

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

vs.

ILIAD WATER SERVICES, INC.

Respondent.

DOCKET NO. UW-060343

COMMISSION STAFF'S  
RESPONSE TO ILIAD WATER  
SERVICES' MOTION TO FILE  
LATE FILED EXHIBIT

1 Pursuant to WAC 480-07-375(d)(4), staff of the Washington Utilities and Transportation Commission (Staff) submits this response in opposition to Iliad Water Services, Inc.'s (Company) Motion to File Late Filed Exhibit.

2 On December 27, 2006, the Company submitted a Motion to File Late Filed Exhibit, with an exhibit attached. The Company's motion is, in substance and effect, a Motion to Reopen the Record, which is permitted only in limited circumstances by WAC 480-07-830. WAC 480-07-830 provides, in part, that "the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause." The Company's motion comes well after the record has been closed in this case, and nearly a month after filing of simultaneous post-hearing briefs on that record. An initial order by the Commission is imminent. Staff opposes the Company's motion. The Company has failed to show that the proposed exhibit is essential to the outcome of this proceeding, and has failed to show that the evidence was unavailable and not reasonably discoverable with due diligence at the time of the hearing. Further, Staff does not believe

that admitting this evidence on the basis of the Company's perceptions of Staff's post-hearing brief, or in response to any arguments made on brief, is good and sufficient cause to grant the motion and reopen the record to accept the new evidence.

3           First, the Company has not asserted in its motion that the evidence it seeks to admit is essential to a decision, and, in fact, concedes that it does *not* address "an earthshaking issue as far as the hearing is concerned." Staff agrees with this statement. The closed record reflects that the individual(s) and the corporation, about which the proposed evidence apparently relates, are not parties in this case, nor did they present witness testimony before the Commission. Rather, the Company vaguely asserts that "an individual's reputation is at stake." However, Staff does not believe that any individual's reputation, least of all that of a person who did not appear before the Commission, is an issue set to be decided in this proceeding. To the extent Company may view this as an issue, it had the opportunity to develop the record previously.

4           Second, the Company has not demonstrated that the proposed evidence was unavailable and not reasonably discoverable with due diligence at the time of the hearing. In fact, nowhere in the Company's motion is this argument made. The Company's motion refers to statements made in direct testimony by Iliad Water, and also to an exhibit filed by Staff in response testimony. Considering the schedule provided for Company rebuttal, Staff believes that the Company had ample opportunity to rebut Staff's response testimony on this issue, and to submit the proposed exhibit with rebuttal. Since Staff's witnesses appeared at hearing, the Company also had the opportunity to move to admit its proposed exhibit in conjunction with cross examination of Staff's witness on this issue. At no time until now has the Company sought to admit this exhibit, and there is nothing to suggest that the

evidence was unavailable or not reasonably discoverable at time of hearing.

5           Third, the Company's reference in its motion to Staff's brief is not a sufficient reason for reopening the record to admit new evidence. The record is closed, briefs have been submitted on that record, and an initial order is pending. The procedural schedule, as agreed upon by both parties, called for a single, simultaneous round of post-hearing briefs, to be followed by the Commission's initial order. Thus, the parties were given the opportunity to make arguments in the briefs, and are entitled to have those briefs considered, on their face, along with the evidentiary record. It would not be appropriate at this time for the parties to comment upon the substance or merits of the closed record or the briefs filed. Staff believes it would not be good and sufficient cause to grant the Company's motion based upon the Company's apparent perception, stated in its motion, that Staff's brief "implied" something.

6           The Commission should therefore deny the Company's Motion to File a Late Filed Exhibit. If, however, the Commission decides to grant the Company's motion, Staff would request the opportunity to respond to any new evidence received into the record, in accordance with WAC 480-07-830.

DATED this 3<sup>rd</sup> day of January, 2007.

Respectfully submitted,

ROB MCKENNA  
Attorney General

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