

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

ILIAD WATER SERVICES, INC.,

Respondent.

DOCKET NO. UW-060343

PETITION FOR REVIEW AND  
CLARIFICATION OF  
INTERLOCUTORY ORDER 04

**I. INTRODUCTION**

1 Commission Staff respectfully requests review of the Commission’s Interlocutory  
Order 04.

2 As set out in WAC 480-07-810 (“Interlocutory Orders”), interlocutory review is  
discretionary with the Commission. Staff believes that review is necessary because the  
Interlocutory Order raises several issues not previously litigated in this case or addressed in  
the initial order, and directs a new Staff investigation that requires clarification. For the  
reasons explained below, review is necessary to prevent substantial prejudice to parties that  
would not be remediated by post-hearing review, and review could save the Commission  
and the parties substantial effort and expense. Also, Staff believes that other factors are  
present that outweigh the costs in time and delay in exercising review. WAC 480-07-  
810(2).

## II. ARGUMENT

3           Staff requests review of the Order's May 1, 2007, deadline, requests review and  
clarification of the Staff investigation directed in the Order, and requests review of the  
decision to issue an interlocutory rather than a final order.

**A.     Staff Requests Review of the May 1, 2007, Deadline for Resolution of  
Issues Raised in the Interlocutory Order.**

4           Staff respectfully disagrees that May 1, 2007, is a determinative deadline for  
resolving questions concerning potential funding of the Department of Health-required  
project via the Drinking Water State Revolving Fund (DWSRF). Staff is concerned because  
the Order requires a Staff investigation and report, due May 1, 2007, which is designed to  
coincide with the "application period" for DWSRF.<sup>1</sup> Reliance upon May 2007 as a funding  
date is misplaced. In fact, Iliad Water Service, Inc. ("Iliad Water" or Company) will not  
find out if it will obtain DWSRF financing until sometime in 2008, nor will the Commission  
or Staff.<sup>2</sup> DWSRF timelines for the 2007 loan cycle include, but are not limited to, the  
following:

May 2007	Applications due <sup>3</sup> ;
Sept. 2007	Applicants advised of where their projects lie on the draft funding list <sup>4</sup> ;
Sept. 2007 – Feb. 2008	Public Works Board conducts financial review and approves final project funding list <sup>5</sup> ;
March or April 2008	Funds Available upon loan contract execution. <sup>6</sup> Construction begins?

---

<sup>1</sup> Interlocutory Order, footnote 5.

<sup>2</sup> Iliad's Petition for Review states "the next cycle for funding does not occur *until* May, 2007 (emphasis added). Iliad Petition for Review, 3:11. It also states "the next round of funding is not available until May, 2007." Iliad Petition for Review, 4:14. This language may be confused to mean actual funding will be available in May. That is not the case, as the record shows. A May deadline for DWSRF application by a company merely begins the process. The Commission may have misinterpreted this.

<sup>3</sup> Sarver, Exh. No. 64 - 14:14-21.

<sup>4</sup> Sarver, Exh. No. 64 - 10:3-4.

<sup>5</sup> Sarver, Exh. No. 64 - 10:10-15.

<sup>6</sup> Sarver, Exh. No. 64 - 14:14-21

The DWSRF application process is described in further detail in Staff's Exhibit 71.

5 Commission acceptance of Iliad Water's post-Initial Order, non-litigated proposal to suspend activity in this docket pending an application for funding with the DWSRF,<sup>7</sup> means that the docket will likely remain open with virtually no activity until well into 2008, more than a year from now. As is explained in more detail below, the cost of a DWSRF-financed project cannot be determined independently until that process is resolved. If the Staff investigation is to coincide with this open docket, Staff requests that the Commission consider a timeline more appropriate and consistent with the normal DWSRF application and funding process.

6 Alternatively, Staff suggests a more practical approach would be 1) for the Commission to issue a final order closing the docket and order an investigation by Staff in a separate docket, since the tariff filing at issue for hearing has been rejected by the Commission; and 2) at such time as the Public Works Board ("PWB") grants DWSRF financing to the Company, then the Staff, the PWB and the Company will work together to develop a surcharge consistent with the requirements of the PWB and the results of the Staff investigation.

7 Additionally, Staff is concerned that the May 1, 2007, deadline for a Staff investigation presents significant practical burdens on Staff resources at present. Commission Staff analyst Danny Kermode conducted the audit in the rate case. Staff considers him to be the most knowledgeable person on this case and the obvious choice to respond to the Commission. However, Mr. Kermode's responsibilities in the PacifiCorp case (UE-61546) may conflict with the timeline the Commission has set. Mr. Kermode is a

---

<sup>7</sup> Iliad Petition for Review, p. 4:12-18. See also Interlocutory Order 04, Finding of Fact (18) ¶50.

witness and filed testimony in the PacifiCorp case. That case is scheduled for hearing on March 27, 2007, and briefs are due April 23, 2007.

**B. Staff Requests Review of the Order Directing the Staff Investigation, and Clarification of the Terms used to Define the Investigation.**

8 Staff requests review of the Order’s directive for a Staff investigation, and requests clarification of the investigation, including terminology used. Below are the main issues that warrant review, identified by Staff in the short time allotted for this petition. This list may not be exhaustive. As a general matter, Staff does not oppose undertaking an investigation into the Company, or other companies, by separate docket, if so directed by the Commission.

9 Staff also believes that, when a management or operations audit/investigation is directed, terms of art should be clearly defined to avoid confusion.<sup>8</sup> As explained further below, some terms used by the Commission concerning the ordered investigation are unclear to Staff.

*1. Financial Health and Management are in Question.*

10 The Commission alertly states that “the Company’s financial health and management are in question and that further questions must be answered before we can approve a subsequent tariff.”<sup>9</sup> Staff agrees, but suggests that the proper time to review and answer those questions in preparation for the new tariff filing (which may occur sometime in summer or fall 2008), rather than as a post-mortem to a tariff filing that has been denied.

---

<sup>8</sup> See National Association of Regulatory Utility Commissioners, *Management Audit Manual*, Vol. 1. Page 6, 11/28/1988. [“Defining the term ‘audit’ is much easier than defining the various types of audits. The most commonly recognized types of auditing are internal auditing and financial auditing, both of which have long histories, well defined and documented principles and procedures, and large groups of practicing professionals. However, other types such as “operational,” “management,” “functional,” “performance,” and comprehensive” audits are less clear and may be described or defined differently, depending on the literature consulted. It is important when using these terms to carefully define what is meant or intended in order to avoid confusion.”]

<sup>9</sup> Interlocutory Order, ¶ 6.

11 In Paragraph 53 of the Order, the Commission directs Staff to report with reasonable accuracy “(4) a financial and management plan.” Staff requests the Commission to clarify this direction with respect to the directed “management plan.” Staff consulted the National Association of Regulatory Utility Commissioners, *Management Audit Manuals*, Vols. 1 – III, which notes that:

“As the scope of audits expanded beyond accounting matters, the professional expertise required for auditing grew beyond the discipline of accounting into other professions as well. Today (1988), leading management consulting organizations utilize a wide range of professionals such as engineers, economists, financial analysts, personnel and management analysts and any others required to perform the more comprehensive types of audits.”

12 Commission Staff has not previously conducted a management audit. Although the Commission is well served by its Staff of experienced financial auditors, and Staff has expertise in a wide range of areas, Staff personnel do not have professional expertise in “management audits.”

2. *Potential Need for Company Rate Relief.*

13 At Paragraph 50, the Commission states that Staff should be directed to investigate whether the Company needs rate relief. This is also alluded to in Paragraph 53, subpart (4). Staff requests clarification if the Commission intends that Staff, in effect, prepare a rate case for the Company by providing a financial analysis of rates, including proposed rate design. Staff believes a Staff investigation to determine rate relief inappropriately shifts the Company’s burden of demonstrating the need for rates to the Staff. Staff suggests that, alternatively, the Commission consider simply ordering the Company to file a rate case. Staff believes that doing so would be more appropriate and consistent with the normal regulatory process and does not set a precedent. That is, the Company prepares its rate case, and then Staff performs an audit and review of the proposed rates at that time.

3. *Surcharge Rate Should be Calculated and Spread Among Customers.*

14 Also, at Paragraph 50 of the Order, the Commission states that Staff is directed to investigate “how a surcharge rate should be calculated and spread among customers.” Staff assumes that this statement refers to a surcharge rate to pay for the proposed treatment project. Although Staff understands the Commission’s concern, Staff believes that any analysis of a surcharge is premature; only when the DWSRF process is essentially complete (sometime in the Spring of 2008) will the appropriate project cost, loan principal, interest rate and term be known. Therefore, until an actual surcharge amount can be computed, Staff’s analysis will concern hypothetical amounts, which Staff believes would later require re-review and re-analysis once the DWSRF process is complete.

4. *The Cost of the Proposed Facility.*

15 At Paragraph 53, the Commission directs Staff to institute an investigation to determine with reasonable accuracy “the cost of the proposed facility.” Staff believes this also inappropriately shifts the Company’s burden to demonstrate costs of the chlorination plant. In addition, and perhaps more importantly, any cost that Staff computes is irrelevant in both the current docket and for any future amount funded by the DWSRF. It is irrelevant to the current docket because the tariff for current financing has been rejected, and it is irrelevant as to the amount financed by DWSRF because the PWB requires the Company to obtain competitive sealed bids for the project,<sup>10</sup> and it relies upon those bids in its determination, not upon costs separately analyzed or provided by Staff.

16 Because the Water Staff lacks the expertise to make an independent determination or estimate of the project’s actual costs, Staff foresees the need to use either a UTC pipeline

---

<sup>10</sup> Sarver, Exhibit 71, p. 31.

engineer or hire an outside engineering consultant if the Commission requires that Staff undertake this task.

17           Staff believes that the cost of the project recovered through a surcharge is more appropriately resolved by the Company filing for a new surcharge in a new docket. It is Staff's position that an independent Staff investigation into the cost of the project is premature and would likely not only be extraneous but also ultimately moot.

5.       *Proper Allocation of Cost.*

18           At Paragraph 53, the Commission directs Staff to investigate the "proper allocation of cost among investment, loans and advances for ratepayer reimbursement through surcharges." Staff requests clarification regarding this instruction. Staff assumes that the Commission's reference to "proper allocation of cost" addresses what the optimal financing mix would be to finance the new treatment system. If this understanding is correct, then Staff respectfully argues that any investigation would be merely a study of a hypothetical capital structure and would serve little practical purpose since the Company is constrained to finance the treatment project either through DWSRF debt or customer up-front advances. A "proper allocation" of financing methods is irrelevant under such a constraint. Staff believes this investigation would be extraneous and requests that it be reconsidered.

6.       *Clarification of "Advances for Ratepayer Reimbursement Through Surcharges."*

19           At Paragraph 53, the Commission uses the terminology "advances for ratepayer reimbursement through surcharges." Staff is unaware of the terminology or the dynamics described in the wording. Staff asks for clarification of the use of the terminology or the source that refers to it.

7. *Company Viability.*

20 At Paragraph 53, the Commission orders an investigation into “whether the Company is viable” given several factors identified by the Commission. Staff suggests that the determination of Company viability will be addressed in the DWSRF process, in conjunction with review by the PWB. The Company, Staff and the PWB will work together to assure that the Company is financially able to service the requested loan.<sup>11</sup> Staff’s regulatory role includes working with the Company and the PWB to design rates that allow viability. Staff respectfully requests that the Commission reconsider this requirement as it is redundant and premature to work that will be done in the normal DWSRF process.<sup>12</sup>

8. *Water System Relationships.*

21 At Paragraph 53, the Commission orders an investigation to determine, with reasonable accuracy, “the proper relationship between the Alder Lake System and other Iliad systems . . . as a step in determining the proper allocation of project costs and ongoing operations to ratepayers.” Staff requests clarification of what specifically the Commission is requiring. Iliad Water is a separate, regulated company, owned by Mr. Derek Dorland, and includes three water systems.<sup>13</sup> As correctly stated in the Initial Order, Iliad Water contracts with Iliad, Inc. for maintenance services on its systems.<sup>14</sup> There is no evidence in the record that Mr. Dorland has ownership in Iliad, Inc. or that the two corporations share a corporate structure.<sup>15</sup>

22 If the Commission is requesting review of the operations of Iliad, Inc., an unregulated management company, and its relationship to other water systems it manages,

---

<sup>11</sup> See, i.e., Sarver, Exh. 64, 8:12-16; Exh. 64 10:8-22 – 11:5; Exh. 64 20:7-10; Exh. 64 21:4-11.

<sup>12</sup> Part of the DWSRF process requires the Company to prepare and submit a Small System Management Plan. See Ex. 72, Sarver Exh. 64, 11:7 – 13:5. Pell, Ex. 32: 21:1 – 22:3

<sup>13</sup> See ie. Kermode Ex. 20. 3:11-19, Dorland testimony 38:7-14.

<sup>14</sup> Initial Order, ¶ 44.

<sup>15</sup> See, ie. Dorland, TR. - 39:7-20.



Staff would respectfully suggest it is outside the scope of this docket – a surcharge request by Iliad Water Service. A separate investigation may be ordered under another docket. The Commission may order Staff to begin an investigation into the jurisdiction over the “unified management”<sup>16</sup> of Iliad, Inc. but it is, again, not relevant to this docket. Staff requests that this portion of the order be reconsidered and eliminated.

9. *Clarification of Commission’s Acceptance of Iliad Water’s Proposal.*

23 In its Petition for Review and Statement of Position, Iliad Water proposed, among other things, suspension of activity in this docket pending its application for DWSRF – a position not part of the Company’s case at hearing or on brief, but only on its petition for review of the Initial Order.<sup>17</sup> Staff had no opportunity to respond to the new proposal.

24 At Paragraph 1 of the Interlocutory Order, the Commission states that “we accept the Company’s suggestion” to defer further consideration of a surcharge tariff pending efforts to secure a subsidized-interest loan. Further, in the same paragraph, the Commission states “consistent with the Company’s suggestion we attempt to fashion an agreed longer-term solution. . . .”<sup>18</sup>

25 Although the Commission accepted the Company’s proposal, the Commission does not clearly state its position on the Company’s complete proposal, and it could be construed that the Commission accepted the entire Company proposal. Staff respectfully requests clarification of the extent of the Commission’s acceptance of the Company’s proposal.

26 For example, Staff believes it is important that the Commission note that, in addition to requesting that the docket remain open “until the next round of financing. . .,” Iliad Water’s proposal appears to request that the any new surcharge be based on the project costs

---

<sup>16</sup> Interlocutory Order, ¶ 25.

<sup>17</sup> Iliad Water Petition For Review, 4:1-5:7.

<sup>18</sup> Interlocutory Order, ¶ 1.

provided in the current docket.<sup>19</sup> Such a proposal, if correct, conflicts with the bidding process required by the DWSRF.<sup>20</sup> It would not be in the public interest to bypass DWSRF procedures as well as the procedures and safeguards developed by the PWB.

27           Staff also seeks clarification related to the Commission's position on Iliad Water's proposal that, if Iliad Water does not qualify for DWSRF, the commercial financing originally proposed will be allowed to go into effect and the surcharge calculated accordingly.<sup>21</sup>

**C.     Staff Requests Review of the Order to Hold the Docket Open and Defer Action, and Requests that a Final Order be Issued.**

28           Staff believes that there is merit in the Commission's goal to reach long-term financial and management solutions for Iliad Water. That is in the best interests of all concerned. However, Staff believes these questions are best addressed by directing a separate Staff investigation in a new docket and also by reviewing and auditing the Company's tariff filings. The issues that were the subject of this docket have been resolved. The case before the Commission was whether the surcharge filed by the Company is fair, just, reasonable, and sufficient. With the ALJ holding that the Company failed to meet that burden, and the Commission affirming that holding, the matter has been resolved and issuance of a final order is appropriate. Keeping the docket open indefinitely raises a number of concerns. First, it is unclear by the Order precisely what action the Commission is deferring, now that it has rejected the filing. Second, it is unclear from the Order what, if any, further action is required by the Company to satisfy the docket. Third, suspending the Order indefinitely raises the unique situation that a rate case docket suspended on March 29,

---

<sup>19</sup> Iliad Water Petition for Review, 4:16-18.

<sup>20</sup> *See, i.e.* Sarver, Exh. No. 71 at 31.

<sup>21</sup> Iliad Petition for Review, 5:1-3.

2006, will not be resolved until some time in 2008.<sup>22</sup> Fourth, and perhaps most importantly for Staff in light of its concerns above regarding the investigation, an open docket prevents Staff from consulting with the Commission as to the intent, extent and means of conducting a new investigation that is part of a suspended docket.

29           Staff suggests that closure of the current docket would remove the ex parte wall currently in place and result in a more productive, efficient and successful Staff investigation, which would be in the best interests of the Company, the Commission and ratepayers.

30           If the Commission denies the request to issue a final order and keeps the docket open, Staff requests that the Commission clarify that all discovery rules under WAC 480-07-400 invoked at the outset of the hearing remain in effect for the duration of the docket.<sup>23</sup> While Staff bears the burden of conducting any investigation, it emphasizes that the Company's active cooperation will be necessary toward that end.

### **III. CONCLUSION**

31           For the reasons stated above, Staff respectfully requests that the Commission grant this Petition for Review and Clarification of Interlocutory Order 04 and reconsider whether May 1, 2007, is an appropriate timeframe to resolve issues of potential state-subsidized financing for the Company's project and to conclude any Staff investigation, review and clarify the Staff investigation it has directed, review its decision to hold the docket open, and issue a final order in this docket.

---

<sup>22</sup> RCW 80.04.130(1) provides that the Commission may suspend the operation of a tariff for a period of 10 months. Although a Company can agree to extend the suspension period, Staff merely wishes to note here whether a precedent should be set extending the suspension of a company's tariff filing for such an indefinite duration, especially when it has been extended once, proceeded through hearing, and ultimately rejected.

<sup>23</sup> See Prehearing Conference Order 02, ¶ 6. (Aug. 23, 2006).

DATED this 9<sup>th</sup> day of March, 2007.

Respectfully submitted,

ROBERT M. MCKENNA  
Attorney General

---

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