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November 29, 2006

**VIA HAND DELIVERY AND E-MAIL**

Carole Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7250

Re: Docket No. UW-060343 - Iliad Water Services, Inc. - Brief

Dear Ms. Washburn:

Iliad Water Services, Inc. ("Iliad") is filing this letter in this docket in lieu of a more formal brief. Iliad does not have the resources to purchase the transcript in this case and desires to limit, to the extent possible, its expenditures on attorney's fees. The original and nine copies of this letter are being filed pursuant to the requirements of this docket.

**STATEMENT OF POSITION**

By this letter, Iliad will provide its statement of its position on the issues in this case. To do this, Iliad will identify what it believes are the important issues and indicate what Iliad believes the record demonstrates.

Ultimate Issue: The ultimate issue in this case is whether the surcharges filed by Iliad should be approved. If the surcharges filed are not to be approved, then what is the appropriate course of action?

Position: Iliad is no longer requesting that its filing be approved in the amount that has been set forth in its proposed tariff revision. Instead, as stated on this record, Iliad is willing to undertake the project at a lower amount. Iliad requests that a surcharge in the Commission Staff recommended amount of \$125,183 be approved. See, Exhibit 20 at p. 27, l. 11-13. Assuming thirty-five

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lots,<sup>1</sup> this translates to a surcharge of \$3,576.66 per customer. The financing option that would be available for the customers would still be available. The rate would be \$49.27.

#### Must This Project Go Forward?

Position: Clearly, the Department of Health believes that the project is needed. In fact, the Department of Health has issued an order that requires the project to be constructed in the next few months. See, Exhibit 61 at p. 6 (construction deadline is March 30, 2007). The company believes the project must go forward.

#### Can the Company Afford to Fund the Construction on its Own?

Position: No. Commission Staff recognizes this fact. As stated by Mr. Kermode: "The only viable option for financing is either through government sponsored loan programs or the customers themselves." Exhibit 20 at p. 7, l. 20-21. Mr. Kermode recognizes that Iliad has a large negative retained earnings of <\$150,000> with total assets of only \$90,000. Therefore, long-term debt financing is unlikely. Exhibit 20 at p. 7, l. 18-20. Mr. Kermode's observations are confirmed by looking at the company's most recent annual report, filed as Exhibit 75. That annual report shows that the company operated at a substantial loss in 2005. The company is a very small company serving, at maximum capacity, 89 customers. The Alderlake Water System has a maximum capacity of 35 connections. There are 30 active connections and 5 non-users at the present time. There are simply no resources for the company to fund this project on its own.

#### Is the State Revolving Fund Available as a Source of Funding at This Time?

Position: No. As pointed out by Mr. Sarver, the State Revolving Fund financing works on an annual cyclical basis. It appears that the next funding cycle is not available until May of 2007 (as the date applications are due) with ultimate funding sometime later. On the other hand, DOH's order requires that the improvements be constructed by March 30, 2007, clearly before applications for the next funding cycle could be filed. Exhibit 61 at p. 6.

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<sup>1</sup> At the hearing, the ALJ asked Mr. Dorland if the assessment should be assessed to thirty or thirty-five lots (i.e., the users only or both users and non-users). Mr. Dorland recommended thirty as the basis. Upon reflection, Iliad recommends thirty-five, with the assessment applying to all lots since all lots will benefit.

Should the Company's Failure to Obtain State Revolving Fund Financing Earlier be Deemed to be an Imprudent Action?

Position: No. As pointed out above, this is a company with very limited resources. It must rely on its consultants to help guide it. The company's engineer informed the company that, in his opinion, the company was not eligible for state revolving fund financing. Although it now appears that the engineer was incorrect in his assessment, that does not mean that the company acted imprudently. This would be a new definition of imprudent if the company cannot rely on the opinions of trained professionals.

A subsidiary question is whether the company can be criticized for taking as much time as it did on this project. The answer is that it is apparent that the company can be criticized in some ways, but that criticism has to be taken in context. The context is that this is a very small company with very limited resources. It is easy in retrospect to say that the company should have taken certain actions and should have moved more quickly. It should also be remembered that the company did make a filing in 2004 with the Commission that was subsequently withdrawn because a number of questions were raised by Commission Staff. It was not as though the company was not trying.

Can this Project be Funded Through a Customer Surcharge?

Position: Yes. This position is also recognized by Commission Staff as a project that is eligible for funding through a customer surcharge. See, Exhibit 74, which is the Staff Memorandum that originally recommended approval of the surcharge.

SUMMARY

Commission Staff recommends that the surcharge not be approved. This is inconsistent with Commission Staff's recognition that the company does not have the resources to undertake the project on its own and that this project can really only be funded through a government subsidized loan program or the customers themselves. Because DOH has issued an order that requires construction of this project in the next few months on a timetable that clearly makes state revolving funds unavailable, Staff's recommendation not approving the surcharge is inconsistent with the financial analysis undertaken by

Commission Staff.

As an alternative, Commission Staff recommends that the project be allowed to be funded through a surcharge but only in the amount of \$125,183. The company is willing to accept this lower number as recommended by Commission Staff.

The company does not believe that it has acted imprudently. The company relied on its professional consultant, its engineer, to guide it through this process. At the time it was taking its actions, the company did not believe that it was proceeding too slowly. In retrospect, the company understands how people believe it should have moved more quickly. If it had the ability to do this all over again, the company would have tried to move more quickly. How much more quickly it could move with its limited resources is an open question.

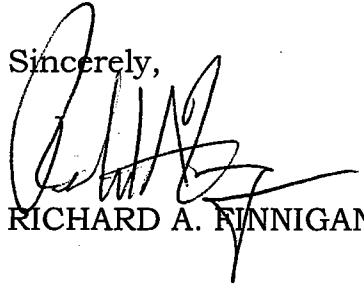
If, when all things are taken into account, the Commission is of the opinion that the company needs to be punished or sanctioned in some way, then the company is willing to undertake to construct the project and only assess the customers \$118,000 (which is less than the Commission Staff recommends) with the company absorbing the difference in cost. For a company this size, this is a substantial penalty. The Commission should keep in mind that the company has also had to absorb the cost of this proceeding, which in itself is a substantial blow to the company's resources.

There may be a number of ancillary issues in this case that ultimately have no bearing on the bottom line. That bottom line is that DOH has ordered that the treatment facilities be constructed by March 30, 2007. There are three forms of financing available for a project such as this: company provided financing, government supported financing mechanism or the customer surcharge. Commission Staff agrees that the company does not have the financial resources to provide the financing. As a factual matter, the state revolving fund is not available to provide financing for the project within the timeframe required by the DOH order. This leaves the only mechanism available is the customer surcharge. Although it is lower than the number that the company originally filed, Iliad is willing to live with Mr. Kermode's recommendation that the surcharge be in the amount of \$125,183.

Carole Washburn  
November 29, 2006  
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Iliad respectfully requests that the Commission order a revised filing to reflect a total surcharge amount of \$125,183.

Sincerely,

A handwritten signature in black ink, appearing to read 'RAF/km', written over the word 'Sincerely,'.

RICHARD A. FINNIGAN

RAF/km  
Enclosures

cc: Service List (w/encl., via hand delivery and e-mail)  
David Dorland (w/encl., via U.S. mail and e-mail)

CERTIFICATE OF SERVICE  
UW-060343

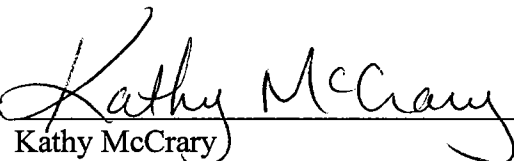
I certify that I have this day served the attached letter to Carole Washburn upon all parties of record in this proceeding by sending a copy by hand delivery and electronic mail to the following parties or attorneys of parties:

Michael Fassio  
Assistant Attorney General  
1400 S. Evergreen Park Drive SW  
PO Box 40128  
Olympia, WA 98504-0128  
mfassio@wutc.wa.gov

I also certify that I have this day served the attached letter to Carole Washburn by electronic mail and hand delivery to the following:

WUTC Records Center  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250  
records@wutc.wa.gov

Dated at Olympia, WA this 29th day of November, 2006.

By   
Kathy McCrary