

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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"

and

In the Matter of the Penalty Assessment
Against LOWPER, INC., in the Amount of
\$10,500

DOCKETS UW-091006 and
DOCKET UW-110213
(consolidated)

COMMISSION STAFF
COMMENTS ON LOWPER'S
RESPONSE BENCH REQUEST
NO. 2.

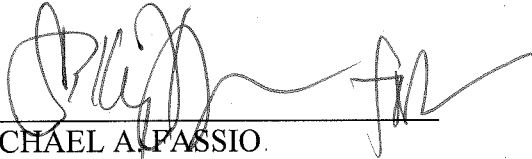
- 1 Pursuant to the opportunity to provide comments on Lowerper, Incorporated's (Lowerper) response to Bench Request No. 2 as set forth in the Notice of Bench Requests issued on April 28, 2011, Staff of the Washington Utilities and Transportation Commission (Staff) provides the following comments.
- 2 Bench Request No. 2 asked Lowerper to provide "correspondence, emails, and the purchase agreement" referenced in the testimony of witness David Dorland. Lowerper's response provides "copies of the correspondence from 2010 between Lowerper, Incorporated d/b/a Lowerper Water Company and Clallum County PUD." Staff has not previously seen this correspondence and has no firsthand knowledge of them. Although the transcript is not available at this time, Mr. Dorland's testimony may have referenced specific correspondence contained in Lowerper's response. The record will also reflect that Staff testified regarding its contact with Clallum County PUD since the Commission issued the penalty assessment in Docket UW-110213 and its understanding from that contact of recent communications between Lowerper and Clallum County PUD.

3 Staff observes that all of the correspondence provided in response to the Bench Request, if it is dated, is dated from *March 2011*. The record will show, and it is not disputed, that the date of Staff's Investigation Report, the time frame of the alleged violations found in Staff's investigation, the date the Commission issued the penalty assessment, and the date Lowerper filed its written response to the penalty assessment, all occurred prior to March 2011. The response to the Bench Request does not appear to include any correspondence in 2010, within the time frame that alleged violations upon which the penalty assessment was based occurred. If the Bench Request response is added into the record, the Commission should weigh its relevance to the penalty assessment accordingly. At hearing, Staff made recommendations to the Commission on the penalty assessment based upon its findings and the record at the time of hearing. Lowerper's response to the Bench Request does not change Staff's recommendation.

DATED this 6th day of May, 2011.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



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