

[Service Date April 29, 2011]

April 29, 2011

**NOTICE OF OPPORTUNITY TO BRIEF ISSUE
(Due by May 6, 2011)**

RE: *In the Matter of Determining the Proper Carrier Classification of Lowper, Inc. d/b/a Lowper Corporation, a/k/a Lowper Water Company and Iliad Inc. d/b/a Lowper Water System, Docket UW-091006 and In the Matter of the Penalty Assessment Against Lowper, Inc. in the Amount of \$10,500, Docket UW-110213, (consolidated)*

On February 14, 2011, the Washington Utilities and Transportation Commission (Commission) instituted a special proceeding to determine whether Lowper Incorporated (Lowper 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. Also on February 14, 2011, the Commission assessed a penalty against Lowper for violations of WAC 480-110-433(3) requiring any water company to file an initial tariff with the Commission when the company becomes subject to the Commission's jurisdiction.¹

The Commission convened an evidentiary hearing on April 27, 2011, at which time Lowper acknowledged that its operations are subject to Commission jurisdiction. The Company initially responded to the penalty assessment by requesting a hearing, but Lowper did not request mitigation. At the hearing, the administrative law judge requested that the parties brief the legal issue of whether, and on what grounds, the Commission could mitigate the assessed penalty under RCW 80.04.405² when

¹These matters have been designated as Dockets UW-091006 and UW-110213, respectively. The Commission consolidated the dockets on March 24, 2011.

² RCW 80.04.405 states, in pertinent part:

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to

Lowerper did not request mitigation in writing within fifteen days of the Commission's notice of penalty assessment.

NOTICE IS GIVEN that legal briefs on the limited issue of the Commission's authority to mitigate the penalty assessment under RCW 80.04.405 when Lowerper did not submit a written request for mitigation within 15 days of the Commission's notice of penalty assessment, are due by Friday, May 6, 2011.

Sincerely,

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

cc: All Parties

recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper.