

[Service Date February 14, 2011]

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

In the Matter of Determining the Proper)	DOCKET UW-091006
Carrier Classification of:)	
)	ORDER 01
LOWPER, INC. D/B/A LOWPER)	
CORPORATION, A/K/A "LOWPER)	ORDER INSTITUTING SPECIAL
WATER COMPANY" AND "ILIAD INC.)	PROCEEDING, SUBPOENA AND
DBA LOWPER WATER SYSTEM")	NOTICE OF HEARING
)	(Set for April 27, 2011,
)	at 1:30 p.m.)
)	
.....)	

INTRODUCTION

- 1 The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 80.04.015, institutes this special proceeding on its own motion to determine whether Lower, Inc. d/b/a Lower Corporation (Lower or Company) is subject to regulation under Chapter 80.28 RCW and is performing any act requiring approval of the Commission without securing such approval.
- 2 The Commission has information from which it believes and therefore alleges that Lower may be engaged in business as a water company, defined in RCW 80.04.010 and WAC 480-110-255, without having filed a tariff as required by RCW 80.28.050 and WAC 480-110-433(3).
- 3 Pursuant to RCW 80.04.015, upon proof of these allegations, the Commission is authorized to issue such orders as may be necessary to require Lower to comply with Title 80 RCW and the Commission's rules adopted under that title.
- 4 The significant findings of Commission Staff's investigation, which remain to be proven in this formal proceeding, are as follows:

- 5 (1) Lowper owns, controls, and manages a water system for the purpose of providing water service to the public for hire in Clallam County, Washington.
- 6 (2) David Dorland is the sole governing individual and owner of Lowper.
- 7 (3) Lowper's registered trade name is "Lowper Corporation." The names "Lowper Water Company" and "Iliad, Inc. dba Lowper Water System" are used by Lowper on other documents associated with its water system. "Iliad, Inc." is a separate and distinct Washington corporation whose sole governing individual is also David Dorland according to the Washington Secretary of State, and is not currently regulated by the Commission.
- 8 (4) Lowper has not filed a tariff with the Commission.
- 9 (5) Water companies are exempt from the Commission's jurisdiction if they have fewer than 100 customers and receive average annual per-customer revenue of less than \$471.00. Thus, a small company that is below the jurisdictional threshold could come within the Commission's jurisdiction either by connecting its 100th customer or upon receiving, over a period of one year, average per-customer revenue of more than \$471.00. WAC 480-110-255.
- 10 (6) Effective April 4, 2009, after 30 days notice to its customers, Lowper increased its metered rates. The Company set the metered base rate at \$59.15 plus a "PUD master meter charge" of \$0.72 per day plus \$0.0235 per cubic feet of usage, plus tax. For a billing cycle of 31 days, the monthly minimum charge is \$81.47 per customer.
- 11 (7) Based upon the rates effective April 4, 2009, Lowper met the revenue threshold for Commission jurisdiction as defined by WAC 480-110-255 as of October 4, 2009, if not before. Its current rates (base and PUD Master meter charge) produce annual per-customer revenue of at least approximately \$972.00.
- 12 (8) In accordance with the Commission's rules, the Company should have filed a tariff to become effective on the date on which its revenues met the threshold for jurisdiction. WAC 480-110-433.

ORDER, SUBPOENA AND NOTICE OF HEARING

13 The hearing in this matter will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), Chapter 34.05 RCW. The Commission has jurisdiction to institute a special proceeding to determine whether Lowerper is subject to regulation under Chapter 80.28 RCW and is performing any act requiring approval of the Commission without securing such approval, pursuant to RCW 80.01.040 and RCW 80.04.015. In addition to the foregoing statutes, this matter involves Title 80 RCW, including but not limited to RCW 80.01.040, RCW 80.04.010, RCW 80.04.020, and RCW 80.28.050. This matter also involves the administrative rules set forth in WAC 480-110 and WAC 480-07.

14 **IT IS HEREBY ORDERED That Lowerper appear before the Commission in this special proceeding conducted under the authority of RCW 80.04.015 at 1:30 p.m. on April 27, 2011, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington** to give testimony and evidence under oath as to its operations. Lowerper shall appear at the time and place set forth above unless the Executive Director and Secretary of the Commission, by notice of hearing, specifies a different time and place. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 80.04.015. RCW 80.04.020.

15 **THE COMMISSION FURTHER ORDERS** that, pursuant to RCW 34.05.446 and RCW 80.04.015, Lowerper bring to the special proceeding:

- (1) for each water system owned, operated or controlled by Lowerper, (a) records of all revenues (monthly or otherwise) received from each customer of the water system(s) since March 2009, including but not limited to, invoices and/or billing notices for water service, including usage information; and (b) any customer notices regarding water rates and services sent by Lowerper to customers since March 2009.

16 **IT IS FURTHER ORDERED** that at the hearing in this special proceeding the burden of proving that the alleged operations are not subject to the provisions of Title 80 RCW shall be upon Lowerper, as provided by RCW 80.04.015.

17 **NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.**

18 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

19 The names and mailing addresses of all parties and their known representatives are shown as follows:

Respondent: Lower, Inc.
 PO Box 20429
 Seattle, WA 98102

8501 Eastview
Everett, WA 98208

Representative: David Dorland
 4803 37th Avenue S.W.
 Seattle, WA 98126

Commission: Washington Utilities and
 Transportation Commission
 1300 S. Evergreen Park Drive S.W.
 P.O. Box 47250
 Olympia, WA 98504-7250
 (360) 664-1160

Representative: Michael A. Fassio
 Assistant Attorney General
 1400 S. Evergreen Park Drive S.W.
 P.O. Box 40128
 Olympia, WA 98504-0128
 (360) 664-1192

20 Administrative Law Judge Marguerite E. Friedlander, from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective February 14, 2011.

GREGORY J. KOPTA
Administrative Law Judge
Director, Administrative Law Division

Inquiries should be addressed to:

Executive Director and Secretary
Washington Utilities and
Transportation Commission
Richard Hemstad Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired: (Yes)_____ (No)_____

Do you need a certified sign language interpreter?

Visual_____ Tactile_____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.: (____)_____