

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET UW-110892
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	ORDER 04
	)	
v.	)	
	)	INITIAL ORDER APPROVING
LOWPER, INCORPORATED,	)	AND ADOPTING SETTLEMENT
	)	AGREEMENT
Respondent.	)	
	)	
.....	)	

1 *Synopsis.* This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective as described in the notice at the end of this order. If this Initial Order becomes final, the Settlement Agreement entered into between Lowper, Incorporated and the Commission Staff will be approved and adopted. The Settlement provides that the parties agree that Lowper’s revenue from current rates, including the utility tax, does not generate an excessive return, that a revenue neutral change in Lowper’s tariff would eliminate the excise tax and increase the three remaining rates, and that Lowper will refund to customers the difference between the utility tax that it collected and the utility tax rate published in its tariff.

**BACKGROUND**

2 On May 13, 2011, Lowper, Incorporated (Lowper or Company) filed with the Washington Utilities and Transportation Commission (Commission) an initial tariff and supporting information in Docket UW-110871. Commission Staff <sup>1</sup> (Staff)

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<sup>1</sup> In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

conducted an initial review of the Company's financial information and determined that the rates in the Company's tariff generate more revenue than the Company requires to pay reasonable operating expenses and earn a reasonable return. On June 14, 2011, the Commission issued Order 01 – Complaint Against Rates in Docket UW-110892. The Commission convened a prehearing conference on September 7, 2011, at which the parties agreed on a procedural schedule that the Commission adopted in Order 02.

- 3 On November 30, 2011, Staff filed a Settlement Agreement, a Narrative Supporting Settlement Agreement and a supporting declaration from Staff. In accordance with WAC 480-07-730, the narrative requests a streamlined review of the proposed agreement in the form of an informal review on the paper record, as provided in WAC 480-07-740(1)(b).
  
- 4 The Settlement Agreement provides that the utility tax in Lowerper's current tariff should be removed, because Lowerper is exempt from the tax. However, because the current rates, including the utility tax, do not generate an excessive return, the parties propose a revenue neutral change in the Company's tariff to eliminate the Excise Tax and increase the remaining three rates (the Base Rate, the Master Meter Charge and the Usage Rate) by the 5.029 percent that used to be charged as the utility tax. Lowerper also agrees to refund to its customers the difference between the utility tax rate it 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 Lowerper became regulated to the date it stopped collecting the tax. The parties agree that this refund can be distributed in the form of a credit spread evenly over five consecutive months beginning with the first billing cycle after the Commission approves the Settlement Agreement. The Settlement Agreement and attachments A, B, and C are attached to, and made a part of, this Order by this reference.

### DISCUSSION

5 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”

6 Thus, the Commission considers the individual components of the Settlement under a three-part inquiry. The Commission asks:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

7 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to condition(s).
- Reject the proposed settlement.

8 The Settlement Agreement reflects Staff’s determination after reviewing the data provided by Lowerper that Lowerper’s current rates and charges do not result in an excessive return and that after eliminating the utility tax, refunding to customers the amounts the Company collected over the rate posted in their tariff for that tax, and adjusting the rate elements accordingly, Lowerper’s rates are fair, just, reasonable and sufficient. The Settlement Agreement, therefore, is consistent with the public interest. Accordingly, the Commission approves the Settlement Agreement without condition.

**FINDINGS OF FACT**

9 Having discussed above in detail the evidence received in this proceeding concerning all material matters the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

10 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including water companies.

11 (2) Lowper, Incorporated is a “public service company” and a “water company” as those terms are defined and otherwise are used in Title 80 RCW. Lowper, Incorporated is engaged in the business of supplying utility services and commodities to the public for compensation.

12 (3) The parties propose to resolve the issues in this proceeding via the Commission’s approval and adoption of their Settlement Agreement filed on November 30, 2011, which is attached to, and made a part of this Order.

13 (4) The Commission’s approval and adoption of the Settlement Agreement attached to, and discussed in the body of this Order is in the public interest.

**CONCLUSIONS OF LAW**

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

15 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. Title 80 RCW.

16 (2) The Settlement Agreement attached to this Order as an Appendix and incorporated by prior reference, should be approved and adopted.

- 17 (3) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

**ORDER**

THE COMMISSION ORDERS THAT:

- 18 (1) The Settlement Agreement attached and incorporated into this Order by prior reference, is approved and adopted.
- 19 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective December 8, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARTIN LOVINGER  
Administrative Law Judge

## NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

# **Docket UW-110892 Settlement Agreement**