

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UW-060343
TRANSPORTATION COMMISSION,)	
	)	ORDER 06
Complainant,)	
	)	ORDER ACCEPTING
v.	)	INTERLOCUTORY REVIEW AND
	)	GRANTING IN PART AND
ILIAD WATER SERVICE, INC.,	)	DENYING IN PART STAFF'S
	)	PETITION FOR REVIEW;
Respondent.	)	EXTENDING DEADLINE FOR
	)	STAFF INVESTIGATION REPORT;
	)	CLARIFYING ORDER 05
.....)	

1 **SYNOPSIS.** *In this Order, we accept interlocutory review of Order 05, and grant in part and deny in part Staff's petition for review and clarification of the Order. We deny Staff's request that we enter a final order rejecting Iliad's filing for a tariff revision. However, we grant Staff's petition in part by granting an extension of time to June 30, 2007, for the staff investigation and report required by the Order and clarifying the terms used to describe the investigation.*

2 **PROCEEDING.** This matter involves a request for tariff revision filed on March 1, 2006, by Iliad Water Service, Inc. (Iliad or Iliad Service), to fund the installation of a water chlorination system to comply with a Department of Health (DOH) order.

1 **APPEARANCES.** Michael Fassio, Assistant Attorney General, Olympia, Washington, represented the Commission Staff. Richard A. Finnigan, attorney, Olympia, Washington, represented Iliad.

2 **PROCEDURAL HISTORY.** Iliad filed a tariff revision for a surcharge effective April 1, 2006, seeking to increase rates to fund the installation of a water chlorination system to comply with a DOH Order entered in 2000. Iliad requested recovery of \$132,795 through a one-time flat rate assessment of \$3,405, or at the customers'

option, a monthly surcharge of \$49.26 for ten years.¹ The Washington Utilities and Transportation Commission (Commission) suspended the tariff and convened an evidentiary hearing before Administrative Law Judge Patricia Clark on November 8 and 9, 2006, in Olympia, Washington. The Commission also held a hearing in Eatonville, Washington, on November 14, 2006 to receive public comment. The parties filed post-hearing briefs on November 29, 2006.

3 Judge Clark entered Order 04, an initial order, on January 10, 2007, proposing to reject the tariff.² The Commission served a notice of possible review and the Company waived the February 1, 2007, suspension date for 30 days. The Company sought administrative review and Commission Staff responded in support of the initial order.

4 On February 28, 2007, the Commission entered Order 05 in this proceeding. While the interlocutory order upheld the initial order and rejected the tariff filing, the order also directed a staff investigation and report due May 1, 2007, and deferred action on the tariff filing pending the investigation.

5 Commission Staff filed a Petition for Review and Clarification of Interlocutory Order 04 on March 9, 2007 and Iliad filed a reply to Staff's petition on March 15, 2007.

MEMORANDUM

6 Staff raises several issues on review. First, Staff requests the Commission review or extend the deadline for the investigation and report. Staff asserts that resources are limited and that May 1, 2007 is not a deadline for resolving questions about state subsidized funding of the project. Second, Staff requests that the Commission enter a final order rejecting the tariff rather than deferring action on the pending tariff filing. Staff asserts that the Commission has rejected the proposed tariff revision and should close the docket and allow any required investigation under a new docket. Third, Staff seeks review of the order directing the staff investigation and clarification of terms used to describe the investigation. Iliad supports an extension of time to

¹ Staff calculated project costs of \$125,183. Iliad modified its proposal to accept Staff's financial analysis. On brief, Staff reported an error in its prior calculation. Although recommending rejection of the tariff, it proposed a project cost of \$120,899 or a *pro rata* assessment of \$3,099.

² The order also rejected a motion to reopen the record, to which no party took exception.

complete the investigation and report required in the order, but requests the Commission deny Staff's petition.

7 We discuss these issues in more detail below.³

A. Standard of Review

8 Under WAC 480-07-810(2), we have discretion to consider petitions for interlocutory review, i.e., accept review, and may then grant or deny the petition. We may accept review if we find:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.⁴

3 We exercise our discretion in accepting review of Staff's petition. We find Staff's petition meets the standard in WAC 480-07-810(2): Without review and clarification, Staff and the Company may expend unnecessary time and resources implementing the terms of Order 05.

B. Staff's Petition

1. Request for Final Order

9 We deny Staff's petition for review of our decision to continue to suspend the Company's tariff filing rather than issue a final order rejecting the tariff.⁵ Given the facts of this case, and our mandate to regulate in the public interest, we find it

³ The factual background of this matter is described adequately in Order 05 and will not be repeated here.

⁴ WAC 480-07-810(2).

appropriate to continue to suspend the tariff filing in order to allow the Company to apply for a state-subsidized loan at the lower interest rate, and to permit the Company to amend its tariff proposal after the Company and Staff provide answers to the questions posed in the Order.

- 10 Based on the evidence in the record, a continued suspension of the filing is in the best long-term economic interests of both the customers and the Company. If the Company is able to obtain funding through the DWSRF, customers may pay significantly less on a monthly basis. Had we rejected the tariff in a final order, DOH may have enforced its order to construct the chlorination facility, rather than continue to forbear enforcement, and Iliad would have had no mechanism for recovering the costs of the facility, further harming the Company's financial condition.
- 11 We are responsible not only for customers' economic interests, but for their health and safety as well. Iliad is required to provide service, in this circumstance water, that is "safe, adequate, and efficient, and in all respects just and reasonable."⁶ Alder Lake customers are entitled to clean, safe drinking water and have been waiting for the Company to ensure such clean safe water since the DOH order in 2000. For this reason, we directed the Staff and Company to address concerns over the Company's viability, management and organization at the same time the Company files its application with DWSRF to enable us to determine the best course of action for constructing the chlorination facility in the least amount of time.
- 12 As we discuss below, we grant an extension of time for Staff to complete its investigation and report, but continue to find the investigation and report necessary and appropriate. At Staff's request, we clarify that the Commission's discovery rules remain in effect for the duration of the docket, but direct the parties to work together in a collaborative manner to gather the necessary information rather than obtaining information in a litigious manner through discovery requests.
- 13 We clarify the extent to which we have accepted the Company's proposal in its petition for review. The Company proposed that the Commission continue to suspend

⁵ We question Staff's argument that it had no opportunity to respond to the Company's proposal to continue to suspend the docket. Staff filed a reply to the Company's petition for review and opposed the Company's proposal.

⁶ *RCW 80.28.010*. The Commission may order improvements in the quality of water, and if the Company does not make the required improvements, the Commission may work with DOH and request the agency petition the court to place the Company in receivership. See *RCW 80.28.030 and RCW 80.28.040*.

the filing until DOH makes a decision on the Company's DWSRF application, and if the DOH does not grant funding under the DWSRF, allow the Company's tariff to become effective. As noted above, while we accepted the Company's proposal to suspend the filing to allow the Company to pursue funding through the DWSRF, we did not allow the existing tariff filing to become effective if the Company does not obtain state funding. We upheld the initial order's finding that the Company's tariff filing was not fair, just, reasonable and sufficient in which was not based solely upon its failure to obtain funding from the DWSRF. Regardless of whether Iliad obtains state subsidized funding, the Company will need to file an amended tariff proposal.

2. Review and Clarification of Order Directing Staff Investigation

- 14 For reasons discussed below, we reject Staff's petition for review of the requirement in Order 05 to investigate Iliad and file a report. We continue to find the investigation and report appropriate and necessary to our future decision whether it is prudent or in the best interests of the ratepayers to approve any tariff for the project given the management of the Company.
- 15 By ordering a Staff investigation, we acknowledge changing slightly the workload burden, but do not acknowledge changing the Company's statutory burden to demonstrate that proposed rates are fair, just, reasonable and sufficient. The Company may not rely on the Staff to do its work, however, but should work collaboratively with Staff in providing information to address the questions we posed in Order 05, assist in preparing the report, and prepare any necessary tariff filing. In addition, we ask Staff to work collaboratively with the Company to identify information that may assist us in acting swiftly on any substitute or new tariff the Company may file.
- 16 Overall, we intend for Staff to use its best judgment to provide a frank assessment of the Company, focusing on the concerns raised in Order 05, based on Staff's knowledge and experience with small water companies and this Company in particular. To the extent the parties have not already identified the information in response to our order, we clarify our intent in paragraphs 24-27, and 53 of Order 05 to assist Staff and the Company in answering the questions we posed.
- 17 **Cost of the proposed facility.** Order 05 requires Staff and the Company to work collaboratively to determine "the cost of the proposed facility, including the proper allocation of its costs among investment, loans, and advances for ratepayer

reimbursement through surcharges.” Staff asserts that the Order “inappropriately shifts the Company’s burden to demonstrate costs of the chlorination plant.”⁷

18 We deny Staff’s request to review this requirement. As we discuss above, we do not intend to shift the Company’s burden to demonstrate that its tariff filing is fair, just, reasonable and sufficient. While there is some shift in workload, we simply ask Staff to work with the Company to identify the costs of the proposed facility given the gaps identified in the initial order.

19 **Advances of ratepayer reimbursement through surcharges.** In determining the cost of the proposed facility, we directed Staff to determine the proper “advances for ratepayer reimbursement through surcharges.” “Advances for ratepayer reimbursement through surcharges” is not a term we have used before in addressing water company requests for surcharges. We used the term to reflect the advances customers pay to a company for projects the company may construct for customer benefit, such as the surcharge at issue to pay for the chlorination facility. Our concern is the consequence of requiring ratepayers to become investors in a project, and that ratepayers be treated as investors, in particular if the company later sells the company to a new owner. We are concerned that ratepayers be reimbursed for, or recover their respective share of, capital contributions (including gain on sale) made to the selling company’s owners or shareholders, and that any new owner not be allowed to retain such contributions from the ratepayers upon acquisition. We ask Staff to consider our concerns in determining the cost of the facility and treatment of ratepayer contributions.

20 **Company viability and need for rate relief.** Order 05 requires Staff and the Company to work collaboratively to determine “whether [Iliad] is viable, given its balance sheet, recent losses, the current rates for its systems, its failure to request rate relief, and the quality of management evidenced on this record.”⁸ Staff asserts that the Company’s viability will be determined through the DWSRF process. Staff notes that it will work with DOH staff to design rates that allow the Company’s continued viability. Staff requests the Commission remove this requirement as redundant and premature given the DWSRF process.

⁷ Staff Petition for Review, ¶ 15.

⁸ Order 05, ¶ 53.

- 21 Similar to identifying the costs of the facility, we deny Staff's request to remove this requirement. The Company should have prepared information concerning the Company's viability when preparing its DWSRF application. By now, Staff should have a sense of the Company's financial health and viability, and we request the Staff work with the Company to prepare a frank assessment of the Company's viability, and need for rate relief so we may determine the best course of action. Staff will need to prepare similar information for DOH during the grant application process. Preparing the information for us at an earlier date, based on the information available to Staff and the Company, will assist us in determining how to best protect the ratepayers, while providing financial stability to the Company.
- 22 **Financial health and management.** Order 05 requires Staff and the Company to work collaboratively to determine "a financial and management plan, including possible rate relief, that will ensure the Company's prudent management and financial viability at reasonable rates, for the protection of its ratepayers."⁹ Staff agrees with our assessment that the Company's financial health and management are in question, but asserts that the best time to review this issue is in preparing for a new filing rather than investigating a tariff filing that has been denied. Staff notes that it is competent to evaluate the financial health of the Company, but has never conducted a management audit. Staff seeks clarification of how to implement this requirement of the Order.
- 23 Iliad responds that we should direct Staff to evaluate whether Iliad management devotes sufficient time to the management of Iliad, rather than evaluating the requirement within traditional regulatory terminology, such as a management audit.
- 24 Our intent is not that Staff conduct a formal management audit, but using its best judgment, Staff should evaluate the current management of the Company and recommend any changes that may "ensure the Company's prudent management..." Given the time frame we provide for investigation and report, we are not looking for the report of a management analyst, but Staff's recommendations given its knowledge and experience with small water companies and effective management practices for such companies.
- 25 **Water System Relationships.** Order 05 requires Staff and the Company to work collaboratively to determine "the proper relationship between the Alder Lake System

⁹ Order 05, ¶ 53.

and other Iliad systems and among systems under common or related ownership or de facto management, as a step in determining the proper allocation of project costs and ongoing operations to ratepayers.” The Order also requests that that Staff “determine whether the operators of the various systems constitute a unified management, whether the current structure is prudent or whether the water service of all the systems should be considered to be under single management, and whether the costs of the project should be spread among a larger base of customers.”¹⁰

26 Staff requests review of this requirement asserting that such a review is outside of the scope of a tariff filing docket. Staff suggests the Commission open an investigation into the “unified management” of Iliad. Iliad understands the Order to require Staff to review the relationship between Iliad and Iliad, Inc., which Iliad believes can be accomplished within this docket. We deny Staff’s request to open a separate docket to address this issue.

27 **Spreading surcharge among customers.** Order 05 requires Staff to determine “how a surcharge rate should be calculated and spread among customers.”¹¹ Staff asserts that any analysis of a surcharge is premature until the DWSRF process is complete and the project cost, loan principal, interest rate and term of the loan are known. Iliad counters that the work Staff and the Company have done on providing a detailed analysis of the surcharge could serve as a starting point for further discussions. We deny Staff’s request on this issue for the reasons discussed above.

28 **Proper allocation of cost.** Order 05 requires Staff and the Company to work collaboratively to determine “the proper allocation of cost among investments, loans and advances for ratepayer reimbursement through surcharges.” Staff requests clarification that this instruction means Staff must address the optimal financing mix to finance the new system. If this is not the intent, but Staff must study hypothetical capital structure instead, Staff requests we reconsider the requirement as extraneous.

29 We deny Staff’s request and clarify, as above, that we ask Staff to work collaboratively with the Company to ensure that customers are not harmed disproportionately under any project financing scenario. Staff should look at the areas of concern identified in the Order when preparing the report. We are not asking Staff

¹⁰ Order 05, ¶ 25.

¹¹ Order 05, ¶ 50.

to study a hypothetical capital structure, but a common sense approach to considering allocation of cost for this project.

30 In summary, we continue to suspend Iliad's tariff filing to allow the Company to pursue state subsidized financing. We deny Staff's request to enter a final order and to direct an investigation in a separate docket. We extend the deadline for a report on Staff's investigation and clarify the elements of the investigation we directed in Order 05. Following the investigation, we expect Staff and the Company to prepare a frank assessment of the Company's financial viability and management quality, and common sense recommendations for how to address Iliad's situation.

3. May 1 Deadline for Staff Investigation and Report

31 We grant, in part, Staff's petition for review of the May 1 deadline in Order 05 for a Staff report on its investigation. We understood when entering Order 05 that May 1, 2007, was the deadline for filing DWSRF applications, not the time for a decision on those applications. We chose the May 1 deadline intending that Staff and the Company would work together to resolve the questions we posed in the Order to ensure that the Company's DWSRF application would be complete.

32 The sooner the Staff and the Company work together to identify the information we requested in Order 05, the quicker the Staff, Iliad and this Commission can determine the best course of action. The Company has offered to work with Staff and does not object to an extension of time. Presumably the Company has nearly completed its application, and may have already answered some of the questions we posed in our Order. After May 1, the application deadline, the only question remaining for financing the project should be whether or not Iliad will obtain state-subsidized funding. We understand Staff's limited resources, and given the timing of this order, grant an extension of time until June 29 to allow Staff and the Company to work collaboratively, share information and report their findings to the Commission. We see no reason why this investigation must be conducted through a separate docket and deny Staff's request to issue a final order, close the docket and open a new staff investigation docket. We deny the request for an extension of time until 2008 when the DOH awards grant monies. We need not wait that long to determine the best course of action. It should be apparent how best to proceed after Staff files its investigation report.

FINDINGS OF FACT

4 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

33 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates and charges of water companies.

34 (2) Iliad Water Service, Inc. (Iliad), is a water company owning, controlling, operating, or managing a water system for hire within the State of Washington that is subject to regulation by the Commission.

35 (3) An initial order entered on January 10, 2007, recommends rejecting Iliad's tariff filing, finding the Company did not demonstrate the proposed surcharge to be fair, just, reasonable and sufficient.

36 (4) After the Company sought review of the initial order, the Commission entered an interlocutory order upholding the initial order's recommendation to reject the filing, but deferred a final order on the filing to allow the Company to pursue financing through the state and required Staff and the Company to work collaboratively to investigate and prepare a report on the Company's financial viability and management quality.

CONCLUSIONS OF LAW

5 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

37 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings, according to RCW

80.04.010, RCW 80.04.130, RCW 80.04.250, RCW 80.28.020, and RCW 80.28.022.

- 38 (2) Iliad Water Service, Inc., failed to meet its burden of proof that the proposed tariff revision results in rates or charges that are just, reasonable, and sufficient, as required by RCW 80.28.020.
- 39 (3) Continuing to suspend the Company's tariff filing is in the best long-term economic interests of both the customers and the Company. Continuing to suspend filing will allow the Company to apply for a state-subsidized loan at the lower interest rate, and permit filing an amended tariff proposal at a later date after the Company and Staff submit a report addressing questions not answered in the current record.
- 40 (4) The Commission is responsible not only for customers' economic interests, but their health and safety as well, requiring water companies to provide service that is "safe, adequate, and efficient, and in all respects just and reasonable." *See* RCW 80.28.010.
- 41 (3) In order for the Commission to determine how best to resolve the Company's pending tariff filing, it remains necessary and appropriate for Staff to investigate and file a report on the Company's financial viability and quality of management, whether the Company needs rate relief and how a surcharge rate should be calculated and spread among customers.

ORDER

THE COMMISSION ORDERS:

- 42 (1) Commission Staff's Petition for Review is accepted under WAC 48-07-810(1).
- 43 (2) Commission Staff's Petition for Review is granted in part and denied in part consistent with the terms of this Order.
- 44 (3) Staff is granted an extension of time until June 29, 2007, to file a report on its investigation of the financial viability, water system relationships, and quality of management of Iliad Water Service, Inc., as described in Conclusion of Law 3 of Order 05 and clarified in this Order.

- 45 (4) This docket is held open pending the Staff investigation identified in Conclusion of Law 3 of Order 05, as clarified in this Order, consideration of its conclusions, and a determination as to funding under the Drinking Water State Revolving Fund.

DATED at Olympia, Washington, and effective April 27, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner