

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND) DOCKET UW-110892
TRANSPORTATION COMMISSION,)
)
Complainant,) SETTLEMENT AGREEMENT
)
v.)
)
LOWPER, INCORPORATED,)
)
Respondent.)
_____)

1 This settlement agreement (Agreement) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are Lowerper, Incorporated (“Lowerper” or “Company”), and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, “the Parties”).

II. RECITALS

3 Lowerper is a water company regulated by the Washington Utilities and Transportation Commission (Commission). The Company serves seven customers near Sequim, Washington. On May 13, 2011, Lowerper filed its initial tariff as well as financial information in support of its rates. The tariff became effective May 14, 2011. Staff reviewed this filing, and its contents indicated to Staff that Lowerper’s rates might be generating an excessive return. On June 14, 2011, the Commission issued a Complaint Against Rates (Complaint). The Complaint alleges that Lowerper’s rates may be unjust and

unreasonable in that they may generate more revenue than the Company requires to pay reasonable expenses and earn a reasonable return.

4 After the Commission issued the Complaint, Lowerper provided Staff with additional information relating to the Company's rates and charges. Staff analyzed the information and concluded that Lowerper's current rates and charges, including a utility tax assessed by the Company and discussed in the next paragraph, do not generate an excessive return for the Company.

5 The issues requiring resolution in this proceeding include a utility tax published in Lowerper's tariff. Lowerper collected the utility tax from its customers but did not remit the funds to any taxing authority. In addition, the utility tax was published in the tariff as ".05029 percent," but Lowerper collected 5.029 percent. The Company discovered it was exempt from reporting the utility tax due to the limited revenue involved, and it has ceased collecting this tax from its customers.

III. AGREEMENT

6 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

A. Tariff Revision

7 The Parties agree that the utility tax in Lowerper's current tariff should be removed but that Lowerper's revenue from current rates, including the utility tax that the Company assessed at 5.029 percent, does not generate an excessive return. Accordingly, the Parties

propose a revenue neutral change in the Company's tariff that would eliminate the Excise Tax and increase the three remaining rates (the Base Rate, the Master Meter Charge, and the Usage Rate) by 5.029 percent. A draft tariff reflecting these rate changes is attached to this Agreement as Attachment A. Two additional draft tariff sheets, a legend and a revised index reflecting the addition of the legend, are attached as Attachments B and C respectively. The Parties agree that the revised rates shall go into effect the first day of the month after the Commission approves this Agreement.

B. Refunds

8 Lowerper agrees to refund to customers the difference between the utility tax the Company collected (5.029 percent of each customer's monthly bill), and the utility tax rate published in Lowerper's tariff (.05029 percent of each customer's monthly bill), calculated from the date the Company became regulated to the date it ceased collecting the tax. The Parties agree that Lowerper may distribute the refunds as a bill credit spread evenly over five consecutive months beginning with the first billing cycle after the Commission approves this Agreement.

9 Lowerper agrees to report, by the fifteenth day of the month after the Commission approves this Agreement, the Company's calculation of the refunds due to each customer. Lowerper further agrees to notify the Commission once the Company has distributed all of the refunds. The Parties agree that this notification is due within 30 days after Lowerper issues the last bill credit or otherwise completes the refund.

IV. GENERAL PROVISIONS

10 The Parties agree that this Agreement is in the public interest and would produce rates for the Company that do not generate more revenue than the Company requires to pay

reasonable expenses and earn a reasonable return. The Parties further agree that this Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement, including the admissions contained herein, is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions and agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

11 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

12 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements), and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the Agreement is not binding on the Commission itself.

13 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Lower or Lower's ability to assert defenses to such claims.

14 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents

a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

15 By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

16 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

17 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

18 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

19 In the event that the Commission rejects all or any portion of this Agreement, or accepts the settlement upon conditions not proposed in this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the Order rejecting

part or all of this Agreement or imposing conditions not proposed in this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and the Parties agree to request the prompt reconvening of a prehearing conference and to cooperate in developing a procedural schedule.

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

LOWPER, INCORPORATED

ROBERT M. MCKENNA
Attorney General

JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for the Washington Utilities and
Transportation Commission

Dated: _____, 2011.

RICHARD A. FINNIGAN
Counsel for Lowper, Incorporated

Dated: _____, 2011.

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

Dated: _____, 2011.