure.

0064

1 Okay, I have reviewed it, I'm sorry, can you
2 reask the question, I'm sorry.

3 BY MR. FINNIGAN:

4 Q. To your knowledge, were there additional
5 components in the second invitation to bid when compared
6 to the first invitation to bid that were added to meet
7 the design criteria for the project as approved by DOH?

8 A. And I will preface this, I'm obviously not an
9 engineer, but I do not see anything specific that is
10 different between the two. Obviously since it's a
11 revised plan, I assume there are differences, but I --
12 for example, I am not seeing a fire flow requirement,
13 nor am I seeing replacement of service lines or a
14 requirement for new meters. So I'm sorry I'm no help on
15 that, but I'm not seeing anything.

16 MR. FINNIGAN: Your Honor, at this point we
17 probably ought to mark this as an exhibit.

18 JUDGE CLARK: All right, how many copies of
19 the document do you have with you, Mr. Finnigan?

20 MR. FINNIGAN: I have two additional copies.

21 JUDGE CLARK: Just one is fine, thank you.

22 Do you have a title you would like to give
23 this document, Mr. Finnigan?

24 MR. FINNIGAN: The title would be the Alder
25 Lake Community Water System Engineering Report Revised

0065

1 December 23rd, 2004.

2 JUDGE CLARK: And how many pages are in this
3 document?

4 MR. FINNIGAN: Ten.

5 JUDGE CLARK: Thank you.

6 A 10-page document bearing the title Alder
7 Creek Community Water System Engineering Report Revised
8 December 23rd, 2004, has been marked for identification
9 purposes as Exhibit 77.

10 MR. FINNIGAN: And, Your Honor, if I said
11 Alder Creek, I apologize, it should be Alder Lake.

12 JUDGE CLARK: Okay, Alder Lake Community
13 Water System, thank you.

14 And could you explain to me why this is a
15 document that was not previously disclosed with the
16 other cross-examination exhibits that were disclosed
17 during the course of the prehearing conference set to
18 mark such exhibits?

19 MR. FINNIGAN: Because at the time I didn't
20 think it would be necessary.

21 JUDGE CLARK: Okay, you may proceed.

22 THE WITNESS: Your Honor, may I, I have
23 researched Mr. Fassio's question to me as to if it was
24 provided in the prior case, it was provided in the 2004
25 case, just to clarify the record.

0066

1 JUDGE CLARK: All right, thank you.

2 BY MR. FINNIGAN:

3 Q. Mr. Kermode, if you will look at page 3 of
4 the exhibit, which is down in the bottom corner marked
5 page 4.

6 JUDGE CLARK: Okay, before you proceed with
7 that, Mr. Finnigan, this is a document that has not yet
8 been received in evidence, and before I will permit the
9 witness to testify, you need to lay an appropriate
10 foundation, move its admission, and we need to accept
11 it, and then I will accept inquiry regarding the
12 document.

13 MR. FINNIGAN: Sure.

14 BY MR. FINNIGAN:

15 Q. Mr. Kermode, you have stated in the record
16 that you have received this document from the company in
17 the past; is that correct?

18 A. That is correct.

19 Q. And you have reviewed this document as part
20 of your duties as regulatory analyst for the Commission?

21 A. Yes, sir.

22 Q. And you consider yourself familiar with the
23 content of the document?

24 A. Yes.

25 Q. And you would agree that this is an

0067

1 engineering report that was submitted on behalf of the
2 company?

3 A. To myself, yes.

4 Q. And that was pursuant to your request?

5 A. Yes.

6 MR. FINNIGAN: I will offer Exhibit 77.

7 JUDGE CLARK: Is there any objection to its
8 receipt?

9 MR. FASSIO: No objection.

10 JUDGE CLARK: Hearing none, it is received.

11 Please proceed.

12 BY MR. FINNIGAN:

13 Q. Mr. Kermode, I had asked you to look at the
14 third page of the exhibit which is otherwise marked in
15 the bottom right-hand corner as page 4.

16 A. Yes, sir.

17 Q. And if you will look at the last line of the
18 first paragraph.

19 A. Yes.

20 Q. Do you see a reference to a separate 3-inch
21 PVC force main; do you see that?

22 A. Yes, sir.

23 Q. And at the last paragraph on that page, do
24 you see reference to 2,100 lineal feet of 3-inch PVC
25 main?

0068

1 A. Yes, sir.

2 Q. Does that help you with your understanding as
3 to whether there would be additional mains constructed
4 in the project?

5 A. Oh, I don't think I testified that I don't
6 think there would be additional mains. These are --
7 what I, to clarify the meaning of my testimony, what I
8 testified was that I understood that under both the old
9 proposal and the current proposal that a dedicated
10 transmission main was required to take the water from
11 the pump house and the chlorination system to the tank,
12 which is obviously apparently 2,100 linear feet away
13 from the pump house, to allow for contact time. What I
14 -- what difference I did see between the old and the new
15 bid was the removal of the replacement of service lines
16 on the distribution main, which is separate from this
17 transmission main.

18 Q. Okay, thank you for that.

19 Would you look at page 16 of your testimony,
20 please.

21 A. Yes, sir, I'm there.

22 Q. And on page 16 beginning at line 5, you talk
23 about the debt service for the proposal, excuse me, the
24 debt service component.

25 A. Yes, sir.

0069

1 Q. Thank you. You indicate at lines 9 and 10
2 that interest as a component of the total payment will
3 slowly decrease over the life of the debt; do you see
4 that?

5 A. Yes, sir.

6 Q. Would you agree that that's the normal case
7 during an amortization of a debt?

8 A. Yes, it is.

9 MR. FINNIGAN: Thank you, that completes my
10 cross of Mr. Kermode.

11 JUDGE CLARK: Thank you.

12

13 E X A M I N A T I O N

14 BY JUDGE CLARK:

15 Q. Mr. Kermode, I have a few questions for you.
16 The purpose of my inquiry is to ensure that I understand
17 the testimony that's being given in this proceeding.

18 A. Yes, Your Honor.

19 Q. I would like to have you turn to page 6 of
20 your prefiled testimony, if you could, please. And at
21 the top of that page on line 1, you indicate that August
22 of, let's see, no, October 11th, 2004, Iliad Water
23 Services, Incorporated filed an assessment comparable to
24 this one for funding the chlorination system; is that
25 correct?

0070

1 A. That's correct.

2 Q. And was the 2004 filing the first filing
3 regarding this chlorination system received by the
4 Commission?

5 A. Yes, it was.

6 Q. Are you familiar with the exhibits that have
7 been received in evidence in this proceeding that are
8 attached to the prefiled testimonies of both Mr. Pell
9 and Mr. Sarver?

10 A. I have reviewed them, yes.

11 Q. All right. Could the witness, if you do not
12 already have it, be provided with a copy of Exhibit 47.
13 That's attached to the testimony of Mr. Pell.

14 A. I'm almost there.

15 Q. That's fine, take your time.

16 A. That would be the DOH memoranda on
17 conversation dated August 22nd?

18 Q. That's correct, August 22nd, 2003.

19 A. Yes, I'm there.

20 Q. All right, this is not on numbered lined
21 paper, but if you look at the second bullet point, it
22 looks, oh, no, the first bullet point is apparently
23 Dorland's company has submitted paperwork to WUTC, and
24 the second bullet point was that WUTC has requested more
25 documentation of the costs.

0071

1 A. I read that, yes.

2 Q. All right, I don't understand. If the first
3 filing with the WUTC was made in 2004, what filings are
4 being referred to in this document, if you know?

5 A. I believe -- I can remember the other
6 document I saw from DOH there was another reference to
7 Iliad Water Services was in the process of filing with
8 the Commission. I assume that reflects this
9 conversation also. But the research I did indicated
10 that there was no -- there -- I should -- let me
11 rephrase that. There was no records that I could find
12 that would indicate that there was a filing.

13 Q. There was no tariff filing in 2003?

14 A. That's correct.

15 Q. All right.

16 I would like to have you now turn to Exhibit
17 50, which is also attached to Mr. Pell's testimony.

18 A. I am there.

19 Q. All right. And this is also a memorandum of
20 understanding from the Department of Health.

21 A. Conversation memorandum.

22 Q. I'm sorry, memorandum of conversation.

23 MR. FINNIGAN: And, I'm sorry, I'm not with
24 you yet, could I have that reference again, please.

25 JUDGE CLARK: Certainly, Exhibit 50, it's

0072

1 attached to Mr. Pell's testimony.

2 MR. FINNIGAN: Thank you, Your Honor.

3 BY JUDGE CLARK:

4 Q. This is also a memorandum of conversation,
5 this document bears the date September 29th, 2003, and
6 the second bullet point under that is that the company
7 expected WUTC approval of the fee structure by the end
8 of the year. Do you know what filing that notation is
9 referring to?

10 A. No, I do not.

11 Q. Okay, I would like to have you look, if you
12 would, please, at Exhibit Number 55, which was attached
13 to Mr. Pell's testimony.

14 A. Letter dated May 21st, 2004?

15 Q. Yes, that is correct.

16 A. I'm there.

17 Q. All right, if you look at the -- it's a
18 letter from the Department of Health to Mr. Dave Dorland
19 and signed by Ingrid M. Salmon. The first full
20 paragraph of that document says, the sentence says:

21 According to our records, you have been
22 making application to WUTC for upgrade
23 to this system since December 12, 2001,
24 in response to the same requirement.

25 And my question to you is, are you familiar

0073

1 with a filing by this water system in 2001 for an
2 upgrade for the chlorination system?

3 A. No, I'm not, Your Honor.

4 JUDGE CLARK: All right, I believe that's all
5 the questions I have.

6 Redirect, Mr. Fassio?

7 MR. FASSIO: I have no questions for
8 Mr. Kermode.

9 JUDGE CLARK: Thank you for your testimony,
10 Mr. Kermode.

11 MR. FINNIGAN: Your Honor, may I ask one
12 question in response to the questions you have asked?

13 JUDGE CLARK: You want additional
14 examination?

15 MR. FINNIGAN: Just in response to the
16 questions that you had asked.

17 JUDGE CLARK: All right.

18 Mr. Fassio, I will give you an opportunity
19 for redirect after this inquiry.

20 You may proceed, Mr. Finnigan.

21

22 C R O S S - E X A M I N A T I O N

23 BY MR. FINNIGAN:

24 Q. Mr. Kermode, do you remember any informal
25 discussions with the company concerning the filing, what

0074

1 information might be necessary, in the months prior to
2 the first filing by the company?

3 A. No, I do not.

4 MR. FINNIGAN: Okay.

5 JUDGE CLARK: Does that conclude?

6 MR. FINNIGAN: That's it.

7 JUDGE CLARK: All right.

8 Am I correct in assuming there is no
9 redirect?

10 MR. FASSIO: No redirect, Your Honor.

11 JUDGE CLARK: All right, thank you.

12 Thank you for your testimony, Mr. Kermode.

13 Why don't we take a few minutes off record to
14 allow the Commission Staff to call its next witness,
15 we're off record.

16 (Discussion off the record.)

17 JUDGE CLARK: All right, we're back on the
18 record, would the Commission Staff call their next
19 witness, please.

20 MR. FASSIO: Commission Staff calls Mr. Derek
21 Pell.

22 (Witness Derek M. Pell was sworn.)

23 JUDGE CLARK: Mr. Fassio.

24

25

0075

1 Whereupon,

2 DEREK M. PELL,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 D I R E C T E X A M I N A T I O N

7 BY MR. FASSIO:

8 Q. Good morning, Mr. Pell. Would you please
9 state your full name for the record, spelling your last
10 name.

11 A. My name is Derek Pell, P-E-L-L.

12 Q. And who is your employer?

13 A. My employer is the Washington State
14 Department of Health, Office of Drinking Water.

15 Q. And what is your business address for the
16 record?

17 A. It's, I may have to look it up now, 20435 -
18 72nd Avenue South, Kent, Washington.

19 Q. And what is your position with the Department
20 of Health?

21 A. I am currently the Assistant Regional
22 Manager.

23 Q. And on whose behalf are you testifying in
24 this proceeding today?

25 A. The Department of Health.

0076

1 Q. And who called you as a witness?

2 A. Counsel did.

3 Q. The Staff?

4 A. Staff.

5 Q. The UTC Staff?

6 A. The UTC Staff.

7 Q. In your duties as the Assistant Regional
8 Manager of the Office of Drinking Water, did you prepare
9 the testimony and exhibits in this case numbered 32
10 through 63?

11 A. Yes, I did prepare Exhibit 32.

12 Q. And the exhibits were part of your testimony
13 under your supervision and direction?

14 A. Yes.

15 Q. And if I ask you the questions that appear in
16 your testimony, would you give the answers that appear
17 there?

18 A. Yes.

19 Q. Are the answers true to the best of your
20 knowledge?

21 A. Yes.

22 MR. FASSIO: Since we have already stipulated
23 to admit the testimony and exhibits, the witness is
24 available for cross-examination.

25 JUDGE CLARK: Thank you, Mr. Fassio.

0077

1 Mr. Finnigan.

2 MR. FINNIGAN: Thank you.

3

4 C R O S S - E X A M I N A T I O N

5 BY MR. FINNIGAN:

6 Q. Good morning, Mr. Pell.

7 A. Good morning.

8 Q. This whole issue that's before the Commission
9 today started with a failure of the wells for the Alder
10 Lake system in the fall of 2000; is that correct?

11 A. That's correct.

12 Q. And the failure of the wells placed those
13 customers in immediate danger because they had no water;
14 is that correct?

15 A. That's correct.

16 Q. Iliad Water Service responded promptly to
17 that situation, did they not?

18 A. Yes, they did.

19 Q. And, in fact, you I think congratulated them
20 on their timely response; is that correct?

21 A. I believe so, yes.

22 Q. In your Exhibit 38?

23 A. A letter dated January 18th, 2001, to
24 Mr. Dave Dorland?

25 Q. Yes.

0078

1 A. Yes.

2 Q. And you begin that letter by expressing your
3 thanks to the company for their timely response?

4 A. Yes.

5 Q. As part of that response, is it true that the
6 company arranged with the City of Eatonville for the
7 delivery of water by tanker to the customers of Alder
8 Lake?

9 A. Yes, that's what I was told.

10 Q. And that the company also immediately tried
11 to address the physical failure of the well?

12 A. Yes, I believe what the company did is they
13 arranged to have one of the two wells deepened.

14 Q. And that was done shortly after the well
15 failed; is that correct?

16 A. Yes, it was.

17 Q. And those are the types of actions that
18 you're expressing your appreciation for in your letter
19 of January 18th; is that correct?

20 A. Yes, I am.

21 Q. Okay. You have been present this morning
22 when Mr. Dorland testified; is that correct?

23 A. Yes.

24 Q. And you heard him describe the existence of a
25 management contract between Iliad Water Services and

0079

1 Iliad, Inc.; is that correct?

2 A. I can't say I was paying detailed attention,
3 I was not seated at the table.

4 Q. Okay. Would you accept that there is a
5 management or operation agreement in existence between
6 Iliad Water Services, Inc. and Iliad, Inc.?

7 A. Yes, I accept that.

8 Q. Are you aware that Iliad, Inc. manages
9 several water systems throughout the state of
10 Washington?

11 A. Yes.

12 Q. Do you have a general impression of the
13 quality of work provided by Iliad, Inc. in the
14 management of those systems?

15 A. I would have to check the record to speak to
16 specific issues associated with this, but in the
17 operation and management of several of the water systems
18 that were discussed earlier today, there have been some
19 issues with operation and management of the systems such
20 that customers were calling our office with significant
21 complaints, recurring significant complaints.

22 Q. So you're saying that you don't have an
23 overall impression today?

24 A. About the entire operations of Iliad, Inc.?

25 Q. Correct.

0080

1 A. I have the impressions from those repeated
2 calls.

3 Q. Okay.

4 A. Yes.

5 Q. Mr. Pell, is it the case that sometimes water
6 system improvements that DOH believes are necessary take
7 some time to implement?

8 A. Yes.

9 Q. And that it's not unheard of for them to take
10 three to five years to get the -- I will start that
11 question over.

12 Would you agree that it's not unheard of for
13 a company to take three to five years to get the
14 improvements in place that DOH has requested?

15 A. I would like to answer that question with
16 giving some scope to it. Relative to improvements
17 directed at public health issues, three to five years is
18 what I would consider a long period of time. Utilities
19 are required to do some water system planning and
20 preparing capital improvement projects or budgets and
21 lists of projects, and in some of those capital
22 improvement projects it's not uncommon to see
23 construction schedules go out three to five years or
24 longer.

25 Q. Okay.

0081

1 Excuse me, the reason I'm hesitating is that
2 I had another question that your earlier response
3 prompted me, and I'm having a senior moment here trying
4 to figure out what it was that I was going to ask.

5 MR. FINNIGAN: And I just can't recall, so
6 that concludes my cross, thank you.

7

8 E X A M I N A T I O N

9 BY JUDGE CLARK:

10 Q. Mr. Pell, I have a few questions for you.
11 The purpose of my questions is to make sure I understand
12 the testimony that's been given in this proceeding. The
13 first of my questions relates to page 12 of your
14 prefiled testimony, and my understanding is that after
15 DOH approved the design that was submitted by Iliad
16 Water Services, Incorporated that the disinfection
17 system should have been installed I believe your
18 testimony says within 30 days of approval or around
19 March 1st, 2002; is that correct? I'm looking
20 specifically at the testimony you have given on line 18
21 of that page.

22 A. I am reading line 18, and could you rephrase
23 your question again so I understand it completely.

24 Q. My understanding is that the disinfection
25 treatment should have been installed within 30 days of

0082

1 Department approval. If you look at lines 6 and 7,
2 apparently that approval was issued by the Department on
3 January 31st, 2002, so I'm assuming that that
4 disinfection system should have been installed somewhere
5 around the 1st of March 2002; is that correct?

6 A. That's what my testimony says.

7 Q. I'm looking now on page 13 of your testimony,
8 and you're talking about the length of time that
9 approval is effective, and my understanding is that
10 approval is effective for approximately two years?

11 A. Yes.

12 Q. And I believe your testimony also indicated
13 that there may be circumstances in which that approval
14 may be extended even if no request for an extension is
15 made; is that correct?

16 A. That's correct.

17 Q. And my understanding is that Iliad Water
18 Services did not request extension of the approval for
19 this project?

20 A. That's correct.

21 Q. So my question is, is there a currently
22 approved project before the Department of Health, or has
23 that lapsed?

24 A. I think technically we can argue that it has
25 lapsed. I think I can also be open to the argument that

0083

1 the design that was presented is still a valid design to
2 address the kind of problem that we're looking at, and
3 it is something that we would reconsider with good faith
4 to extend.

5 Q. All right. And how would one go about I
6 guess reigniting that fire to take a look at the
7 engineering design that's currently filed with the
8 Department of Health?

9 A. The water utility could write us a letter
10 explaining that they recognize the approval has expired
11 and that they wish to recommence with that project. And
12 we would ask them what is an appropriate schedule that
13 they expect to complete the project. We would look to
14 see if there are any other outstanding issues that need
15 to be addressed in order to meet the intent of the
16 original project. Perhaps we would have some additional
17 comments or requests, but we would proceed along that
18 manner.

19 Q. All right, thank you.

20 All right, I'm looking at page 14 of your
21 testimony now, there's also an exhibit you have attached
22 to your testimony that refers to this topic which
23 escapes me at the moment, but I'm looking at lines 16
24 and 17. Is Iliad Water currently classified as an SSNC
25 or State Significant Non-Complier?

0084

1 A. Yes.

2 Q. I'm now looking at Exhibit 35, and that is a
3 letter from the State of Washington Department of Health
4 dated December 19th, 2000. I'm sorry, now I'm confused,
5 the first page of the document says December 19th and
6 the second page of the document says December 20th, but
7 that's all right as long as we're all in the same
8 document. My question is, is that document the first
9 notice that was given to the company to install the
10 chlorination system within 30 days of approval, or is
11 there a previous communication that made that
12 requirement?

13 A. I believe this is the first.

14 Q. I'm looking at Exhibit 37, and Exhibit 37 is
15 a letter from Iliad, Inc. to the Department of Health,
16 and it's dated March 12th, 2001, and I guess I'm a
17 little bit shaky on the dates here. The design for the
18 treatment facility was, according to this letter, I
19 believe to be submitted the week of March 19th. Do you
20 have, I'm sorry, do you have that document?

21 A. Yes.

22 Q. You do, thank you, Mr. Fassio.

23 This is a letter dated March 12th, and the
24 last paragraph of that letter aside from the closing
25 says:

0085

1 The design for the installation of the
2 disinfection facility should be ready
3 for submittal next week.

4 And so I'm assuming that would be the week of
5 March 19th?

6 A. Yes.

7 Q. All right. However, it appears that this
8 letter was received by the Department of Drinking Water
9 on March 20th?

10 A. That's correct.

11 Q. And was the design submitted the same week?

12 A. No.

13 Q. Do you recall when the design was submitted?

14 A. If I may reflect on my submittals here?

15 Q. You may.

16 A. There should be a letter that addresses the
17 specific design. I believe it's Exhibit 41, a letter
18 from Western Engineering, Inc., it included the chlorine
19 disinfection design documents received on May 30th,
20 2001.

21 Q. All right, thank you.

22 I'm looking now at Exhibit 46. Exhibit 46 is
23 a letter from Iliad, Inc. dated December 12, 2001, to
24 the Department of Health Northwest Operations. And in
25 that letter, the second paragraph of that letter

0086

1 indicates that the water company has made a loan
2 application for the water system improvements. Do you
3 know if the Department of Health was provided with a
4 copy of that loan application?

5 A. I do not believe we were provided a copy of
6 the loan application.

7 Q. Is that a document that would ordinarily be
8 required to be filed with the Department of Health?

9 A. Not unless it was a loan application for
10 State Revolving Fund.

11 Q. Okay.

12 I'm looking now at document Exhibit 59.
13 Exhibit 59 is a letter from Iliad, Inc. dated May 19th,
14 2005, to the State Department of Health, and there are
15 some notations made in the upper right-hand corner of
16 this letter. Do you know what those notations are or
17 who made them?

18 A. I made those notations.

19 Q. All right. I'm interested in item number 2
20 where it says, UTC appears to have dropped their
21 objections, see attached. There is no attachment to my
22 document, so I'm interested in knowing what it was you
23 relied on to form that conclusion.

24 A. I don't have an attachment either, Your
25 Honor. What I -- the notes would -- are reflecting a

0087

1 conversation I had with Mr. Dave Dorland that are up at
2 the top of the page. I must have made that note based
3 on a comment that I heard from Mr. Dave Dorland.

4 Q. All right. So if I took a look at the other
5 documents in this proceeding, would it be correct to
6 assume that something comparable to a memorandum of
7 conversation with Mr. Dorland would have been prepared
8 as a result of that conversation?

9 A. Unfortunately, no. In this case the
10 memorandum of conversation were simply my notes on this
11 page.

12 Q. All right. So do you have any idea what the
13 attachment might have been that you were referring to?

14 A. At this time, no, I don't.

15 Q. Okay.

16 I would like you to turn, if you would,
17 please, to Exhibit 60. Exhibit 60 is a Department of
18 Health letter dated April 3rd, 2006, and I'm interested
19 in the second paragraph of that document where you talk
20 about give notice of the DWSRF funding and the deadline
21 for making those applications. It appears that the
22 letter was submitted to Dave Dorland Senior regarding
23 Alder Lake Community Water System approximately one
24 month before that filing deadline; is that correct?

25 A. It appears so. The letter that you're

0088

1 referring to I did not write. It was from our regional
2 compliance manager. But yes, I see that that is
3 correct.

4 Q. All right.

5 I'm looking now at Exhibit 61, specifically
6 page 5 of that document. And this is under the Section
7 1.4, violation of duty to have a certified water works
8 operator, the last sentence of that order indicates that
9 as of the date of this order there is no operator
10 designated for the system; do you know as of the date of
11 the hearing whether or not there is an operator
12 designated for the system?

13 A. I heard in this morning's testimony from
14 Derek Dorland that there is now someone that has been
15 designated. I don't know if that information has gone
16 through our system yet.

17 Q. All right, I would like you to turn to page 6
18 of the same document, the next page. Paragraph 2.2 says
19 hire a certified operator, and in that paragraph the
20 Department of Health requires the water company within
21 30 days of receipt of the order to provide proof to DOH
22 that the company retained the services of a properly
23 certified water works operator. If my math is correct,
24 that wouldn't be due until the 22nd of October, and so
25 you don't know if that document has been submitted to

0089

1 DOH?

2 A. That's correct, I do not know.

3 Q. I would like you to look at Exhibit 63,
4 please. Exhibit 63 bears the letterhead of the
5 Tacoma/Pierce County Health Department and bears a date
6 that appears to have been corrected to read January
7 11th, 2006. This is a letter that is signed by, I hope
8 I'm saying this correctly, a Richard Hoesch, who is an
9 Environmental Health Specialist II. The final full
10 paragraph except for the closing indicates that Iliad
11 Water Services, Inc. is to review the information in the
12 letter and begin to implement corrections as soon as
13 possible and wanted a plan and a time frame for
14 completing the items within 60 days. Do you know if
15 that was received by the Tacoma/Pierce County Health
16 Department?

17 A. I do not know.

18 JUDGE CLARK: Thank you, I appreciate your
19 response to my inquiry.

20 Do you have redirect, Mr. Fassio?

21 MR. FASSIO: If I could have a short moment,
22 please.

23 JUDGE CLARK: Certainly.

24 MR. FASSIO: I have no questions for Mr. Pell
25 on redirect.

0090

1 JUDGE CLARK: All right.

2 MR. FINNIGAN: Your Honor.

3 JUDGE CLARK: Yes, Mr. Finnigan.

4 MR. FINNIGAN: Your Honor, again just
5 directly in response to questions that you have asked, I
6 have two questions to ask.

7 JUDGE CLARK: All right.

8 Mr. Fassio, I will give you the opportunity
9 for additional redirect following the conclusion of this
10 inquiry.

11 Please proceed.

12 MR. FINNIGAN: Thank you.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. FINNIGAN:

16 Q. Mr. Pell, Judge Clark asked you about your
17 testimony at page 12, and particularly at lines 18 and
18 19; do you see that?

19 A. Yes, I do.

20 Q. Could you explain the import of your
21 testimony at the immediately following sentence on lines
22 20 and 21, what did you mean to convey by that sentence?

23 A. If I may, I would like to read it out loud:

24 The two year approval limit is
25 established so that if regulations or

0091

1 design standards change after an
2 approval is issued, DOH can request an
3 updated design without debate after the
4 expiration date.

5 Is there something I need to clarify?

6 Q. I'm sorry, I'm confused, are you at page 12?

7 A. I'm at page 12 of my --

8 Q. Because that's not the information I have on
9 my page 12.

10 JUDGE CLARK: I think you have a different
11 line reference. I think that Mr. Finnigan was referring
12 to the same page but probably lines 18 through 19.

13 MR. FINNIGAN: I'm sorry if I misspoke.

14 JUDGE CLARK: I think he went to line 12,
15 page 12.

16 THE WITNESS: So you're referring to line 18
17 in my December 19th, 2000, letter?

18 BY MR. FINNIGAN:

19 Q. Judge Clark asked you a question about that,
20 and I was trying to follow up and say in light of that,
21 what did you intend to convey by the sentence you
22 include beginning on line 20, and it's the next sentence
23 in the order.

24 A. I see. So if I may read line 20:

25 This was intended as a starting point to

0092

1 establish a realistic schedule for
2 completing the project.

3 Q. And what did you mean by that?

4 A. What I meant by that is that I would like to
5 see disinfection installed within 30 days unless we can
6 reach a realistic schedule that I was requesting from
7 the company, something that was more realistic in the
8 mind's eye of the company if they were to so say.

9 Q. Okay, thank you.

10 The other question I have for you is related
11 to Exhibit 61, which is the DOH recent order to the
12 company. Do you have that?

13 A. Yes.

14 Q. And would you look at the order itself, which
15 is page 3 of 8, also noted page 5 of the exhibit, and at
16 the bottom line under Section 2.1.

17 A. Yes.

18 Q. There's a reference to the approved project
19 report.

20 A. Yes.

21 Q. Does that refer back to the report approval
22 of your letter of January 31, 2002, as being the
23 document that's to be used for construction of
24 facilities?

25 A. Yes.

0093

1 Q. In light of that, is there any need for the
2 company to submit a request to extend the approval
3 period for the design?

4 A. It would appear that the way the order is
5 written that that would be a design in good standing.

6 MR. FINNIGAN: Thank you, that's all I have.

7 JUDGE CLARK: Redirect, Mr. Fassio?

8 MR. FASSIO: I just have one question for
9 clarification in response to one of Mr. Finnigan's
10 questions as well as one of your questions.

11

12 R E D I R E C T E X A M I N A T I O N

13 BY MR. FASSIO:

14 Q. When you have stated that you were, on your
15 page 12 of your testimony was intended as a starting
16 point to establish a realistic schedule for completing
17 the project, you answered a question earlier regarding
18 existence of a bilateral compliance agreement; is that
19 part of establishing a schedule?

20 A. Yes.

21 Q. And was this effort made by the Department of
22 Health to establish a schedule through the bilateral
23 compliance agreement?

24 A. Yes. The Department drafted a bilateral
25 compliance agreement and asked the utility to enter into

0094

1 an agreement that would establish a realistic time
2 frame. We did not receive a time frame that established
3 new dates, therefore we considered that the company was
4 not interested in signing a bilateral compliance
5 agreement with the Department.

6 Q. And if I could just refer to I believe it is
7 your Exhibit 48, which is a bilateral compliance
8 agreement from the Department of Health, I don't believe
9 we had the exhibit earlier when Your Honor had brought
10 up this question, but I did want to note for the record
11 that that bilateral compliance agreement would have been
12 Exhibit 48.

13 JUDGE CLARK: Do you have a question for
14 Mr. Pell regarding that?

15 MR. FASSIO: I don't have any further
16 questions, Your Honor, thank you.

17 JUDGE CLARK: Thank you for your testimony,
18 Mr. Pell.

19 Is there any objection to this witness being
20 excused?

21 MR. FINNIGAN: No objection.

22 JUDGE CLARK: All right, hearing none, before
23 we recess for the day I'm wondering if you could recall
24 Mr. Dorland for one inquiry.

25 MR. FINNIGAN: Certainly.

0095

1 JUDGE CLARK: Thank you. And if you could
2 provide him with a copy of the document that we have
3 marked as Exhibit 77, which is the engineering report
4 revised December 23rd, 2004.

5 Mr. Dorland, I remind you you remain under
6 oath.

7

8 Whereupon,

9

DEREK DORLAND,

10 having been previously duly sworn, was called as a
11 witness herein and was examined and testified as
12 follows:

13

14

E X A M I N A T I O N

15 BY JUDGE CLARK:

16 Q. I just have one question.

17 A. Okay.

18 Q. Do you know who the author of this document
19 is?

20 A. I believe without looking at it it's going to
21 be John McDonald.

22 Q. Thank you.

23 A. That is our engineer.

24 And there's nothing on there, is there?

25 Q. Right, which is why I was asking the

0096

1 question.

2 A. I would have to say it would be John
3 McDonald.

4 JUDGE CLARK: Thank you very much.

5

6 R E C R O S S - E X A M I N A T I O N

7 BY MR. FASSIO:

8 Q. I'm sorry, McDonald or McConnell?

9 A. McDonald.

10 Q. McDonald?

11 A. Yes.

12 Q. JC --

13 A. McDonnell, I'm sorry.

14 Q. Just to clarify the record on this --

15 A. I'm sorry, it's McDonnell.

16 Q. It's McConnell?

17 A. No, McDonnell, John McDonnell. That's what I
18 have always --

19 Q. I believe in your testimony you referred to
20 JC McDonald and there are documents from a JC McConnell,
21 and I just want to make sure the record is clear on
22 that.

23 A. That's who it is then, yeah. I have always
24 just known him for 27 years, calling him the wrong name
25 that long, yeah. I just know him as John, so John

0097

1 McConnell, you're saying it's M-C --

2 Q. I'm asking you just to clarify the record.

3 A. I remember it being McDonnell.

4

5 E X A M I N A T I O N

6 BY JUDGE CLARK:

7 Q. And what enterprise does this individual work
8 for?

9 A. He has his own -- he worked for a different
10 engineering firm, I believe he's on his own now. He
11 doesn't work for Iliad, Inc.

12 Q. Was it Western something?

13 A. Yes. I can't recall off the top of my head.

14 Q. Is the author of the document the same
15 company and individual who submitted the initial
16 engineering report?

17 A. Yes.

18 JUDGE CLARK: Okay, thank you.

19 THE WITNESS: You're very welcome.

20 MR. FINNIGAN: Your Honor, if you look at
21 Exhibit 10, it's JC McDonnell, M-C-D-O-N-N-E-L-L.

22 JUDGE CLARK: All right, thank you very much.

23 Is there anything further that should be
24 considered on the record this morning?

25 All right, hearing nothing, we are at recess

0098

1 until 10:00 a.m. tomorrow morning.

2 (Hearing adjourned at 11:45 a.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25