

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

vs.

ILIAD WATER SERVICES, INC.

Respondent.

DOCKET UW-060343

POSTHEARING BRIEF OF COMMISSION STAFF

November 29, 2006

ROB MCKENNA
Attorney General

MICHAEL A. FASSIO
Assistant Attorney General
Office of the Attorney General
PO Box 40128
1400 S Evergreen Park Drive SW
Olympia, WA 98504-0128
(360) 664-1192

TABLE OF CONTENTS

- I. OVERVIEW 1
- II. CONTEXT OF THIS CASE 1
 - A. Current Case 1
 - B. 2004 Prior Case 3
- III. APPLICABLE LAW 4
- IV. FINANCING 5
 - A. The Company Believes a Customer Surcharge is the Only Option Given its Financial Position 5
 - B. Customers will Face a Considerable Increase with the Company’s Chosen Financing 7
 - C. The Company has Failed to Adequately Document its Chosen Financing 9
 - D. The Company has not Demonstrated that it Adequately Considered Other Private Financing Options 10
 - E. The Company did not Demonstrate that it Properly Considered Government-Sponsored Financing Alternatives, such as a Drinking Water State Revolving Fund Loan 11
 - 1. A Drinking Water State Revolving Fund loan is the lowest cost, optimal financing method 11
 - 2. The Company, Alder Lake water system, and the treatment project are all eligible for a DWSRF loan 13
 - 3. It is highly likely that DOH would have extended the DWSRF loan if Iliad Water had applied..... 14

4.	Company management should have known DWSRF financing was available.....	15
V.	DEPARTMENT OF HEALTH’S ASSESSMENT OF THE NEED OF THE PROPOSED TREATMENT PLANT TO ADDRESS WATER QUALITY	17
A.	The Water System’s Volume and Water Pressure are Adequate to Meet Demand	17
B.	Construction of the Chlorination Treatment Plant is “Important but not Urgent”	18
C.	The Company’s Delays in Constructing the Treatment System Raised Significant Concerns with the Department of Health.....	19
VI.	PROJECT COST	20
A.	The Construction Bid.....	21
B.	Other Appropriate Project Costs to be Recovered.....	22
C.	Staff’s Adjustment of Recoverable Project Costs	23
D.	If Approved, the Surcharge should be Collected from Customers after the Treatment Plant is Constructed	24
E.	The Commission should not Limit the Surcharge to the Cost of Construction in 2003-2004 as the Company Proposed.....	25
VII.	CONCLUSION	26

TABLE OF AUTHORITIES

Statutes

RCW 80.04.250 24

RCW 80.04.130 4

RCW 80.04.130(4)..... 4

RCW 80.28.020 4

RCW 80.28.022 4

WAC 246-290-010 13

WAC 246-292-020 13

WAC 480-110-455 6, 24

WAC 480-110-455(2)..... 2

WAC 480-110-455(2)(i)..... 6

WAC 480-110-455(2)(ii)..... 6

Commission Dockets

Rosario Utilities, Inc.,
Docket No. UW-991913 7

WUTC v. Alderton-McMillin Water Supply, Inc.,
Docket Nos. UW-910563 & UW-911474,
Order Rejecting Surcharge and Securities Filing (April 1992) 4

WUTC v. Cascade Natural Gas Corp.,
Docket No. UG-941408, Third Supplemental Order (October 1995) 4

WUTC v. Iliad Water Services, Inc.
Docket No. UW-041830, Order 01 (November 24, 2004) 3, 26

WUTC v. Olympic Pipe Line Company,
Docket No. TO-011472, Twentieth Supplemental Order
(September 27, 2002), at 89..... 24

WUTC v. Puget Sound Power and Light Co.,
1st Supplemental Order at 32-33, Cause No. U-85-54 (1984)4

WUTC v. Puget Sound Power and Light Co.,
Docket Nos. UW-920433, UT-920499 and UE-921262
(Consolidated), Nineteenth Supplemental Order
(Prudence order) (September 1994).....5, 9

I. OVERVIEW

1 This case is a tariff filing by Iliad Water Services, Inc. (“Iliad Water” or “Company”) to assess each of the approximately 39 customers on its Alder Lake water system a monthly surcharge of \$49.26 a month over ten years, or a one-time assessment of \$3,405, for the costs associated with installing a water chlorination treatment system required by the Department of Health (DOH). Major issues in this case are the reasonableness of the requested surcharge, and whether the Company acted prudently in managing the process of planning and implementing the construction and financing of the proposed project.¹

2 Staff has significant concerns with the Company’s chosen method of financing, and believes that the Company did not properly, or prudently, consider available lower-cost financing, specifically the Drinking Water State Revolving Fund (DWSRF) loan, that would have resulted in considerable savings to water system customers. The record is clear that present DOH enforcement is the result of Company mismanagement resulting in an unreasonable delay. The Commission set this case for hearing to develop a more substantial record regarding these concerns.

3 The evidence in the record does not support a finding that the Company’s proposed tariff revision is fair, just, reasonable and sufficient. Therefore, Staff recommends that the Commission reject the proposed filing.

II. CONTEXT OF THIS CASE

A. Current Case

4 On March 1, 2006, Iliad Water filed with the Commission a revision to its effective tariff, which was suspended pending Staff investigation.² The tariff revision proposed to

¹ Docket No. UW-060343, Notice of Prehearing Conference (August 16, 2006) at ¶ 3.

² *WUTC. v. Iliad Water Services, Inc.*, Docket No. UW-060343, Order 01 (Complaint and Order Suspending

assess the Company's Alder Lake water system ("Alder Lake") customers a one-time flat-rate assessment of \$3,405 for the costs associated with the installation of a water chlorination treatment system required by the Department of Health.³ The assessment would provide full recovery of the Company's \$132,795 projected cost of the project, including legal costs,⁴ if distributed among 39 customers pro rata.⁵ The proposed tariff also allowed customers to select an "assessment over time" option, by signing a promissory note with the Company's chosen third-party lender, for the amount of \$3,405 payable in monthly installments over ten years. The interest on this loan would be 11%, with a loan origination fee of between three to five percent of the loan principal.⁶

5 On August 15, 2006, the Company filed a substitute page replacing the original filed tariff.⁷ The substituted page retains the one-time assessment of \$3,405, but replaces the option of the customer-signed promissory note with an option of a monthly charge of \$49.26 over the next 10 years.⁸ That is, rather than its customers taking on debt with the private lender, the Company would carry the debt itself with the same private lender at the same proposed terms, and use the funds from the monthly surcharge to service the debt. The surcharge would repay principal and interest charges.⁹ Staff determined that this revision is consistent with the requirements of WAC 480-110-455(2).¹⁰ On August 16, 2005, at the

Tariff Revision); Dorland, Exh. No. 15.

³ Kermode, Exh. No. 20 - 10:4-8.

⁴ Kermode, Exh. No. 20 - 10:8-9, and 12:18-19; Dorland, Exh. No. 14 - 13.

⁵ On cross-examination, Mr. Dorland stated that he believed the assessment would be distributed among 30 users. See Dorland, TR. - 44:14 to 45:12. This creates some uncertainty as to the actual number of customers that would be assessed, because company's own tariff is based on 39 customers. See Dorland, Exh. No. 17 and Dorland, Exh. No. 14. Staff's financial analysis assumed a customer count of 39, based on the company's documents. If the recovery was distributed pro rata among 30 users, the assessment would increase considerably to \$4,426.50 (\$132,795 divided by 30 customers).

⁶ Dorland, Exh. No. 15 - 2; Kermode, Exh. No. 20 - 14:22 to 15:3.

⁷ Dorland, Exh. No. 17; Kermode, Exh. No. 20 - 15:5-8.

⁸ Kermode, Exh. No. 20 - 15:10-14.

⁹ Kermode, Exh. No. 20 - 16:1-3.

¹⁰ Kermode, Exh. No. 20 - 14:5-16.

Commission's Open Meeting, Staff recommended approval of the revised tariff. Staff's memo, however, expressed significant concerns with the Company's chosen financing for the project and the resulting high cost to customers.¹¹ The Commission verbally expressed concerns, took no action and did not approve the filing, setting the matter for hearing to further develop a record for consideration and decision.

B. 2004 Prior Case

Iliad Water's previous tariff filing on October 11, 2004, (see Docket UW-041830) was similar to this docket's initial filing, with the same intent of financing the DOH-required chlorination system. In its 2004 filing, the Company proposed a \$3,265 one-time assessment to the Alder Lake water system customers to pay for a chlorination treatment project.¹² During its investigation, Staff raised several concerns with the Company, foremost of which was the Company's projected construction cost that it sought to recover, which included several unrelated costs, such as replacement of service mains, prior well drilling, and water hauling.¹³ During its review, Staff also discussed financing of the project, including applying for a Drinking Water State Revolving Fund loan; however this was not a central issue at the time because Staff typically considers financing only after the total cost of a project is determined.¹⁴ The Company voluntarily withdrew its filing on May 24, 2005, with Commission approval, before the parties reached agreement on cost issues.¹⁵ The Company stated it was necessary to withdraw the filing to re-bid the project, and that it intended to file a tariff revision with the new supporting bid documentation "in the near

¹¹ Kermode, Exh. No. 74.

¹² Dorland, Exh. No. 6; *WUTC v. Iliad Water Services, Inc.*, Docket No. UW-041830, Order 01 (Nov. 24, 2004); Kermode, Exh. No. 20 - 14:22 - 15:3.

¹³ Kermode, Exh. No. 20 - 8:5-8.

¹⁴ Kermode, Exh. No. 20 - 8:11-15.

¹⁵ Kermode, Exh. No. 20 - 8:14 -15 and 9:20-21, and Dorland, Exh. No. 1 - 8:9.

future.”¹⁶ The filing currently before the Commission represents the promised filing.¹⁷

III. APPLICABLE LAW

6 The burden of proof to show that a tariff increase is just and reasonable falls upon
the Company.¹⁸ Regulated companies also bear the burden of proving that their decisions are
prudent.¹⁹ Prior Commission orders have rejected a water company surcharge request when
the company failed to demonstrate that the surcharge was just, fair and reasonable.²⁰

7 The Commission is empowered, but not mandated, by RCW 80.28.022 to approve a
surcharge related to Department of Health requirements.²¹

8 The traditional prudence test is set forth as follows:

In evaluating prudence it is generally conceded that one cannot use
the advantage of hindsight. The test this Commission applies to measure
prudence is what would a reasonable board of directors and company
management have decided given what they knew or reasonably should have
known to be true at the time they made a decision. This test applies both to
the question of need and the appropriateness of the expenditures.²²

The Commission relies upon a reasonableness standard. The company must
establish that it adequately studied the question of whether to purchase these
resources and made a reasonable decision, using the data and methods that a
reasonable management would have used at the time the decisions were
made.²³

9 A company who acquires resources should keep adequate, contemporaneous records
of its decision making procedures that will allow the Commission to subsequently evaluate

¹⁶ Dorland, Exh. No. 13.

¹⁷ Kermode, Exh. No. 20 - 9:23-10:1.

¹⁸ RCW 80.04.130(4).

¹⁹ RCW 80.04.130; *WUTC v. Cascade Natural Gas Corp.*, Docket No. UG-941408, Third Supplemental Order (October 1995).

²⁰ RCW 80.28.020; see, i.e., *WUTC v. Alderton-McMillin Water Supply, Inc.* Docket Nos. UW-910563 & UW-911474, Order Rejecting Surcharge and Securities Filing (April 1992).

²¹ RCW 80.28.022.

²² *WUTC v. Puget Sound Power & Light Co.*, 1st Supplemental Order at 32-33, Cause No. U-85-54 (1984).

²³ *WUTC v. Puget Sound Power and Light Co.*, 19th Supplemental Order at 10, Docket No. UE-921262, *et al.* (1994), citing, 2nd Supplemental Order, Cause No. U-85-53 (1986), and 5th Supplemental Order, Cause No. U-83-26 (1984).

the adequacy of the company's decisions.²⁴ Iliad Water failed to do so, and failed to demonstrate that its decisions concerning the building and financing of its project were prudent.

IV. FINANCING

10 The Company's choice of financing is central to this case. The Company seeks recovery of the costs of an asset it has not yet acquired, utilizing a proposed financing agreement it has not yet formally obtained. The Company failed to meet its burden to establish its proposed surcharge is fair, just, and reasonable, and failed to demonstrate that the financing arrangement is reasonable and prudent. Company management should have known that better public financing was available, saving its ratepayers a considerable sum. The Company mismanaged its financing decision and it would be unfair to ratepayers to bear the costs of that mismanagement.

A. The Company Believes a Customer Surcharge is the Only Option Given its Financial Position.

11 The Company chose to service its prospective debt to build the treatment system with a customer surcharge. Although other options are available, it appears consistent with existing Commission regulations to do so.

12 A typical investor-owned water company may have several choices to finance long-term capital improvements, including using a mix of equity and long-term debt.²⁵ In this situation, completed water utility plant would be included in rate base, and investors would earn an appropriate return on the equity portion of the

²⁴ *WUTC v. Puget Sound Power and Light Co.*, Docket Nos. UW—920433, UT-920499 and UE-921262 (Consolidated), Nineteenth Supplemental Order (Prudence order) (September 1994), at 48. See also *WUTC v. American Water Resources, Inc.*, Docket No. UW-000405, Final Order Affirming Initial Order; Dismissing Tariff Revisions, Without Prejudice (March 29, 2001).

²⁵ Exh. No. 20, at 7:8-17 (Kermode)

investment over the life of the asset along with an interest return on the debt portion of the investment. *Id.* A typical company would depreciate the related plant in service over the life of the asset.²⁶

13 Here, alternatively, Iliad Water chose to finance its plant entirely through debt. Iliad Water had negative retained earnings of \$152,814 and total assets of \$90,816 in fiscal year 2005.²⁷ Although the Company provided limited testimony about its finances, it is clear from its financial records that the Company has insufficient internal funds to pay for the cost of the treatment plant without obtaining additional equity or high cost debt. In this situation, the only viable options available to the Company are government-sponsored loan programs, or customers themselves.²⁸ Instead, the Company has chosen to finance the project with high cost debt and recover the cost of financing from the customers.

14 WAC 480-110-455 provides funding mechanisms for water companies that have insufficient funds to respond to emergencies, replace or upgrade failing infrastructure, or add plant to accommodate growth.²⁹ The purpose of a surcharge or a facilities charge is to provide the water company with a source of capital, provided by customers, to fund these needs. Commission approval of a surcharge is required.³⁰

15 A company may collect a surcharge from current customers to fund a reserve for a future capital project, such as a DOH-required project to assure compliance with drinking water regulations.³¹ A surcharge can also be collected to service and repay debt used for the financing of a current water utility plant.³²

²⁶ Kermode, Exh. No. 20 - 7:8-17.

²⁷ Kermode, Exh. No. 75 - 7, and Exh. No. 20, 7:19.

²⁸ Kermode, Exh. No. 20 - 7:20-21.

²⁹ WAC 480-110-455 (1).

³⁰ *Id.*

³¹ WAC 480-110-455(2)(i).

³² WAC 480-110-455(2)(ii).

16

The Company's revised filing allows the Company to carry debt itself, while charging the customers who select an "assessment over time" option \$49.26 per month for 10 years. This is consistent with Commission regulations because the Company would use the funds received from the "assessment over time" (or "surcharge") to service the related debt (principal and interest) on the water chlorination treatment plant.³³ The question before the Commission is not the propriety of the filed surcharge, but rather the cost of the selected financing vehicle that is serviced by the surcharge.

B. Customers Will Face a Considerable Increase with the Company's Chosen Financing.

17

The surcharge proposed by the Company to pay for the chlorination system, at \$49.26 per month per customer, would represent a considerable increase to the average water bill for Alder Lake water system customers. The effect of approving the Company's proposed tariff would be to increase the base rate from \$23.15 per month to \$72.39 per month, a 312% increase.³⁴ This would place it among the largest surcharges, as a percentage of a customer's total water bill, that the Commission has approved.³⁵ A customer, could, alternatively, select a one-time assessment of \$3,405, a pro-rata share of the Company's total projected cost.³⁶ The proposed surcharge is intended to service a debt instrument with terms at 11% interest over 10 years, with an origination fee of three to five percent of the loan principal.³⁷ BHL Investment is the sole source of this financing.³⁸ Because the

³³ Kermode, Exh. No. 20 - 15:20 to 16:3.

³⁴ Kermode, Exh. No. 74 - 2.

³⁵ A non-exhaustive sample taken by Staff during the course of investigation found the highest approved surcharge to water bill relationship was for Rosario Resorts at 63%. In that case, the surcharge paid for water treatment and generators that all its systems benefited from, at approximately \$22/month or a one-time charge of \$1,427. See Docket No. UW-991913 (Tariff filing of *Rosario Utilities, Inc.*)

³⁶ Kermode, Exh. No. 20 - 15:11-13.

³⁷ Kermode, Exh. No. 20 - 17:10-15.

Company's tariff proposes to assess its customers a 312% increase in their rates for 100% of its proposed financing, it is incumbent upon the Company to show that the tariff is fair, just, and reasonable. The considerable financial impact upon individual customers further demonstrates that the Company has an obligation to adequately consider cost-saving financing alternatives. The Company did not meet this obligation.

18 Staff testified that the financial impact upon individual Alder Lake ratepayers would decrease if the Commission applied a "Single Tariff Pricing" rate design and distributed the surcharge on all customers served by Iliad Water.³⁹ However, Staff does not support this cost allocation method in this unique case because it would significantly burden the customers on the other systems owned by the Company who would receive no benefit from the proposed Alder Lake treatment system. The significant increase is due to the small scale of Iliad Water Company. Alder Lake customers represent approximately 39 of the 89 total customers of the three water systems owned by Iliad Water.⁴⁰ If the proposed surcharge were distributed evenly, all customers would receive a \$21.58/month rate increase.⁴¹ This would equal approximately 86 percent of the average water bill for Cascade Crest water system customers, and 93 percent of the average water bill for the Western Stavis water system.⁴² Because of this significant increase to non-Alder Lake water system customers, Staff supports applying the proposed surcharge, if approved by the

³⁸ Dorland, TR. - 30:22 - 31:4.

³⁹ Kermode, Exh. No. 20 - 24:1 - 25:12.

⁴⁰ Kermode, Exh. No. 20 - 24:14.

⁴¹ Kermode, Exh. No. 20 - 25:3-4.

⁴² Kermode, Exh. No. 20 - 25:4-6.

Commission, only to customers on the Alder Lake water system, as it most equitably matches the surcharge to those who benefit.

C. The Company has Failed to Adequately Document its Chosen Financing.

19 The requirement for contemporaneous documentation of a company's decisions is a logical adjunct to the determination of prudence of those decisions, and to meet the company's burden of proof in a ratemaking proceeding.⁴³ Decisions made on an ad-hoc basis, with little to no structured analysis or documentation, have been found by the Commission to be imprudent.⁴⁴ The documentation by the Company to support its decision is scant.

20 The only written support in the record for the Company's financing is an August 2004 "commitment" letter from BHL Investment dated August, 2004, over two and a half years after DOH approved the Company's engineering report.⁴⁵ On cross-examination, Mr. Dorland stated that there was follow-up correspondence in 2004 with BHL Investment, but the Company did not provide this for the record.⁴⁶ Also, the Company did not demonstrate that it approached other lenders between August, 2004 and March, 2006 to seek a commitment with more favorable terms.

21 Additionally, because the Company has provided conflicting evidence in its testimony, it is unclear from the record whether the 2004 financing arrangement has in fact been "confirmed." Mr. Dorland stated in direct testimony that the Company confirmed the financing prior to the tariff filing.⁴⁷ In response to Staff's data

⁴³ See *WUTC v. Puget Sound Power & Light Company*, Docket Nos. UE-920433, UE- 920499, and UE-921262 (consolidated), 20th Supplemental Order (December 1994).

⁴⁴ *WUTC v. Puget Sound Power & Light Company*, Docket Nos. UE-920433, UE- 920499, 19th Supplemental Order (September 1994)

⁴⁵ Dorland, Exh. No. 76; Dorland, TR. 34:5; Pell, Exh. No. 44.

⁴⁶ Dorland, TR. 34:18-24.

⁴⁷ Dorland, Exh. No. 1 - 8.

request, Mr. Dorland elaborated that communications were “verbal.”⁴⁸ At hearing, Mr. Dorland stated that he did not know if the Company had received verbal assurance that the financing commitment was still in place.⁴⁹ Additionally, no debt instrument has been signed. According to Mr. Dorland, the loan will not be completed, and therefore not effective, until the Commission approves the Company’s proposed tariff.⁵⁰

D. The Company has not Demonstrated that it Adequately Considered Other Private Financing Options.

22 The Company failed to demonstrate a search for alternative private financing. First, the Company did not provide support for Mr. Dorland’s assertion that it considered or approached other commercial lenders, or support for its assertion that commercial lenders would not be interested in the project.⁵¹ The Company did not provide, for the record, examples of correspondence with other lenders. On cross-examination, Mr. Derek Dorland admitted he did not personally conduct the search for financing; Mr. David Dorland, Sr., of Iliad, Inc., was directly involved.⁵² Mr. David Dorland, Sr. did not testify on behalf of Iliad Water. The Company may have limited resources; however, this should not excuse a regulated company from keeping, and providing when necessary, supporting evidence to document its financing decisions.

⁴⁸ Dorland, Exh. No. 76 - 1.

⁴⁹ Dorland, TR. 50:7-11.

⁵⁰ Dorland, TR. 35:22-36:8.

⁵¹ Dorland, TR. 31:7-14; Dorland, Exh. No. 1 - 4:21.

⁵² Dorland, TR. 29:16-30:8.

E. The Company did not Demonstrate that it Properly Considered Government-Sponsored Financing Alternatives, such as a Drinking Water State Revolving Fund Loan.

23 Staff showed that public financing, via a Drinking Water State Revolving Fund (DWSRF) loan, was available to the Company for this project. Staff also showed that this loan would provide considerable cost savings for the customer. The Company did not rebut this showing. The evidence shows that Company management reasonably knew or should have known of the availability to Iliad Water of DWSRF financing. The evidence also shows that with that knowledge, the Company should have chosen DWSRF financing as the least-cost financing. The customers should not now bear the cost of mismanagement and unreasonable delay.

1. A Drinking Water State Revolving Fund loan is the lowest cost, optimal financing method.

24 The purpose of the Drinking Water State Revolving Fund Program (DWSRF) is to provide loans to community and nonprofit non-community water systems for capital improvements that increase public health protection and comply with drinking water regulations.⁵³ In 2006, DWSRF provided, in general, loan terms of an interest rate of 1.5% over twenty years or the life of the project, whichever is less, with a loan fee of 1%.⁵⁴

25 Staff clearly demonstrated that DWSRF financing would result in a significant savings for the Company, and thus the Alder Lake water system customers, particularly when measured against the Company's chosen private financing.⁵⁵

⁵³ Sarver, Exh. No. 64 - 5:13-16.

⁵⁴ Sarver, Exh. No. 71 - 9.

⁵⁵ Kermode, Exh. No. 20 - 18-21; Kermode, Exh. No. 28; Kermode, Exh. No. 29; Kermode, Exh. No. 30.

Staff's analysis computed the present value amounts for both the proposed private financing and the DWSRF financing, assuming 100% of the project was financed.⁵⁶ Staff's analysis assumed, for purposes of calculation, the additional costs that the Company provided to Staff during its investigation that the Company stated it would incur if it selected DWSRF financing.⁵⁷ Staff concurs with the Company that there are likely to be additional costs associated with applying for a DWSRF loan as compared to a private loan.⁵⁸ However, as Staff's analysis shows, these additional costs do not offset the significant interest savings of a DWSRF loan; DWSRF produced the lowest present value, therefore it is the optimal method of financing the project.⁵⁹ In addition, Staff's analysis calculated the average monthly surcharge per customer if the Company had financed with DWSRF, assuming that, like the Company's proposed tariff, 100% of the financing was serviced by a surcharge on 39 customers.⁶⁰ The average surcharge on customers would be approximately \$21.53 per month over 20 years, as compared to \$49.26 per month over the next 10 years, an average savings of \$27.73 per month for customers that choose the surcharge option over the one-time assessment.⁶¹

The Company did not provide an alternative analysis in its direct or rebuttal testimony. Previously, the Company told Staff that there was no formal study or contemporaneous correspondence related to its consideration of DWSRF, but instead the Company merely discussed the issue verbally with its engineer.⁶² Other than an apparent blind reliance upon its engineer's advice, which is not documented, the Company has failed

⁵⁶ Kermode, Exh. No. 20 - 18

⁵⁷ Kermode, Exh. No. 20 - 20:13; Kermode, Exh. No. 27.

⁵⁸ Kermode, Exh. No. 20 - 20:3-6.

⁵⁹ Kermode, Exh. No. 20 - 21:3-4.

⁶⁰ Kermode, Exh. No. 20 - 20:21; Kermode, Exh. No. 30.

⁶¹ Kermode, Exh. No. 20 - 21:8-10; Kermode, Exh. No. 30.

⁶² Kermode, Exh. No. 26.

to demonstrate any basis for a belief that DWSRF was less cost-effective for the Company than the chosen private financing.

2. The Company, Alder Lake water system, and the treatment project are all eligible for a DWSRF loan.

28 Staff clearly showed that Iliad Water, as owner of Alder Lake Water System, and the proposed water chlorination treatment system, are eligible for a DWSRF loan⁶³. This testimony was also un-rebutted by the Company.

29 Iliad Water is eligible for a DWSRF loan. Owners of publicly and privately owned community systems may apply for a loan to assist in financing. A community system primarily serves residences such as Alder Lake.⁶⁴ The Alder Lake water system is classified by Department of Health as a Group A community water system as defined under WAC 246-290-020 and WAC 246-292-010.⁶⁵ Because Iliad Water owns the Alder Lake Water System, it is an eligible entity to apply for a DWSRF loan.⁶⁶ Even if the Company's consulting engineer does not think that, as of June 2006, the Company is eligible for this loan because it is a private for-profit system,⁶⁷ Iliad Water's management should have known how its water systems are defined, and therefore that it met eligibility requirements.

30 The position of the consulting engineer is baffling since evidence provided by DOH shows that the same engineer filed for a DWSRF loan application for a privately owned, Commission regulated Company in 1997.⁶⁸

31 Further, the water chlorination treatment system project is clearly eligible for a DWSRF loan. Iliad Water can apply for a DWSRF loan to assist in financing water system

⁶³ Sarver, Exh. No. 64 - 20:22-23.

⁶⁴ Sarver, Exh. No. 64 - 8:19, Sarver, Exh. No. 64 - 8:2.

⁶⁵ Pell, Exh. No. 30 - 4.

⁶⁶ Sarver, Exh. No. 64 - 20:22-23.

⁶⁷ Dorland, Exh. No. 18 - 8.

⁶⁸ Sarver, Exh. No. 73.

projects that address public health risk and systems that DOH determines are not in compliance with the Safe Drinking Water Act.⁶⁹ DOH prioritizes projects for DWSRF financing based on the types of public health risks that will be addressed by a proposed project; this is also published in guidelines, which remain fairly consistent from year to year.⁷⁰ The Company’s proposed chlorination project would be categorized as a “Risk Category 1” project, concerning “existing or potential microbial contamination.”⁷¹ This is considered the highest public health risk, and therefore has the highest priority for funding.⁷²

3. It is highly likely that DOH would have extended the DWSRF loan if Iliad Water had applied.

32 If Iliad Water had applied for a DWSRF loan for its project, it would have, in all likelihood, received funding. Mr. Sarver testified that all eligible applications scored under “Risk Category 1” would have been funded in prior and current funding cycles, and, prospectively, would likely be funded in the 2007 cycle.⁷³ Through the first ten years of the program, DOH funded all eligible Risk Category 1, 2, and 3 projects, all of which address a direct public health threat to consumers.⁷⁴ In addition, a project that addresses a DOH compliance requirement receives additional “points” in the prioritization process, increasing the likelihood for funding.⁷⁵ No project equivalent to Alder Lake’s proposed project has ever fallen below the funding cutoff for DWSRF, even without “points for non-compliance.”⁷⁶ Since the Alder Lake project is a Risk Category 1 project, and the system is out of compliance with DOH regulations, DWSRF financing was likely if the Company had

⁶⁹ Sarver, Exh. No. 64 - 8:13.

⁷⁰ Sarver, Exh. No. 64 - 16:17-18; Sarver, Exh. No. 64 -17:10-15; Sarver, Exh. No. 64 - 8:16-20.

⁷¹ Sarver, Exh. No. 64 - 17:20 – 18-8.

⁷² Sarver, Exh. No. 64 -17:5-7.

⁷³ Sarver, Exh. No. 64 - 18:10-12.

⁷⁴ Sarver, Exh. No. 64 - 18: 13-15.

⁷⁵ Sarver, Exh. No. 64 - 19:1-7.

⁷⁶ Sarver, Exh. No. 64 - 19: 21-23.

gone through the application process. It is also likely that Iliad Water would make the funding cut if it applied next year.

4. Company management should have known DWSRF financing was available.

33 The Company did not dispute Staff's testimony that the project was eligible for DWSRF funding. The Company asserted that, at some time after it withdrew its filing in 2005, and before its current filing, it asked its engineer to evaluate DWSRF.⁷⁷ The engineer's opinion was that a DWSRF was not available.⁷⁸ In six years, the Company never applied for a DWSRF loan.⁷⁹ The Company did not obtain advice from DOH personnel regarding DWSRF availability.⁸⁰ Iliad Water has not shown that its management adequately considered the availability of DWSRF financing, and has in fact not shown any evidence of a decision-making process beyond vague assertions.

34 Information regarding DWSRF, which could have formed the basis for management analysis, has been publicly available since the project was required by DOH.

35 DWSRF information is available on the DOH web site and others.⁸¹ The DOH provides DWSRF information through special yearly editions of the *Water Tap* newsletter, which is sent to all certified water-works operators and the owners of all eligible water systems, and is available on its Web site.⁸² Iliad Water's President, Derek Dorland, admitted that he has received copies of these newsletters periodically

⁷⁷ Dorland, Exh. No. 1 – 8:15-17.

⁷⁸ Dorland, Exh. No. 1 – 8:16-17.

⁷⁹ Sarver, Exh. No. 64 – 13:18-19.

⁸⁰ Sarver, Exh. No. 64 - 13:19 – 14:6.

⁸¹ Sarver, Exh. No. 64 - 5:22 – 6:1.

⁸² Sarver, Exh. No. 64 - 6:4-15; Sarver Exh. No. 65; Sarver Exh. No. 66; Sarver Exh. No. 67; Sarver Exh. No. 68; Sarver Exh. No. 69; Sarver Exh. No. 70;.

since he became president in 1992.⁸³ The DWSRF guidelines, which describe eligibility and process for obtaining a DWSRF loan, can be downloaded from the Office of Drinking Water Web site.⁸⁴ Staff contacts for DWSRF are also available on the Web site.⁸⁵ Each Spring, DOH and Public Works Board staff jointly conduct about five public workshops statewide to provide information to interested parties about the DWSRF.⁸⁶ Technical assistance is available to water companies of any size regarding all aspects of DWSRF, whether or not they have applied for the loan.⁸⁷

36 The Company did not argue, and did not assert in testimony, that management considered any of the information available regarding DWSRF before its tariff filing, or before selecting its financing. Mr. Dorland states only that the Company asked its engineer to evaluate DWSRF, and the engineer's opinion was that it was not available. The Company provided nothing to document any study by management or by its engineer concerning DWSRF availability or cost-effectiveness. It provided no testimony by its engineer, J.C. McDonnell. However, even if the engineer expressed a verbal opinion, the engineer is not responsible for the Company's management, nor is he an employee of Iliad Water. Staff believes that the regulated Company should have known of the availability and feasibility of a low-interest DWSRF loan. Because DWSRF information is publicly available and DOH has an active outreach program, the conclusion is obvious.

37 Richard Sarver testified that neither he, nor Chris Gagnon with DOH, could

⁸³ Dorland, TR. 47:2-18.

⁸⁴ Sarver, Exh. No. 64 - 6:3.

⁸⁵ Sarver, Exh. No. 64 - 6:2.

⁸⁶ Sarver, Exh. No. 64 - 7:3.

⁸⁷ Sarver, Exh. No. 64 - 8:12-16.

recall being contacted by anyone from Iliad Water. It is also clear that Iliad Water never applied for DWSRF in 2001, 2002, 2003, 2004, 2005, or 2006.⁸⁸ The Company has not demonstrated, or documented, any decision-making process. The Commission must conclude that the Company has failed to meet its burden of showing that it properly managed its financing decision.

V. DEPARTMENT OF HEALTH'S ASSESSMENT OF THE NEED OF THE PROPOSED TREATMENT PLANT TO ADDRESS WATER QUALITY

38 The Company filed the proposed tariff to fund a project ordered by the Department of Health. DOH considers the project important to the health and safety of water users, and therefore Staff supports completion of the project. However, the volume, water quality, and overall health and safety of the Alder Lake system appear adequate at the present time.

A. The Water System's Volume and Water Pressure are Adequate to Meet Demand.

39 The Department of Health (DOH) has monitored the Alder Lake water system since 1986, communicating with the Company on various health issues primarily with Dave Dorland, Sr. of Iliad, Inc.⁸⁹ It was in December 2000 when Alder Lake water system experienced a water outage caused by dangerously low water levels in the nearby Alder Lake which created the need for the required chlorination project.⁹⁰ The Company addressed the low water level problem by deepening its primary well and, according to the Department of Health, the rise of Alder Lake to its current, normal operating level suggests that the supply of water currently meets demand.⁹¹ DOH is not aware of changes in

⁸⁸ Sarver, Exh. No. 64 - 13:13-15.

⁸⁹ Pell, Exh. No. 32 - 2:7-23, and 5:17.

⁹⁰ Pell, Exh. No. 32 - 5:22-9:9.

⁹¹ Pell, Exh. No. 32 - 19:14-16.

customer demand or pump performance to suggest that the volume and pressure of the system are inadequate. In addition, a Tacoma/Pierce County Department of Health sanitary survey on December 28, 2005, reaffirmed the need to install the permanent disinfection system, but did not highlight other concerns regarding volume and water pressure.⁹²

B. Construction of the Chlorination Treatment Plant is “Important but not Urgent.”

40 According to Mr. Pell, there is a risk potential for biological contaminants to enter the water system, because the wells on the Alder Lake system have been in hydraulic connection to Alder Lake.⁹³ However, as Mr. Pell testified, there have been no test results indicating the presence of contaminants in the water system.⁹⁴ Mr. Pell clearly stated that the installation of the treatment plant at the Alder Lake water system is important, it is not urgent.⁹⁵

41 Staff supports the Department of Health’s directive to install the chlorination treatment system.⁹⁶ It is important to the health and safety of the customers on the system, because it would provide a barrier to potential health risks to the system.⁹⁷ However, Staff does not believe that the Commission should approve a tariff that allows recovery of a project at any cost simply because the project is ordered by DOH. The Company has not met its burden to establish that the tariff revision is fair, just, and reasonable. The rejection of this tariff filing would require the Company to find reasonable financing to build the system, and it would not be detrimental to the health and safety of its customers.

⁹² Pell, Exh. No. 63.

⁹³ Pell, Exh. No. 32 - 20:3-4.

⁹⁴ Pell, Exh. No. 32 - 20:5-6.

⁹⁵ Pell, Exh. No. 32 - 20:2-3.

⁹⁶ Kermode, TR. 26:1-3.

⁹⁷ Kermode, TR. 26:17, and 20:2-20.

C. The Company's Delays in Constructing the Treatment System Raised Significant Concerns with the Department of Health.

42 Since Iliad Water's initial filing on March 1, 2006, the Department of Health has designated the Alder Lake water system as a "significant non-complier" because disinfection treatment was not provided in a timely manner.⁹⁸ Accordingly, DOH recently issued a Departmental Order on September 22, 2006, requiring Iliad Water to install disinfection treatment by March 30, 2007.⁹⁹ This represents the latest in a series of efforts by DOH to seek compliance with its directives, documented in Mr. Pell's testimony and exhibits. Although the Company, in direct testimony, attempted to provide a brief explanation to the Commission of its own actions, the explanation lacks verifiable detail, and the record shows that DOH has been unimpressed with the Company's efforts. If the Company is indeed "anxious to move forward" on the project, as its president claimed,¹⁰⁰ the Company's past efforts (or lack thereof) do not match its words.

43 First, although Iliad Water initially took steps towards addressing the DOH requirement in 2001, such as submitting an engineering design for treatment, it failed to provide to DOH a schedule for completion when requested.¹⁰¹ Once approved, DOH approval was good for two years, which is the normal time that DOH expects a company to define a reasonable schedule, obtain financing, and complete a project.¹⁰² Mr. Pell testified that a duration greater than two years for a construction schedule is a long period of time,

⁹⁸ Pell, Exh. 30 - 1, Pell, TR. 17: 6-22.

⁹⁹ Pell, TR. 30.

¹⁰⁰ Dorland, Exh. No. 16 - 3:14.

¹⁰¹ Pell, Exh. No. 32 - 10:11 to 12:8, and 14:22 to 16:19; Exh. No. 36, Exh. No. 37.

¹⁰² Pell, Exh. No. 32 - 12:10 to 13:20.

but it is not unheard of.¹⁰³ Accordingly, a company may seek an approval extension after the two years expires.¹⁰⁴ Iliad Water has not sought an approval extension.¹⁰⁵

44 Second, when delays became apparent, DOH wrote to Dave Dorland, Sr. requesting that he sign a Bilateral Compliance Agreement for the construction of the treatment system and that he define a schedule, which was consistent with DOH practice.¹⁰⁶ The agreement was not signed and no schedule was provided.

45 Third, as DOH memoranda from 2003 shows, the Company told DOH Staff in 2003 that it had submitted paperwork to the UTC or was working with the UTC on a tariff filing; however, the first filing before the commission was in late 2004 and, on cross examination, Mr. Kermode was unfamiliar with these.¹⁰⁷ The Company did not provide an explanation in rebuttal.

46 Staff believes that DOH would not have designated Iliad Water as a “significant non-complier” and issued its most recent departmental order if DOH had ultimately determined that the Company’s delays were reasonable and warranted.

VI. PROJECT COST

47 The Company documented its current proposed costs for the project, including construction bids from three companies, its engineering services contract, and a calculation of capital improvements.¹⁰⁸ The Company’s estimate totals \$132,795, when legal costs are added.¹⁰⁹ Staff believes that the Commission must reject the proposed tariff filing.

However, if the Commission does approve the filing, Staff proposes an adjustment to the

¹⁰³ Pell, TR. 80:12-14.

¹⁰⁴ Pell, Exh. No. 32 - 12:12-13; Pell, TR. 82:12 – 83:18.

¹⁰⁵ Pell, Exh. No. 32 - 13:8.

¹⁰⁶ Pell, Exh. No. 32 - 13:17-21, and 15:13-18; Pell, Exh. No. 48.

¹⁰⁷ See Kermode, TR. - 70:20-73:3.

¹⁰⁸ Dorland, Exh. No. 14 - 3-16.

¹⁰⁹ Dorland, Exh. No. 14 – 13; Kermode, Exh. No. 20:15-19.

Company's proposed costs, to properly remove those costs not associated with the chlorination project.

A. The Construction Bid.

48 Of the three bids received prior to the Company's filing, Iliad, Inc., provided the lowest bid to construct the treatment plant, \$108,164.¹¹⁰ Derek Dorland stated on cross-examination that Iliad, Inc. was also in charge of receiving bids.¹¹¹ He also stated that Iliad, Inc. is run by Derek Dorland's father, Dave Dorland, Sr.,¹¹² and has a contract with Iliad Water for the maintenance of Alder Lake water system.¹¹³ Despite the apparently close relationship of these separate entities and the fact that the winning bidder controlled the bidding process, Staff does not believe there is anything improper with the bid amount or the Company's choice to select Iliad, Inc.¹¹⁴ Mr. Kermode testified that, because of the low number of bids, his confidence in the bid amount is lower than if the Company had received a larger number of bids.¹¹⁵ Without additional information or a larger bid pool, Staff must accept that this low bid is the lowest construction cost that Iliad Water obtained when it solicited bids.

49 This most recent bid does, however, represent a 59% increase from the low bid demonstrated in the Company's 2004 filing.¹¹⁶ During cross-examination of Staff's witness, the Company was unable to show that there were additional components to this re-bid that were not included in 2004. The Company referred to an Engineering Report dated

¹¹⁰ Dorland, Exh. No.14 - 7-12, Dorland, TR. 28:1-3.

¹¹¹ Dorland, TR. 28:9-23.

¹¹² Dorland, TR. 37:22, and 39:7.

¹¹³ Dorland, TR. 28:13, and 39:15.

¹¹⁴ Kermode, TR. 57:9-20.

¹¹⁵ Kermode, TR. 57:13-16.

¹¹⁶ Kermode, Exh. No. 20 - 11:8-14.

December 23, 2004 for the first time on cross examination.¹¹⁷

50 In addition, there is nothing in the record indicating that the unidentified change (or changes) in the revised engineering report required the Company to resubmit the revised engineering design for DOH approval. Mr. Pell testified that the only design approved by DOH was in January, 2002, prior to the 2004 filing.¹¹⁸ Absent any testimony to the contrary, which is lacking in this case, the Commission must assume any changes represented by Exhibit 77 are immaterial or not related to the required chlorination project since the Company did not resubmit the modifications to DOH for its approval. What is clear, however, is that the 2004 low bid included the cost of 35 water service connections that is not included in the new bid.¹¹⁹ The Company did not provide any clear explanation for the dramatic increase in costs between the bids in 2004 and the bids in 2005, although the Company may have some explanation for differences.¹²⁰

B. Other Appropriate Project Costs to be Recovered.

51 In addition to the cost related to the construction bid, Staff concludes that the Company's projected cost appropriately includes \$2,765 for the engineer's inspection and approval fees, which are directly associated with the future improvements to the uncompleted chlorination treatment system.¹²¹ Likewise, it is appropriate to include legal costs associated with the Commission's approval of the tariff, estimated by the Company to be \$2,600.¹²² Finally, financing and underwriter fees are also appropriate expenditures because they are directly associated with the future improvements to the system.¹²³

¹¹⁷ Kermode, TR. 65:5 – 68:8.

¹¹⁸ Pell, Exh. No. 32 - 12:1-8.

¹¹⁹ Kermode, Exh. No. 20 - 11:3-14; Exh. No. 4 - 1; Dorland, TR. 42:21-24.

¹²⁰ Dorland, TR. 42:5-20.

¹²¹ Dorland, Exh. No. 14 - 13-16; Kermode, Exh. No. 20 - 27:6-11.

¹²² Kermode, Exh. No. 20 - 12:15-19, and 27:6-11.

¹²³ Dorland, Exh. No. 14 - 13; Exh. No. 20 - 27:6-11.

C. Staff's Adjustment of Recoverable Project Costs.

52 Staff believes that, if the Commission accepts Iliad Water's proposed financing, the financing should be limited to only the costs associated with future improvements to its water system. Therefore, Staff would exclude three items that the Company shows in its exhibit labeled "Alderlake Water Company [sic] Capital Improvements": "Engineering," "DOH Review Fee" and "MPA Tests."¹²⁴ These costs total \$11,896, and, despite the notation on the Company's exhibit, have never been approved by Staff or the Commission.¹²⁵ The Company should have already capitalized these costs over the treatment plant's useful life, since they have already been incurred and are already financed through other invested capital. The Company may recover these costs as normal investment over the life of the asset in the Company's water service rate, but the Company should not include them in a surcharge or special assessment.¹²⁶

53 It should be noted that Staff has errors in its computation of a total adjusted project cost of \$125,183, as calculated in Exh. No. 31, which were discovered after hearing. The total cost amount shown on this exhibit erroneously adds back the engineering costs which Staff considers to be costs incurred in prior periods. In addition, the exhibit's recalculated financing costs include the prior engineering costs in its computation.¹²⁷ If the engineering costs are properly removed from the Company's total projected capital costs of \$132,795, assuming for the sake of argument that financing costs will be comparable to the Company's estimate of \$7,370, the total Staff supported cost of the project is \$120,899. This results in a

¹²⁴ Kermode, Exh. No.14 – 13; Exh. No. 20 - 12:3-7.

¹²⁵ Kermode, Exh. No. 20 - 12:9-12.

¹²⁶ Kermode, Exh. No. 20 - 12:22 to 13:5.

¹²⁷ Kermode, Exh. No. 31.

pro rata assessment of \$3,099. This calculation is consistent with Staff's testimony that costs not related to future improvements to the Company's water system should be removed.

D. If Approved, the Surcharge should be Collected from Customers after the Treatment Plant is Constructed.

54 Iliad Water proposes to either collect a one-time assessment within 30 days of the effective date of the tariff, or to collect a monthly surcharge from the customers not paying the assessment immediately upon the next billing cycle.¹²⁸ Staff believes that the Company should collect the one-time assessment or surcharge only after the treatment plant is constructed and placed into service. As noted earlier, WAC 480-110-455 does allow water companies to obtain a surcharge for a reserve account for future plant. RCW 80.04.250 requires water service company property to be "used and useful for service" before the Commission can place that plant in rate base. The Commission has rarely allowed recovery of plant not yet used and useful, and has expressed "judicial reluctance" to include CWIP in rate base, because it, by definition, is not used and useful in a utility's operations.¹²⁹ Staff has previously taken the position that water utility plant that is under construction should not be included in rate base to prevent its early recovery in current rates.

55 In this case, construction of the chlorination treatment system has not begun, nor has the Company provided a timeline for completion of the project. To say the least, it is unclear when the plant will be fully constructed let alone placed into service for the benefit of water users. If the assessment or surcharge is collected immediately, the Company would begin recovery of the cost of "CWIP" even before the plant is constructed, let alone put into service to become used and useful. If the tariff filing is approved, Staff recommends that the Commission order the surcharge or assessment collected only upon a showing by the

¹²⁸ Kermode, Exh. No. 20 - 16:15-17.

¹²⁹ *WUTC v. Olympic Pipe Line Co.*, Docket No. TO-011472, 20th Supplemental Order (9/27/2002), at 89.

Company that the water-chlorination treatment plant is constructed and in service. This would be consistent with prior Commission practice and appropriate regulations.

E. The Commission should not Limit the Surcharge to the Cost of Construction in 2003-2004 as the Company Proposed.

56 The Company's witness proposed in rebuttal testimony that the cost may be limited to \$118,000 "if the Commission feels it acted improperly in looking at the alternatives that were available."¹³⁰ Mr. Dorland states, "this is approximately the cost that the customers would have borne if the improvements were constructed in the 2003-2004 timeframe," and so the Company would bear the costs of a delay in time.¹³¹ Staff recommends that the Commission not adopt this remedy. Staff's analysis shows that this figure is inaccurate.¹³² The Company did not demonstrate that this cost would have been approved by the Commission as accurately related to the building of the project. The Company states that the cost of the project was estimated by its engineer at \$116,700 in 2004, and when, other costs such as legal, financing, and underwriting fees were included, the cost came to \$125,972.¹³³ Staff's adjusted project cost from the 2004 filing was \$94,805, after appropriately removing from recovery several costs already invested by the Company or not related to the required disinfection project.¹³⁴ At the time, Staff and the Company had not yet reached agreement on costs. However, if the Commission were to accept the Company's proposal to "turn back the clock" to the earlier filing, which Staff does not support, the adjustment properly computed this cost.

57 In addition, there is no evidence that the 2003-2004 timeframe" is the acceptable

¹³⁰ Dorland, Exh. No. 19 - 3:16-21.

¹³¹ *Id.*

¹³² Kermodé, Exh. No. 24 – line 26.

¹³³ Dorland, Exh. No. 1 - 5:15-18, Dorland, Exh. No. 9, at 1 [In 2004, the Company estimated total capital costs of \$127,374, shown in Exh. No. 23. Staff made its adjustments at the time (shown in Exh. No. 25) to this computation.]

¹³⁴ Kermodé, Exh. No. 251 Kermodé, Exh. No. 20 - 9:1-7.

timeframe for consideration taking into account the project was first approved for construction in January 2002.¹³⁵ Notwithstanding the inappropriate use of the later timeframe, the evidence does not support that the Company actually sought to construct the project in 2003-2004 timeframe, rendering the Company's proposal purely hypothetical. The Company received its construction bids in August 2004 and made its first filing to the Commission on October 11, 2004, in UW-041830.¹³⁶ For the Commission to accept the Company's premise would be to base a decision of the merits of a filing that was withdrawn. Docket UW-041830 is not at issue here.

VII. CONCLUSION

58 Iliad Water failed to meet its burden of establishing that the proposed tariff increase is fair, just, reasonable, and sufficient. Accordingly, the Commission should reject the Company's filing. While Staff supports DOH's requirement that Iliad Water install a water chlorination treatment system on its Alder Lake water system, Staff concludes that the proposed financing is imprudent. It would present a high-cost, unreasonable, burden upon Alder Lake customers. The Company did not properly consider, nor apply for, a low-interest, DWSRF loan. This financing clearly would have resulted in significant cost savings. The Company's chosen financing, and its failure to pursue DWSRF, demonstrates mismanagement. Alder Lake customers should not bear the cost of or responsibility for this mismanagement. The Company may still apply for DWSRF financing in the future, build the plant, and re-file with the Commission.

59 Because the Company has asked the Commission to approve a surcharge to service anticipated, but unsecured, financing, to pay for a plant that has yet to be constructed or even

¹³⁵ Pell, Exh. No. 32 - 12:1-8.

¹³⁶ Dorland, Exh. No. 4.

has a timetable for construction, an order rejecting Iliad Water's tariff filing will have no effect on the Company's finances.

60 Accordingly, the Commission should reject the Iliad Water's proposed tariff.

DATED this 29th day of November, 2006.

Respectfully submitted,

ROB MCKENNA
Attorney General

MICHAEL A. FASSIO
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff