

0002

1

2

INDEX OF WITNESSES

3

4

WITNESS:

PAGE:

5

Rayne Pearson

6

Direct Examination by Mr. Fassio

13

7

Clarification Examination by Judge Friedlander

34, 40

8

Cross-Examination by Mr. Finnigan

35

9

Redirect Examination by Mr. Fassio

40, 44

10

David Dorland

11

Direct Examination by Mr. Finnigan

46, 56

12

Cross-Examination by Mr. Fassio

57

13

14

15

INDEX OF EXHIBITS

16

17

EXHIBIT: OFD: AD: DESCRIPTION:

18

BENCH EXHIBITS:

19

1

Partial Settlement Agreement

20

2

E-mails and correspondence from 2010

21

between Lowper and the Clallam County

22

PUD addressing negotiates for Clallam

23

to acquire Lowper, and a draft

24

purchase agreement prepared by counsel

25

for Lowper

0003

| 1 | EXHIBIT: | OFD: | AD: | DESCRIPTION: |
|----|----------|------|-----|--|
| 2 | | | | COMMISSION REGULATORY STAFF WITNESS: |
| 3 | | | | RAYNE PEARSON: |
| 4 | RP-1 | 15 | 16 | Investigation Report dated February |
| 5 | | | | 2011 |
| 6 | RP-2 | 16 | 16 | Letter and Water System Questionnaire |
| 7 | | | | from the Commission to Lowper, dated |
| 8 | | | | June 23, 2009 |
| 9 | RP-3 | 16 | 16 | July 2, 2009, letter from Lowper to |
| 10 | | | | the Commission |
| 11 | RP-4 | 16 | 16 | March 4, 2009, letter from Lowper to |
| 12 | | | | its water customers regarding a rate |
| 13 | | | | increase |
| 14 | RP-5 | 16 | 16 | Water Agreement executed November 3, |
| 15 | | | | 2003, between the Clallam County |
| 16 | | | | Public Utility District and Iliad, |
| 17 | | | | Inc., d/b/a Lowper Water System |
| 18 | RP-6 | 16 | 16 | Washington Secretary of State and |
| 19 | | | | Washington Department of Licensing |
| 20 | | | | database entries |
| 21 | RP-7 | 16 | 16 | Letter and Water System Questionnaire |
| 22 | | | | from the Commission to Lowper, dated |
| 23 | | | | January 20, 2010 |
| 24 | RP-8 | 16 | 16 | February 24, 2010, letter from Lowper |
| 25 | | | | to the Commission regarding the status |

0004

| 1 | EXHIBIT: | OFD: | AD: | DESCRIPTION: |
|----|----------|------|-----|-----------------------------------|
| 2 | | | | of the Lower Water System Sale to |
| 3 | | | | Clallam County PUD |
| 4 | RP-9 | 16 | 16 | Five Lower Water System customer |
| 5 | | | | invoices, dated June 30, 2010 |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| 12 | | | | |
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P R O C E E D I N G S

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(On the record at 1:31 p.m.)

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JUDGE FRIEDLANDER: Let's go on the record. Good afternoon. I'm Marguerite Friedlander, the Administrative Law Judge presiding over this special proceeding. We're here before the Washington Utilities and Transportation Commission on Wednesday, April 27, 2011, to begin a hearing in Docket UW-091006, an inquiry into the proper classification of Lowerper? [the "ow" pronounced as in "cow"]

MR. FINNIGAN: Lowerper. [correct pronunciation is long "o" as in "hope"]

JUDGE FRIEDLANDER: Lowerper. Thank you. Lowerper Inc., d/b/a Lowerper Corporation, a/k/a, Lowerper Water Company and Iliad, Inc., d/b/a Lowerper Water System, as well as Docket UW-110213, a penalty assessment against Lowerper, Inc., for failure to file a tariff once it became subject to the Commission's jurisdiction.

In its response to the penalty assessment Lowerper, Inc., denied the alleged violations and requested this hearing.

So let's go ahead and begin with appearances. We'll start first with Staff.

MR. FASSIO: Good morning, Your Honor. Michael Fassio, Assistant Attorney General. My address is 1400 South Evergreen Park Drive Southwest, Box 40128, Olympia,

0006

1 Washington 98504. Telephone: (360)664-1192. Fax:
2 (360)586-5522. Email address: Mfassio@utc.wa.gov.

3 JUDGE FRIEDLANDER: Thank you. And appearing
4 today on behalf of Lowper, Inc.?

5 MR. FINNIGAN: Thank you, Your Honor. Richard
6 Finnigan. And let me note for the record that none of the
7 entities that are mentioned in either the complaint is the
8 correct entity, in either matter. So if we're going to get
9 real technical, the Commission doesn't have anybody before
10 them. But in an effort to try and resolve this we would ask
11 that the caption be changed -- well, I'll finish my
12 appearance before I do that.

13 The address is 2112 Black Lake Boulevard
14 Southwest, Olympia, Washington 98512. The telephone number
15 is (360)956-7001. Email is rickfinn@localaccess.com.

16 JUDGE FRIEDLANDER: Okay. And did you give us
17 your fax? I know hardly anybody ever uses it, but probably
18 it's a good idea.

19 MR. FINNIGAN: I have a fax number, and I have no
20 clue what it is.

21 JUDGE FRIEDLANDER: Okay. Well, we can always put
22 that on the record later.

23 MR. FINNIGAN: Yeah. Here it is, it's in my
24 heading. It is 360 -- nope, nope, nope, nope, nope, that's
25 it -- that's wrong.

0007

1 JUDGE FRIEDLANDER: We'll leave that off.

2 MR. FINNIGAN: I have no clue what it is.

3 JUDGE FRIEDLANDER: That's fine. Would you mind
4 telling us what the business name of the company is?

5 MR. FINNIGAN: The correct entity name is Lower
6 Incorporated and it does business as Lower Water System.

7 JUDGE FRIEDLANDER: Is that also what it's
8 registered with the -- what would it be? The Department of
9 Licensing here?

10 MR. FINNIGAN: Secretary of State.

11 JUDGE FRIEDLANDER: Secretary of State.

12 MR. FINNIGAN: Yes, that's why I, you know.

13 JUDGE FRIEDLANDER: Got you. And you said Lower
14 Water Systems?

15 MR. FINNIGAN: System.

16 JUDGE FRIEDLANDER: System. Got you. Okay. That
17 does it for the parties. Is there anybody else in the
18 Commission's offices, the Commission's hearing room or on
19 the conference bridge who would also like to put in an
20 appearance?

21 Hearing nothing we'll proceed.

22 As far as -- we had a discussion, I should say,
23 off the record before we started, and there is some
24 indication, I take it, that there's a stipulation, at least
25 a partial stipulation, the parties are willing to enter into

0008

1 the record.

2 Mr. Fassio, would you let me know what that is?

3 MR. FASSIO: Yes. Thank you, Your Honor. The
4 stipulation concerns the classification proceeding matter.
5 We have had discussions off the record, and it is my
6 understanding that the Company is willing to stipulate. And
7 I will recite the stipulation and let Mr. Finnigan just
8 confirm that.

9 That Lower Incorporated is a water company that
10 is subject to the Commission's jurisdiction and that Lower
11 Incorporated will file an initial tariff and its supporting
12 financial data for its water system in full compliance with
13 WAC 480-110-433(3) and WAC four -- I'm sorry, RCW 80.28.050
14 by May 13, 2011. That Lower will -- Lower Incorporated
15 will provide a draft of its intended notice to customers
16 that is required under WAC 480-110-433(3)(b) to Commission
17 staff for its review prior to its notifying customers. And
18 that will be done by the close of business on Friday, April
19 29th. And that is the stipulation.

20 JUDGE FRIEDLANDER: Okay. Thank you.

21 Mr. Finnigan.

22 MR. FINNIGAN: Well, basically that's what we
23 agreed to. Mr. Fassio did not mention the statutory
24 reference, so I don't know what it is that he's referring to
25 when he -- we never talked about a particular statute. We

0009

1 talked about the rule. But I -- so I'm at a loss to know
2 what the statute is that he's referring to. That's a
3 surprise to me but --

4 JUDGE FRIEDLANDER: And you're referring to the
5 statute he referenced in regard to the notice to customers?

6 MR. FINNIGAN: No, the stipulation. He cited to
7 80.28 something.

8 JUDGE FRIEDLANDER: 28.050, I believe.

9 MR. FINNIGAN: 050. And in all of our discussions
10 that had never been raised, so I don't know what it says.
11 So I'm not sure I can -- the essence of the stipulation --

12 MR. FASSIO: I'm happy to cite to that statute and
13 go from there.

14 JUDGE FRIEDLANDER: That's fine.

15 MR. FASSIO: That statute is in -- relates to
16 tariff schedules to be filed with the Commission. "Every
17 gas company, electrical company and water company shall file
18 with the Commission and shall print and keep open to public
19 inspection schedules in such form as the Commission may
20 prescribe, showing all rates and charges made, established
21 or enforced, or to be charged or enforced, all forms of
22 contract or agreement, all rules and regulations relating to
23 rates, charges or service, used or to be used, and all
24 general privileges and facilities granted or allowed by such
25 gas company, electrical company or water company."

0010

1 The specific WAC provision is 480-110-433(b) --

2 MR. FINNIGAN: I understand that.

3 MR. FASSIO: -- is the requirements. And our
4 general RCW requiring tariffs to be filed is that RCW which
5 is what I cited.

6 MR. FINNIGAN: Okay. Just to be clear, what the
7 stipulation is is that we will file a tariff, because the
8 statute you read refers to several other things; right?

9 The import of that is that we are --

10 MR. FASSIO: It's the authority, yes.

11 MR. FINNIGAN: For filing the tariff?

12 MR. FASSIO: Yes.

13 MR. FINNIGAN: Okay. Then I don't have a problem.

14 JUDGE FRIEDLANDER: And this stipulation is going
15 to be memorialized, I take it? This is going to be put in
16 writing?

17 MR. FINNIGAN: I would be happy to have it in
18 writing.

19 MR. FASSIO: We can put it in writing.

20 JUDGE FRIEDLANDER: I appreciate that.

21 MR. FASSIO: I was reading it into the record
22 but --

23 JUDGE FRIEDLANDER: I would appreciate it in
24 writing because of this very issue. I think that to clarify
25 and to make sure that we are all on the same page it would

0011

1 be helpful to have a stipulation.

2 MR. FINNIGAN: And I agree.

3 JUDGE FRIEDLANDER: Okay.

4 MR. FASSIO: Can we follow that up after the
5 hearing?

6 JUDGE FRIEDLANDER: Definitely.

7 MR. FASSIO: To you? How would you like that?

8 JUDGE FRIEDLANDER: Exactly. Normal filing
9 procedure. Electronic as well as original to the records
10 center and they can distribute it to me from there. That's
11 fine.

12 MR. FINNIGAN: That's fine.

13 MR. FASSIO: Okay.

14 JUDGE FRIEDLANDER: Great. Okay. So that I'm
15 understanding this, it means that Docket UW-091006 has
16 effectively been, as soon as we receive the stipulation,
17 agreed to?

18 MR. FINNIGAN: That's correct.

19 JUDGE FRIEDLANDER: And your client, Mr. Finnigan,
20 is admitting that the Commission -- acknowledging that the
21 Commission does have jurisdiction over it? We just have the
22 penalty assessment in the amount of \$10,500 to litigate at
23 this point?

24 MR. FINNIGAN: That's correct.

25 JUDGE FRIEDLANDER: Okay. So are there any

0012

1 procedural matters that we need to deal with before we go
2 forward with the hearing?

3 Okay, hearing none then --

4 MR. FASSIO: Oh, could I have one minute to
5 confer?

6 JUDGE FRIEDLANDER: Sure. That's fine. We will
7 be off the record for a minute.

8 (Break taken from 1:40 to 1:44 p.m.)

9 JUDGE FRIEDLANDER: We will be back on the record.

10 I will note that there was a prior discussion
11 between the parties, and they have agreed that with the best
12 of intentions the stipulation will be filed in writing April
13 29th, or sooner hopefully. If you run into problems please
14 let me know because I will be expecting that. The tariff
15 filing, as Mr. Fassio indicated, will be by May 13th, and
16 notice for Staff's review will be by that same Friday, April
17 29th, as well.

18 So with that, since the penalty assessment
19 complaint was brought by the Commission, I will allow
20 Mr. Fassio to make any preliminary remarks and then call his
21 first witness.

22 MR. FASSIO: I don't have an opening statement. I
23 am prepared to call my witness.

24 JUDGE FRIEDLANDER: That's fine.

25 MR. FASSIO: I would like to call Rayne Pearson to

0013

1 the stand.

2 JUDGE FRIEDLANDER: Okay. Thank you. If you will
3 come over here and sit in the witness area, and I will swear
4 you in.

5 MR. FINNIGAN: Are you -- just off the record for
6 a moment?

7 JUDGE FRIEDLANDER: Sure.

8 (Brief discussion held off the record.)

9 JUDGE FRIEDLANDER: Before you even sit down if
10 you will raise your right hand.

11 (Rayne Pearson sworn on oath.)

12 THE WITNESS: I do.

13 JUDGE FRIEDLANDER: Thank you. You can sit down.
14 And your witness, Mr. Fassio.

15

16 RAYNE PEARSON,

17 having been first duly sworn

18 on oath was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. FASSIO:

22 Q. Good afternoon, Ms. Pearson. Could you please
23 state and spell your name. Take a moment if you need to.

24 A. Rayne Pearson.

25 (Brief interruption off the record as

0014

1 the microphones are plugged in.)

2 A. Rayne Pearson, R-a-y-n-e, P-e-a-r-s-o-n.

3 Q. (By Mr. Fassio) Please state the name of your
4 employer?

5 A. The Washington Utilities and Transportation
6 Commission.

7 Q. And in what position are you employed at the
8 Commission?

9 A. I'm a compliance investigator.

10 Q. How long have you been employed at the Commission?

11 A. Approximately 16 months.

12 Q. Can you please briefly describe your
13 responsibilities as they pertain to this matter?

14 A. One of my responsibilities is to investigate water
15 companies to determine whether they're subject to regulation
16 by the Commission.

17 Q. Are you familiar with Lower Incorporated?

18 A. Yes, I am.

19 Q. How did you become familiar with Lower?

20 A. In May 2009 a customer of Lower Water System
21 contacted our consumer protection staff regarding a rate
22 increase for water services.

23 MR. FASSIO: And just for clarification of the
24 record, I think for brevity sake I will refer to the company
25 as Lower from here, although I understand the proper name

0015

1 of the company is Lowper Incorporated.

2 JUDGE FRIEDLANDER: Thank you. Thank you for that
3 clarification.

4 Q. (By Mr. Fassio) Now have you received personally
5 communications from anyone on behalf of Lowper in response
6 to the hearing notice?

7 A. I have not.

8 Q. Did you investigate Lowper?

9 A. Yes.

10 Q. Did you document your investigation?

11 A. Yes, I did.

12 Q. If you could turn to what's been marked as Exhibit
13 No. 1.

14 JUDGE FRIEDLANDER: And for the record, Exhibit
15 No. 1, that Mr. Fassio is referring to, is entitled an
16 Investigation Report. It has the UTC letterhead on it and
17 is dated February of 2011.

18 Q. (By Mr. Fassio) Is Exhibit No. 1 a true and
19 correct copy of the investigation report that you prepared
20 regarding this Company?

21 A. Yes, it is.

22 MR. FASSIO: I would like to offer Exhibit No. 1
23 for admission into evidence.

24 (Exhibit No. 1 offered.)

25 JUDGE FRIEDLANDER: Mr. Finnigan, any objection?

0016

1 MR. FINNIGAN: No, Your Honor. And just to help
2 the process, we have no objection to any Exhibit 1 --
3 Exhibits 1 through 9, so there's no need to lay a foundation
4 for this admission.

5 JUDGE FRIEDLANDER: Okay. Thank you. And would
6 you, Mr. Fassio, move then for admission of all of these
7 exhibits?

8 MR. FASSIO: Yes, Your Honor.

9 (Exhibit Nos. 2-9 offered.)

10 JUDGE FRIEDLANDER: Okay. They are so admitted,
11 Exhibits 1 through 9.

12 (Exhibit Nos. 1-9 admitted.)

13 MR. FASSIO: And I will proceed as if the exhibits
14 have been admitted.

15 JUDGE FRIEDLANDER: Okay.

16 Q. (By Mr. Fassio) So going back, Ms. Pearson. Once
17 again, how did this Company first come to the attention of
18 the Commission?

19 A. In May 2009 a customer of Lower Water System
20 contacted the consumer protection staff regarding a rate
21 increase for water services.

22 Q. To your knowledge did the consumer protection
23 staff investigate that inquiry?

24 A. Yes.

25 Q. And what actions did they take?

0017

1 A. The consumer protection staff confirmed that
2 Lower was not regulated by the Commission and referred the
3 matter to regulatory services.

4 Q. If you could turn to Exhibit No. 2?

5 A. Uh-huh.

6 Q. This is a copy of the -- of a letter by Commission
7 staff and a questionnaire. Is this the copy of that
8 letter --

9 A. Yes.

10 Q. -- that you just referred to? Did you have a
11 question?

12 A. I had not yet referred to it. But this is a
13 letter that --

14 Q. Did the Commission staff send them, the Company, a
15 letter?

16 A. Yes.

17 Q. And is this that letter --

18 A. Yes, it is.

19 Q. -- that they sent? Did the Company respond to the
20 letter?

21 A. Yes. And --

22 Q. Now --

23 A. Sorry, go ahead.

24 Q. Go ahead. Exhibit No. 3 is a copy of a letter
25 that is with the letterhead Lower Water System. Did the

0018

1 Company -- is this a copy of the Company's response?

2 A. Yes, it is.

3 Q. Did the Company respond in any other fashion?

4 A. No, this was the only letter.

5 Q. And in that attachment, or in that exhibit, the
6 Company indicated that they were in the process of
7 negotiating a sale which should be completed within 60 to 90
8 days, and that the Company will keep you informed of the
9 progress and information on the new owner.

10 Did the Commission staff receive any information
11 on the progress of that sale or information on the new owner
12 within 60 to 90 days or shortly thereafter?

13 A. No, it did not.

14 Q. The Company in that letter indicated that the
15 water company purchases its water from Clallam County PUD to
16 supply the system. Did you, did the Commission staff
17 receive any corroboration from -- regarding that statement
18 that the water system received its water from the PUD?

19 A. Yes. Staff obtained a water agreement dated
20 November 3, 2003, between the Clallam County PUD and an
21 entity called Iliad, Inc., d/b/a Lower Water System to
22 purchase water from the PUD for the Lower Water System.
23 And it's signed by David Dorland, president of Iliad, Inc.

24 Q. Is there an exhibit that we have already admitted
25 into the record that is that water agreement?

0019

1 A. Yes, Exhibit No. 5.

2 Q. That agreement that's signed by Iliad, Inc., d/b/a
3 Lower Water System, in the course of your investigation did
4 you look up any state records for a company called Iliad,
5 Inc.?

6 A. Yes, I did.

7 Q. What did you find?

8 A. I found Iliad, Inc., in the Washington Secretary
9 of State database as a registered corporation with David
10 Dorland as the sole governing individual. And according to
11 the Department of Licensing, as of 2011, Lower Water System
12 is not a registered trade name of Iliad, Inc.

13 Q. Is there an exhibit that we have admitted into the
14 record that is a copy of the databases that you just
15 referred to?

16 A. Yes, Exhibit No. 6.

17 Q. Turning to Exhibit No. 6, just looking at pages 1
18 and 2--recognizing the clarification that Mr. Finnigan did
19 provide for the record--these appear to be database entries
20 for Lower Incorporated. Is this -- did you also do a
21 search for Lower Incorporated?

22 A. Yes.

23 Q. And are these the copies of the database entries
24 as of that date?

25 A. Yes.

0020

1 Q. And at least as of that date, which is on page 1,
2 it says, in the middle of the page I'm reading, "Information
3 Current as of 1-27-2011"?

4 A. Uh-huh.

5 Q. This is the -- looks -- appears to be --
6 First of all, is this a Department of Licensing
7 database entry to your knowledge?

8 A. On page 1, yes.

9 Q. Page 1. It doesn't, at least on this document,
10 appear to show any different names for the Company other
11 than Lower Incorporated and firm name Lower Corporation?

12 A. Correct.

13 Q. And on that Exhibit 6 who is listed as the
14 governing person for Lower Incorporated?

15 A. David K. Dorland.

16 Q. Did you -- were you able to draw any conclusions
17 about the ownership of Lower Water System based upon your
18 review of the documentation that was -- that you had in the
19 record as well -- in your investigation, as well as what you
20 found in the databases, were you able to draw any
21 conclusions as to the ownership of the system from those?

22 A. Yes. That David Dorland owns or controls the
23 company that owns the Lower Water System.

24 Q. Now, earlier--I'm going back--you testified that
25 the Commission first became aware of the Company when a

0021

1 customer made an inquiry about the rates on the system. In
2 the course of your preliminary investigation did Staff
3 receive a copy of a notice by Lower Water Company regarding
4 a rate increase?

5 A. Yes. Staff received a copy of a letter dated
6 March 4, 2009, which was from Lower Water System to its
7 customers.

8 Q. Turning to Exhibit 4, is this the copy of that
9 letter?

10 A. Yes, it is.

11 Q. Does it describe the number of existing customers
12 on the system?

13 A. Yes.

14 Q. And how many is that?

15 A. Actually I don't know if this letter does
16 specifically. It was an earlier letter.

17 Q. On --

18 A. Oh, there it says, existing seven water customers,
19 yes. Sorry.

20 Q. Does it describe the rates that are to be charged?

21 A. Yes, it does.

22 Q. And can you describe what those rates appear to
23 be?

24 A. A base rate of \$59.15 per month, plus PUD charges
25 and utility taxes, which are a PUD master meter rate of 72

0022

1 cents per customer per day and water usage at 2.35 cents per
2 cubic feet and the utility tax of .05029.

3 Q. And according to that letter--I'm turning to
4 page 2 now of that exhibit--when would these rates appear to
5 have gone into effect?

6 A. Thirty days from the date of the notice.

7 Q. And the date of that notice was?

8 A. March 4, 2009.

9 Q. So April 4, 2009?

10 A. Approximately.

11 Q. So if the rates went into effect on approximately
12 April 4th, when would the first bill of the company,
13 approximately, reflecting those rates have been issued to
14 customers?

15 A. The May 2009 bill.

16 Q. So the following bill?

17 A. Uh-huh.

18 Q. I'm going to turn to Exhibit 7. This is a letter
19 from Commission staff to the water company. Actually let me
20 go back a step.

21 You've testified as to the Company volunteering
22 information and writing in a letter that is dated July 2nd
23 of 2009. After this letter was sent did the Commission
24 staff receive any further information regarding the
25 Company's operations?

0023

1 A. No.

2 Q. Did the Commission staff receive any customer
3 inquiries after that letter was sent? Or after that letter
4 was received? I'm sorry.

5 A. Yes. On January 20, 2010, a second Lower
6 customer contacted consumer protection staff.

7 Q. Upon that contact did the Commission staff again
8 attempt to contact the Company?

9 A. Yeah. A letter was sent that same day.

10 Q. I'm referring to Exhibit 7. It's a letter dated
11 January 20, 2010. Is that the letter that you're referring
12 to?

13 A. Yes, it is.

14 Q. And there's also a questionnaire attached to that
15 as well; is that correct?

16 A. Correct.

17 Q. Did they, did the Company, respond to that letter
18 and questionnaire?

19 A. Yes. On February 24, 2010. The letter is dated
20 February 24th. It was received on February 25th.

21 Mr. Dorland sent a letter stating that he had been waiting
22 for the Clallam County PUD's response to their option to
23 purchase the Lower Water System.

24 Q. Is that -- I'm looking now at Exhibit 8?

25 A. Uh-huh.

0024

1 Q. Are you referring to Exhibit 8 when you are --

2 A. Yes.

3 Q. -- in your testimony? Was there a response, to
4 your knowledge, to the questionnaire or the specific answers
5 to the questionnaire as part of that response?

6 A. No, not to my knowledge.

7 Q. After this letter was received on February 24th
8 did the Commission receive any further written
9 communications from the Company?

10 A. Not to my knowledge.

11 Q. Did the Commission receive any further information
12 regarding the water system from customers?

13 A. Yes. On July 27, 2010, consumer protection staff
14 received copies of monthly bills for June 2010 from five of
15 the seven Lower customers.

16 Q. And at that point was the matter referred to the
17 compliance investigation section for a formal investigation?

18 A. Yes.

19 Q. Now, the Company, in Exhibit 8, the letter signed
20 by Mr. Dorland, he indicates that they're waiting for
21 Clallam County PUD's response to option to purchase the
22 Lower Water System. As of this date, or I guess since the
23 classification proceedings and the penalty assessment was
24 issued, have you received any further information or
25 knowledge about -- or contacted the PUD regarding whether or

0025

1 not they have taken over the system?

2 A. Yes.

3 Q. And what prompted that?

4 A. There was an article published in the Sequim
5 Gazette--which I don't have a copy of it in front of me so I
6 don't know the exact date--with a statement from the PUD
7 that it was not in negotiations and did not intend to
8 purchase Lower Water System.

9 Q. After you saw this article did you contact the
10 PUD?

11 A. I did. On April 13th I spoke with Mike Kitz, who
12 is the head of the water department at Clallam County PUD.
13 And he stated that after that article was published he was
14 contacted by Mr. Dorland who offered to donate the Lower
15 Water System to the PUD.

16 Q. I'm going to turn now and specifically ask you
17 some questions about the violations that you found in your
18 investigation report and that ultimately resulted in the
19 penalty assessment.

20 You alluded earlier to receiving copies of
21 invoices of water service. I'm going to refer -- turn now
22 to Exhibit 9. Exhibit 9 is five pages of invoices of
23 water -- of Lower Water Company customers service on the
24 system. What is the date of those invoices?

25 A. June 30, 2010.

0026

1 Q. And reading those invoices what do you -- I would
2 like to ask you some questions about that. What did they
3 appear to show in terms of the rates that were charged as of
4 June 30, 2010?

5 A. Base fee of \$59.15, a PUD master meter fee of 72
6 cents per day, usage at 2.35 cents per cubic feet and a
7 state tax rate of approximately 5 percent.

8 Q. So each of these invoices has in common the base
9 rate to the same master meter rates, 72 cents a day, has a
10 usage charge but that usage is variable depending on the
11 customer?

12 A. Correct.

13 Q. But all the customers appear to have incurred
14 usage charges?

15 A. Correct.

16 Q. How do the rates that are reflected in the
17 invoices of June 30, 2010, compare to those described in the
18 letter to customers in Exhibit 4?

19 A. They're identical.

20 Q. Now what is your understanding of the Commission's
21 rule regarding what makes a company jurisdictional?

22 MR. FINNIGAN: I'll object as calling for a
23 conclusion of law.

24 JUDGE FRIEDLANDER: Mr. Fassio, do you want to go
25 ahead and restate the question?

0027

1 MR. FASSIO: Let me try to restate it.

2 JUDGE FRIEDLANDER: Thanks.

3 Q. (By Mr. Fassio) In the course of your
4 investigation did you find violations of Commission rules?

5 A. Yes, I did.

6 Q. What violation of Commission rules did you find?
7 What was the -- what violation did you find?

8 MR. FINNIGAN: Objection, Your Honor. If this is
9 simply restating what is already in Exhibit 1 the document
10 speaks for itself. If this is going to be introducing items
11 that aren't in the complaint then I'm objecting that this is
12 going beyond the scope of the proceeding. So it's either
13 the document speaks for itself or if they're trying to get
14 something new in then it's beyond the scope of this
15 proceeding.

16 JUDGE FRIEDLANDER: Mr. Fassio?

17 MR. FASSIO: Let me try to get at it a different
18 way.

19 Q. (By Mr. Fassio) In your investigation you were
20 charged with -- one of your responsibilities is to
21 determine -- is to investigate companies that may be subject
22 to regulations; is that a fair statement?

23 A. Yes.

24 Q. And to determine whether or not they're subject to
25 regulation as well as to determine their compliance with

0028

1 Commission rules?

2 A. Correct.

3 Q. Is part of the determination for -- is part of the
4 determination for whether they are subject to jurisdiction
5 looking at the average annual revenue of a water company?

6 A. Yes.

7 Q. This Company has indicated that they have seven
8 customers on the system. What did you determine to be the
9 average annual revenue per customer of this water company
10 based upon the letter that was indicated in Exhibit 4 as
11 well as your knowledge of the water rates that were still in
12 effect as of June 10th?

13 A. Well excluding usage, just based on the base rate
14 and master meter rate, it's a total annual minimum charge of
15 \$972.60 per customer.

16 Q. Can you describe how you reached that calculation?

17 A. That is the \$59.15 base rate plus \$21.90 for a
18 30-day month for the master meter 72 cents per day rate
19 which totals \$81.05, multiplied by 12 months is \$972.60.

20 Q. WAC 480-110-255 indicates that if a company has --
21 that water companies are subject to jurisdiction if they
22 have less than 99 customers, if their average annual revenue
23 per customer is over \$471. Are you able to calculate, based
24 upon that \$471 average annual revenue per customer, when
25 that Company would have exceeded \$471 per customer average

0029

1 annual revenue?

2 A. Yes. Based on the rate increase that was
3 outlined in the letter of March 4th, and the rates going
4 into effect on approximately April 4th, that threshold would
5 have been met on October 4, 2009.

6 Q. So at that October 4, 2009, based upon the rates
7 that were, as you're understanding it, in effect as of April
8 4th, they would have received revenue per customer, they
9 would have reached over that threshold of \$471?

10 A. Correct.

11 JUDGE FRIEDLANDER: If I can interject to ask a
12 clarification question. Ms. Pearson, you testified that the
13 customers would have been billed the rate increase in May of
14 2009. But the Company wouldn't become jurisdictional until
15 October 2009. Why is there that five-month gap?

16 THE WITNESS: My understanding of the way that the
17 average annual revenue is calculated is that once the \$471
18 has been collected from each customer, within that one year
19 period, at that date they become jurisdictional.

20 JUDGE FRIEDLANDER: I see. So it would have taken
21 that five-month period for the revenues to have increased
22 enough to meet the jurisdictional threshold?

23 THE WITNESS: Correct.

24 JUDGE FRIEDLANDER: Okay. Thank you, thank you.

25 Q. (By Mr. Fassio) Now your calculation does not take

0030

1 into account any variable usage charges?

2 A. Correct.

3 Q. So it's possible, but you don't have any
4 calculation, that if you factored in usage it may or may not
5 have been earlier than October?

6 A. Correct.

7 Q. But you did not factor that into your calculation
8 of October?

9 A. Correct.

10 Q. In your investigation did you find violations of a
11 Commission rule regarding requirements of a water company
12 once they met the threshold of \$471 of average annual
13 revenue?

14 MR. FINNIGAN: Your Honor, again it's the same
15 objection. It's either that Exhibit 1 is speaking for
16 itself, or that they're trying to get information that's not
17 within the complaint and is improperly trying to broaden the
18 scope of the complaint.

19 JUDGE FRIEDLANDER: And I assume, Mr. Fassio, that
20 that's not the case. You're not trying to --

21 MR. FASSIO: I'm not trying to --

22 JUDGE FRIEDLANDER: -- expand the scope of the
23 docket?

24 MR. FASSIO: No, not at all.

25 JUDGE FRIEDLANDER: Okay. Thank you.

0031

1 MR. FASSIO: I'm just merely trying to...

2 JUDGE FRIEDLANDER: You can certainly rephrase.

3 MR. FASSIO: Sure.

4 JUDGE FRIEDLANDER: Thank you.

5 Q. (By Mr. Fassio) Exhibit 1 recommends
6 penalties for--on page 6--recommends penalties in the amount
7 of 10,500 calculated \$100 per customer, seven customers per
8 month, for a total of 15 months for failure to file a tariff
9 with the Commission as required by RCW 80.28, WAC
10 480-110-433(3). How many violations -- can you clarify for
11 the record how many violations you found?

12 A. 105.

13 MR. FINNIGAN: Your Honor, I'm objecting. The
14 document speaks for itself. And just reading portions of
15 the document that's been admitted is just taking up time
16 quite frankly.

17 Q. (By Mr. Fassio) Is the penalty assessment that is
18 filed in this docket reflective of the -- of your
19 recommendation and the conclusions in your investigation?

20 A. Yes.

21 Q. And is your understanding that that penalty
22 assessment was for 105 violations of WAC 480-110-433(3)?

23 A. Yes.

24 Q. And what date -- can you clarify what date range
25 your understanding of those violations represent?

0032

1 A. October 4, 2009, through approximately January 4th
2 of 2011.

3 Q. So that's 15 months?

4 A. Correct.

5 Q. And you calculated that based on 15 months times
6 seven customers?

7 A. Correct.

8 Q. Billing those seven customers. Is this -- was
9 this a -- so what is your understanding --

10 The Commission found 105 violations of
11 480-110-433(3). Is it your understanding that the first
12 violation would have occurred on the date that they
13 became -- that they exceed -- that they would have exceeded
14 in their billing the \$471?

15 MR. FINNIGAN: I'm going object to the form of the
16 question. The Commission has not found anything yet. There
17 is a Commission staff investigative report but the
18 Commission has not made any ruling one way or the other. So
19 objecting to the form of the question.

20 MR. FASSIO: I'm asking regarding the Staff's
21 findings, which have not been established by the Commission.
22 I'm asking Ms. Pearson, who wrote the investigation report,
23 how she calculated the violations that are contained in
24 there for clarification of the record.

25 MR. FINNIGAN: I have no objection then --

0033

1 JUDGE FRIEDLANDER: That satisfies my
2 clarification, yeah.

3 MR. FINNIGAN: -- to that.

4 JUDGE FRIEDLANDER: That's correct. Thank you.

5 Q. (By Mr. Fassio) So, Ms. Pearson, the violations --
6 the Company, as your investigation, your conclusion in your
7 report, is that the Company should have filed a tariff on or
8 before October 4, 2009; is that a fair statement?

9 A. Yes.

10 Q. And the Company has been -- was it your conclusion
11 that the Company has been in continuing violation of that?

12 A. Yes.

13 Q. And your calculations were -- your calculation of
14 105 violations is a reflection of --

15 MR. FINNIGAN: Your Honor, I'm going to object as
16 asked and answered. This form -- this question has been
17 asked about five different ways now and --

18 MR. FASSIO: Let me just -- I'll just get to it.

19 Q. (By Mr. Fassio) What is your recommendation to the
20 Commission concerning the penalties that were assessed in
21 the penalty assessment?

22 A. I recommend that the Commission find 105
23 violations of WAC 480-110-433(3) by engaging in business as
24 a water company without having filed a tariff as required by
25 Commission rules and statutes.

0034

1 MR. FASSIO: I think that concludes my
2 investigation of this -- or my questioning of Ms. Pearson at
3 this time. I would reserve the right to redirect.

4 JUDGE FRIEDLANDER: Thank you. And I just have
5 a -- perhaps a couple of brief questions myself.

6

7 CLARIFICATION EXAMINATION

8 BY JUDGE FRIEDLANDER:

9 Q. It would appear that, I believe this is Exhibit 4,
10 the March 4, 2009, letter from Lowper to its customers. The
11 water rates that are proposed to go in effect 30 days from
12 then, or approximately April 4, 2009, we have those in the
13 record. Do we have anything in the record that indicates
14 what the rates were prior to this?

15 A. No, we do not.

16 Q. We don't have any information. Okay. So it's
17 possible, depending on what the rates were then, they were
18 jurisdictional -- the Company would have been jurisdictional
19 prior to this?

20 A. Absolutely.

21 JUDGE FRIEDLANDER: Okay. That's all that I have.
22 Mr. Finnigan, do you have any cross-examination?

23 MR. FINNIGAN: I do.

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CROSS-EXAMINATION

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BY MR. FINNIGAN:

Q. Good afternoon. You've testified that the Commission sent out a letter and questionnaire to the Company in June 23, 2009, which is Exhibit 2; is that correct?

A. Yes.

Q. And that Exhibit 3 there was a letter back to the Commission in response to that letter; is that correct?

A. Yes.

Q. To your knowledge did anyone from Commission staff contact the Company after receiving the letter of July 2, 2009, and say, thank you but we would like further information?

A. Not to my knowledge.

Q. You also testified that as evidenced by Exhibit 7 the Commission sent a letter and questionnaire to the Company dated January 20, 2010; is that correct?

A. Yes.

Q. And you've testified that as what's Exhibit -- what is Exhibit 8 is the Company's response dated February 24, 2010; is that correct?

A. Yes.

Q. To your knowledge did anybody contact the Company and say, thank you for your letter of February 24, 2010, but

0036

1 we require additional information?

2 A. Not to my knowledge.

3 Q. During the course of your investigation did you
4 contact the Company and ask to speak to Mr. Dorland about
5 your investigation?

6 A. No, I did not.

7 Q. Did you contact the Company and ask to speak to
8 anybody at the Company --

9 A. No.

10 Q. -- about your investigation?

11 A. No, I did not.

12 Q. When you received the June 2010 bills from the
13 customers, or more specifically when Commission staff
14 received the June 2010 bills from the customers, to your
15 knowledge did anyone contact the Company to ask them about
16 the bills that were sent to customers?

17 A. Not to my knowledge.

18 Q. And someone looking at those bills, which are
19 Exhibit 9, at that time could have run the same calculation
20 that you've described that you did during your
21 investigation; is that correct?

22 A. Correct.

23 Q. Do you know if anybody ran that calculation at
24 that time, July of 2010?

25 A. I'm not sure what you're asking.

0037

1 Q. Okay. You've testified that -- and from your
2 testimony I couldn't tell you when -- well I'll ask you that
3 question. You described the calculation that you made based
4 on these invoices that are Exhibit 9; correct?

5 A. Yes.

6 Q. When did you make that calculation?

7 A. Several times. Probably most recently January of
8 this year.

9 Q. When was the first time?

10 A. When I received the invoices.

11 Q. Which you testified was in July of 2010?

12 A. Not me personally, no, that's when Commission
13 staff.

14 Q. Well Commission. Okay. When did you receive it?

15 A. Probably in August.

16 Q. Okay. When you ran that calculation did you
17 contact the Company to ask them to explain the calculation
18 from their perspective?

19 A. No, I did not.

20 Q. Do you know if anybody from the Commission staff,
21 when they received them in July of 200- --them being the
22 invoice--in July of 2010, contact the Company and ask them
23 to explain the calculation?

24 A. Not to my knowledge.

25 Q. Would you look at Exhibit 5, please, and the last

0038

1 page of Exhibit 5. Are you there?

2 A. Yes.

3 Q. Do you have any understanding that would be
4 different than what is the first paragraph of Section 10
5 that there is an agreement to offer the Lower Water System
6 to the District at no cost?

7 A. Do I have a different understanding?

8 Q. Yeah.

9 A. No.

10 Q. Okay. In running your calculation that you've
11 discussed, based on the invoices that are in Exhibit 9, your
12 calculation assumes the customers pay their bills; is that
13 correct?

14 A. Correct.

15 Q. Did you contact the Company to see if there were
16 customers that did not pay their bills?

17 A. No, I did not.

18 Q. In looking at Exhibit 9, is it your understanding
19 that some of the charges that are contained on the invoices
20 of Exhibit 9 are pass-throughs of charges from Clallam PUD
21 to the water company?

22 A. It's my understanding the Company made that
23 representation.

24 Q. Did you do any investigation to determine whether
25 these were pass-through charges from Clallam County PUD to

0039

1 the water company?

2 A. No, I did not.

3 Q. Did you do any investigation of the frequency with
4 which Clallam County PUD increases the rates it charges to
5 the water company?

6 A. No, I did not.

7 Q. Do you agree that the Clallam County PUD is the
8 water company's sole source of water for its customers?

9 MR. FASSIO: Objection. I don't think that this
10 witness has the expertise to answer that question.

11 JUDGE FRIEDLANDER: Mr. Finnigan?

12 MR. FINNIGAN: Well, I'm not sure I've ever seen
13 someone impinge their own witness before, but that's okay.
14 I will -- sorry, that was the wrong word.

15 JUDGE FRIEDLANDER: Did you want to --

16 MR. FASSIO: Perhaps you could restate the
17 question?

18 MR. FINNIGAN: Yeah, that's what I'm going to do.

19 JUDGE FRIEDLANDER: And if for some reason
20 Ms. Pearson cannot provide the answer that you -- I should
21 not say cannot provide the answer. Does not have the
22 information to provide you with then perhaps we'll find a
23 different witness.

24 MR. FINNIGAN: And -- well, I'll just -- I'll
25 restate the question.

0040

1 JUDGE FRIEDLANDER: Thank you.

2 Q. (By Mr. Finnigan) Are you aware of where the water
3 company obtains water to service customers?

4 A. No.

5 Q. That was not a part of your investigation then?

6 A. No.

7 MR. FINNIGAN: I have no further questions for
8 this witness.

9 JUDGE FRIEDLANDER: Thank you. I just have one
10 before I'll dismiss you, unless Mr. Fassio has redirect.

11

12 CLARIFICATION EXAMINATION (continued)

13 BY JUDGE FRIEDLANDER:

14 Q. Assuming that the Company does request mitigation,
15 what would be Staff's recommendation?

16 A. Staff opposes mitigation of the penalty.

17 Q. Right. What would -- I guess what I'm asking is
18 would Staff support mitigation of the penalty?

19 A. No.

20 JUDGE FRIEDLANDER: Okay. Thank you.

21 Mr. Fassio, do you have any redirect?

22

23 REDIRECT EXAMINATION

24 BY MR. FASSIO:

25 Q. Ms. Pearson, is Staff required to contact

0041

1 companies and continually contact companies when it conducts
2 an investigation into their operations?

3 A. No.

4 Q. But Staff did contact this Company in writing?

5 A. Yes.

6 Q. And they did receive responses in writing?

7 A. Yes.

8 Q. And your investigation into this was referred to
9 the compliance investigation staff in this summer? It was
10 in August you mentioned that you had started?

11 A. Correct.

12 Q. And your investigation took into account both the
13 Company's representation on March 4, 2009, as well as the
14 invoices that -- of June 30th; is that correct?

15 A. Correct.

16 Q. Is it your belief that this Company should have
17 known that it should -- of its requirements when it came
18 under jurisdiction?

19 A. Yes.

20 Q. What is your basis for that conclusion?

21 A. Information from past investigations, and I
22 believe Mr. Dorland has testified in a rate case for a water
23 company before the Commission in the past.

24 Q. So it's your belief this Company should have
25 known?

0042

1 A. Correct.

2 Q. And you believe it's the responsibility of water
3 companies to be aware of what the requirements are or
4 what -- aware of the requirements are, aware of what the
5 UTC's jurisdiction is so that they can anticipate when they
6 may need to file a tariff or when they may need to do other
7 things that are required under the Commission's authority?

8 A. Yes.

9 Q. Is it your opinion that the Commission staff
10 attempted to contact the Company and obtain information from
11 the Company?

12 MR. FINNIGAN: Objection. Leading.

13 MR. FASSIO: Sorry.

14 Q. (By Mr. Fassio) Was this Company responsive to the
15 questionnaires that were sent to the Company?

16 A. No, it was not.

17 Q. Those questionnaires laid out detailed questions
18 of the Company. I'm just looking at Exhibit 2 and again
19 Exhibit 7. Did the Company make any attempt to answer the
20 details in that questionnaire?

21 A. No, it did not.

22 MR. FASSIO: Thank you. That's all the questions
23 I have.

24 JUDGE FRIEDLANDER: Thank you. And I have one
25 clarification question. You mentioned that you believe

0043

1 Mr. Dorland testified in a prior water rate case, do you
2 know what the docket is that he testified in?

3 THE WITNESS: I believe that Mr. Fassio has that
4 information.

5 MR. FINNIGAN: Your Honor, it's the Alder Lake
6 Water System.

7 JUDGE FRIEDLANDER: Okay. And could you spell
8 that? Alder?

9 MR. FINNIGAN: Alder as in the tree. Lake. Water
10 System.

11 JUDGE FRIEDLANDER: And about approximate year on
12 when that was?

13 MR. FINNIGAN: Two years ago, three years ago,
14 somewhere in that vicinity.

15 JUDGE FRIEDLANDER: So around 2009? Maybe 2008,
16 2009, somewhere around in there?

17 MR. FINNIGAN: I don't remember precisely, Your
18 Honor.

19 JUDGE FRIEDLANDER: Okay.

20 MR. FINNIGAN: I don't want to represent something
21 that I don't have a strong memory on.

22 JUDGE FRIEDLANDER: Okay. Mr. Fassio.

23 MR. FASSIO: Just redirect.

24 ///

25 ///

0044

1 REDIRECT EXAMINATION (continued)

2 BY MR. FASSIO:

3 Q. Ms. Pearson, are you aware of a Kayak -- when you
4 refer to Mr. Dorland testifying in a prior case were you --

5 MR. FINNIGAN: Oh.

6 Q. (By Mr. Fassio) Are you familiar with the Kayak
7 Estates Water System rate case?

8 MR. FINNIGAN: Your Honor, first of all, I want to
9 apologize, I had my cases confused.

10 JUDGE FRIEDLANDER: I see.

11 MR. FINNIGAN: It was not Alder Lake.

12 JUDGE FRIEDLANDER: I see.

13 Mr. Fassio, do you have a docket number for the
14 Kayak Lake or Kayak Estates?

15 MR. FASSIO: I do. I'm happy to cite to it and
16 perhaps we can stipulate that Mr. Dorland did testify in
17 that case. It's -- the Docket Number is UW-05144.[sic.
18 Correct number is 051444] I do have a copy I can share with
19 Mr. Finnigan. I don't think we need to insert it into the
20 record.

21 MR. FINNIGAN: I mean the Commission can take
22 official notice of its own prior proceedings. I mean I
23 don't see that there's anything that's needed on that.

24 JUDGE FRIEDLANDER: That's fine. That's fine. We
25 can take administrative notice. I'm sorry, I just want to

0045

1 make sure I have the docket number. 05?

2 MR. FASSIO: 1444.

3 JUDGE FRIEDLANDER: Great. Thank you. And with
4 that unless -- we don't usually allow recross, but we're
5 doing good on time.

6 MR. FINNIGAN: That's fine, Your Honor.

7 JUDGE FRIEDLANDER: Okay. Thank you. I have no
8 further clarification questions. The witness is dismissed.
9 Thank you.

10 Mr. Fassio, do you have any other witnesses?

11 MR. FASSIO: No, Your Honor.

12 JUDGE FRIEDLANDER: Okay. Thank you.

13 Mr. Finnigan.

14 MR. FINNIGAN: Could we take a 10-minute break?

15 JUDGE FRIEDLANDER: That's fine. We will be off
16 the record.

17 (Break taken from 2:35 to 2:39 p.m.)

18 JUDGE FRIEDLANDER: Okay. We will be back on the
19 record.

20 And I believe, Mr. Finnigan, you have the floor.

21 MR. FINNIGAN: Thank you, Your Honor. Call
22 Mr. Dorland.

23 JUDGE FRIEDLANDER: Okay. Mr. Dorland, if you
24 will step to the witness stand and just go ahead and raise
25 your right hand. Remain standing.

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(David Dorland sworn on oath.)

2

THE WITNESS: I do.

3

JUDGE FRIEDLANDER: Okay. You can be seated.

4

Mr. Finnigan.

5

MR. FINNIGAN: Thank you.

6

7

DAVID DORLAND,

8

having been first duly sworn

9

on oath was examined and testified as follows:

10

11

DIRECT EXAMINATION

12

BY MR. FINNIGAN:

13

Q. Mr. Dorland, would you state your name for the

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record and spell your last name, please?

15

A. Yes. My name is Dave Dorland. And Dorland is

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spelled D-o-r-l-a-n-d.

17

MR. FINNIGAN: Is the mic on?

18

JUDGE FRIEDLANDER: I don't think so. Is the red

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light on?

20

THE WITNESS: Now it is. Red light should be off,

21

shouldn't it?

22

Q. (By Mr. Finnigan) Mr. Dorland, what is your

23

relationship to Lower Incorporated?

24

A. Shall I go into the history?

25

Q. Well, just for the moment what is your present

0047

1 relationship to Lowper Incorporated?

2 A. I am the president of Lowper, Inc.

3 Q. Do you own the stock of Lowper?

4 A. That's correct.

5 Q. Why don't you go ahead and tell us how you came to
6 be in the position of the stockholder of Lowper, Inc.? Or
7 Lowper Incorporated, sorry.

8 A. The Lowper Corporation was established in the mid
9 '90s to develop the Lowper Estate which was 22 lots outside
10 of Sequim. The two principals held by the name of Lowrey,
11 Little and Foresight[spelled phonetically] were the officers
12 and directors. They entered into a contract with Iliad.
13 Iliad is an underground utility company. And where we make
14 our money isn't water systems, it's construction. And they
15 hired us to put in the first phase of the Lowper Water
16 System. Water is very difficult in certain parts of the
17 Sequim area. And getting a water right for more than six
18 users from the Department of Ecology was very difficult. So
19 the Lowper development team had a well drilled and then
20 contracted for Iliad to put in the structure to supply six
21 users that --

22 There was a line extension done by an adjoining
23 developer that would bring Clallam County Water to the
24 remaining lots of the Lowper development. So the owners
25 asked if I would negotiate and work up a price to put in a

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1 water system, for the remaining lots go off the well. And
2 basically it was a water system to supply all the original
3 six users and the remaining lots that were there.

4 Lowerper had an obligation to Iliad, and they were
5 going to pay off as lots sold, which it didn't happen. All
6 three principals died, and I ended up with the Lowerper
7 Corporation.

8 Q. When you referred to Clallam County in your
9 response just now were you referring to Clallam County PUD?

10 A. Yes. I was, yes.

11 Q. How long have you operated the -- how long have
12 you had ownership of the Lowerper Incorporated?

13 A. 2005, 2006 is I think when Lowrey passed away.

14 Q. For those years from 2005 or 2006 to the present
15 has Lowerper Incorporated ever made a profit?

16 A. No, they've -- they -- Lowerper owes Iliad about
17 \$16,000 worth of maintenance and repairs and improvements
18 for the Lowerper Water System.

19 Q. And would you describe for us what the
20 relationship between Lowerper Incorporated and Iliad, Inc.,
21 is?

22 A. Lowerper owns the Lowerper Water System. And Iliad
23 has an agreement to maintain and operate it, and the
24 responsibility of trying to get their money back.

25 Q. So Lowerper Incorporated retained Iliad, Inc., to be

0049

1 the manager of the system?

2 A. That's correct.

3 Q. Have you entered into discussions with Clallam
4 County PUD for them to acquire the system, the Lower Water
5 System?

6 A. Yes. When I -- when Clallam County and myself
7 negotiated the wholesale water agreement that negotiation
8 was with Mike Kitz, who is the water manager of Clallam
9 County. And in that agreement they wanted -- and it's in
10 the agreement that they wanted the option to take over the
11 system after we had completed our improvements and
12 connected, you know, the lots up. That I'm going to say it
13 was like in 2009, late 2008 or 2009 I contacted Mike Kitz
14 and said, I need you to take over the system now. That, you
15 know, there's no development, there's no new customers,
16 there's been seven customers since 1995, and would he be
17 interested in taking over the Lower Water System now being
18 that he could probably, because of his customer base,
19 provide a better rate to the six, seven customers. So...

20 And he says, yes, but there's a number of things
21 that we have to go through. And one of the things that
22 delayed it in 2009 was the double -- four-inch double check
23 valve assembly that was there didn't meet their specs. They
24 wanted that to be put into perspective. And then we've had
25 easement problems, which we're still working on. And it,

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1 you know, might be another six months to get those easement
2 problems squared away.

3 Q. Could you explain, just so the record's clear,
4 what you mean by your -- you referred to a four-inch double
5 check valve?

6 A. It's an apparatus that is required by the Health
7 Department so that you don't have water that backflows into,
8 you know, non-potable water that flows into potable water.

9 Q. Am I understanding that the PUD wanted some change
10 made to that assembly?

11 A. The assembly that was put in did not meet their
12 specifications. We had to remove it and bring in a unit
13 that met their specifications.

14 Q. And this was done in 2009?

15 A. Yes.

16 Q. Have you had continuing discussions with the PUD
17 concerning their assuming operation of the system?

18 A. Yes, I have.

19 Q. Would you describe those, please?

20 A. That as Staff has said is that when I got the
21 notice then I got ahold of Mike Kitz and say, Mike, you
22 know, I want to push on getting this done, do you still want
23 the system? I have four or five letters that I brought
24 that -- of different dates that were emails between he and I
25 on acquiring the system. And at that time I think I hired

0051

1 you to do a draft agreement so their attorney could review
2 it for acquiring the water system. And then there was some
3 easement problems that we're still working out.

4 Q. A draft --

5 A. And as of April 11th I got an email from Mike Kitz
6 saying we absolutely want your system, you know, let's get
7 these items ironed out.

8 Q. A proposed purchase and sale agreement -- well, a
9 proposed acquisition agreement --

10 A. Yeah.

11 Q. -- let me put it that way, has been sent to
12 Clallam County PUD?

13 A. That's correct.

14 Q. Mr. Dorland, when you got the letters from the
15 Commission that are in the record here, and you responded to
16 them, why didn't you register Lower Water System as a
17 regulated water system at that time?

18 A. Number one, I didn't want to go to the expense of
19 regulation hoping that I get PUD to take over the system so
20 that we wouldn't continue to lose money on it.

21 Q. Did you have any opinion at the time about how
22 soon the acquisition by Clallam County PUD would occur?

23 A. I recall that, you know, we were hoping to get the
24 thing done within 60 to 120 days.

25 Q. Did you have any expectation that it would take

0052

1 this long?

2 A. No.

3 Q. Mr. Dorland, is there anything else you would like
4 to offer by way of mitigation in this proceeding?

5 A. You know, I know that this has to do with rates,
6 and the Staff did a good job. You know, what do I say, you
7 know? That I'm trying --

8 Q. Let me ask you --

9 A. -- to get rid of a monster.

10 Q. Okay. Sorry. Let me follow up on what I'm
11 concerning rates.

12 Are a portion of the rates you charge flow-through
13 rates from what the Clallam County PUD charges for delivery
14 of water for the Lower Water System?

15 A. You refreshed my memory. And this is an important
16 thing. We started metered water and purchasing water from
17 Clallam PUD in 2005. Since 2005 they have raised their
18 rates four times on us. And I don't mean just the cubic
19 feet, I mean wholesale meter rate that originally when we
20 would hook up a customer we would have to pay the PUD
21 \$2,200. Now this was 2006, 2007. In 2008 they increased
22 that rate to just under \$7,000 for, you know -- if a
23 customer hooked up that customer had to write a check to
24 Clallam County PUD advising them that they were going to be
25 connecting water and a meter at the Lower Water System.

0053

1 And that's all in that agreement.

2 Q. You mentioned the metered rates, the consumption
3 rates. Do the -- are the consumption rates that customers
4 pay to Lowerper Incorporated the rates that Lowerper
5 Incorporated pays to Clallam County PUD?

6 A. I think it is, yes. And I might mention that
7 there's a letter that came out that in January they're going
8 to raise it another 8 percent.

9 Q. One final question, and just allow you to wrap
10 things up, anything else you want to put on the record?

11 A. Not that I can think of, Rick.

12 MR. FINNIGAN: Okay. Mr. Dorland is available for
13 cross-examination.

14 JUDGE FRIEDLANDER: Okay. Thank you.

15 Mr. Fassio, do you have any cross?

16 MR. FASSIO: Can I take one moment, please, to
17 look over my notes?

18 JUDGE FRIEDLANDER: Sure.

19 Maybe while we're waiting--we are still on the
20 record--I had a clarification possible production of
21 documents request.

22 Mr. Dorland, you mentioned that there were letters
23 from the Clallam County PUD?

24 THE WITNESS: Yes.

25 JUDGE FRIEDLANDER: That you received, four or

0054

1 five, I believe?

2 THE WITNESS: Yes.

3 JUDGE FRIEDLANDER: Do you have those?

4 THE WITNESS: I can get them to you. I can put --
5 you tell me what you want and I can put a packet together.

6 MR. FINNIGAN: I believe he said emails, not
7 letters.

8 THE WITNESS: Well, there are some letters.

9 MR. FINNIGAN: Okay. I'm sorry. Combination of
10 letters and emails.

11 JUDGE FRIEDLANDER: That's fine. And then, I
12 believe, let me look at my notes, there was a prepared
13 document for sale of the water company that the Company,
14 Lowper, prepared. When was that prepared and sent to
15 Clallam?

16 MR. FINNIGAN: Early this year.

17 JUDGE FRIEDLANDER: Okay. So sometime January,
18 February?

19 MR. FINNIGAN: I don't remember the precise date.

20 THE WITNESS: It sticks in my mind it was February
21 8th.

22 JUDGE FRIEDLANDER: Okay.

23 THE WITNESS: Yeah.

24 JUDGE FRIEDLANDER: Okay. Do you have a copy of
25 that as well?

0055

1 MR. FINNIGAN: I prepared the document. I have a
2 copy of it, Your Honor.

3 JUDGE FRIEDLANDER: Okay. If you could submit
4 that. Just for ease of memory, let's go ahead and make it
5 by this Friday because most of the other deadlines are this
6 Friday.

7 MR. FINNIGAN: Sure, not a problem.

8 JUDGE FRIEDLANDER: Okay.

9 MR. FINNIGAN: Just to be sure, you want a copy of
10 the draft agreement that was sent to Clallam County, and you
11 want copies of the correspondence between Lower and Clallam
12 County PUD?

13 JUDGE FRIEDLANDER: Exactly. At least for the
14 period that we're talking about as far as the penalty
15 assessment goes.

16 MR. FINNIGAN: Yes. Thank you.

17 JUDGE FRIEDLANDER: Yes.

18 MR. FINNIGAN: Your Honor, if I might ask a couple
19 more questions on direct while they're thinking about their
20 cross?

21 JUDGE FRIEDLANDER: Well, actually, yeah, I
22 think -- are we about ready to go into cross-examination?

23 MR. FASSIO: I am actually about ready, yes.

24 JUDGE FRIEDLANDER: Okay. I definitely want
25 Mr. Fassio to pay attention during the direct. And I also

0056

1 want to inform you that--and I should have waited until you
2 were finished conversing--but I asked Mr. Finnigan to
3 provide to the Commission the referenced correspondence
4 during the penalty assessment period in question between
5 Lowerper[mispronounced "ow" as in "cow"] -- Lowerper and the
6 Clallam County PUD. And I also requested a copy of
7 the--with the date included of when it was drafted--a copy
8 of the purchase agreement that was prepared by the Company.

9 And those will be served on Staff as well --

10 MR. FINNIGAN: Yes.

11 JUDGE FRIEDLANDER: -- correct? Okay. Good. So
12 that brings you up to speed. I didn't want to have left you
13 out on that one so...

14 You had two more questions on direct,
15 Mr. Finnigan?

16 MR. FINNIGAN: Yes, Your Honor.

17 JUDGE FRIEDLANDER: All right. Please proceed.

18 MR. FINNIGAN: Thank you. I apologize.

19 JUDGE FRIEDLANDER: Sure.

20

21 DIRECT EXAMINATION (continued)

22 BY MR. FINNIGAN:

23 Q. Mr. Dorland, the Staff is proposing a penalty in
24 this case of \$10,500, you're aware of that. That's not a
25 question, that's an introduction.

0057

1 A. Yes, that's why we're here.

2 Q. Does that amount substantially exceed the annual
3 revenue of the Company?

4 A. Absolutely.

5 Q. And of the annual revenue of the Company a
6 significant percentage of that is paid to Clallam County PUD
7 for the water the customers use; is that correct?

8 A. That's correct.

9 MR. FINNIGAN: Those are the two questions I had.

10 JUDGE FRIEDLANDER: Okay. Thank you.

11 And cross-examination, Mr. Fassio.

12 MR. FASSIO: Thank you, Your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. FASSIO:

16 Q. Mr. Dorland, just a few clarifying questions. How
17 long have you been the president/owner of Lower
18 Incorporated?

19 A. As I mentioned to Mr. Finnigan, and I can get the
20 record, but I think it was in -- that Lowery, who was the
21 president, died in 2005 or 2006 and then that's when I took
22 over the corporation.

23 Q. And I believe you've testified also about the
24 relationship of Lower Incorporated with Iliad Incorporated.
25 What is your relationship with Iliad Incorporated?

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1 A. I am the owner, president and only director. I
2 started the corporation in 1972.

3 Q. And how would you describe the operations of Iliad
4 Incorporated as they relate to Lowerper Incorporated or other
5 water systems in general?

6 A. During the late '60s up through the '90s Iliad
7 engineered and built water systems all over the state of
8 Washington and Oregon. By 1986 we were involved in probably
9 over 150 small water systems. And a lot of the work was
10 done for developers. And they wanted someone that could
11 maintain the system. And of course there is an evolution of
12 the Health Department. I can remember the first Health
13 Department manual they put out in 1963 was maybe 20 pages.
14 Now it's 1,220 pages. But in any case.

15 So we have a maintenance company with Iliad in
16 which I have a number of my employees, as certified water
17 operators, that maintain and operate water systems over the
18 state of Washington.

19 We have also a company that's called Water
20 Services that does all the billing, collects the money and
21 pays all the debt on these water systems, which is a service
22 to these developers and owners that own the water systems.
23 So that's the involvement.

24 Q. And many of these -- are many of these water
25 systems that Iliad, Inc., has management and contracts over,

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1 are they regulated -- are these -- are many of these
2 regulate -- many of these water systems or the companies in
3 which it contracts with regulated by the Commission?

4 A. Some of the water systems are regulated systems
5 and others are not.

6 Q. And you -- I guess we had some testimony earlier
7 from Ms. Pearson and some discussion about that you had
8 testified in a prior rate -- or a prior case before the
9 Commission. Was that in your -- was that in your position
10 with Iliad, Inc., or do you recall?

11 MR. FINNIGAN: I'm going to object as -- I'm just
12 going to note for the record that that's beyond the scope of
13 cross, but I won't object to this question. But it goes
14 much further beyond the scope of my cross.

15 JUDGE FRIEDLANDER: It does, but I think it gets
16 into the clarification question that I was asking, so I'm
17 going allow it.

18 A. I don't remember testifying that. In late 1980,
19 early 1990, when the legislation came to you people and said
20 we want you to take over all these little water systems and
21 get them regulated we had a meeting here, Mr. Finnigan,
22 myself and the head of the Health Department, at that time
23 was David Clark. And we agreed that no way were we going to
24 regulate Iliad. That it's a construction company and that
25 any systems over a certain amount would be put into a

0060

1 separate corporation--which my son happens to be the
2 president. And that meeting was held right here in this
3 building. And everyone agreed on it. So, you know, no
4 one's hiding any balls.

5 Q. (By Mr. Fassio) Okay. Thank you. Lower, as
6 you've testified, has a contract with Iliad to manage the
7 water system?

8 A. Yep.

9 Q. Does that contract include compliance with
10 operating requirements such as DOH water quality as well as
11 compliance with UTC requirements, are you aware?

12 A. Yes. I think there's a statement in there that --
13 or a paragraph that says it, to abide by the rules and
14 regulations of the Department of Health, yes.

15 MR. FINNIGAN: I just want to be clear, because
16 Mr. Fassio's question was a little compound in that he had
17 an assumption in his question that the contract had language
18 in it that required compliance with UTC regulations and did
19 it also have language related to DOH regulations.
20 Mr. Dorland has responded to the DOH portion of the
21 question, but I don't think the assumption has been
22 addressed, and maybe that should be asked separately.

23 JUDGE FRIEDLANDER: Thank you for the
24 clarification.

25 Q. (By Mr. Fassio) I realize that was a compound

0061

1 question. So you've asked the -- answered the first part of
2 that question for me. Does the --

3 To your knowledge does that contract that Lowerper
4 has with Iliad, to manage the water system, include language
5 relating to compliance with Utilities and Transportation
6 Commission?

7 A. No, because we're not involved in that. That
8 would be the owner's responsibility.

9 Q. Is it fair to say that since you personally,
10 Mr. Dorland, have been involved with Iliad Incorporated,
11 which has management contracts with--as you've stated--other
12 water systems, and you've been in the water system for
13 sometime, are you generally familiar with UTC regulations?

14 A. Yes, to, you know, a certain extent. I don't read
15 everything that's put out every year. But the answer would
16 be in general, yes.

17 Q. You stated just a second ago that compliance with
18 UTC regulations would be the responsibility of the owner of
19 the water system. But aren't you the owner of Lowerper
20 Incorporated, that water system?

21 A. That's correct.

22 Q. And you've testified that to your communication
23 with the PUD and to various agreements, acquisition
24 agreements that have been sent--and I understand that
25 there's been a request for documentation of those--I don't

0062

1 believe that your response was clear as to when that
2 agreement, the acquisition agreement, was sent. Are you
3 aware at this point on the record of when the --

4 A. I think Mr. Finnigan said he thought it was the
5 first part of the year.

6 Q. And who precisely would have sent that agreement?
7 Would that have been you or somebody else?

8 A. Yes. I think -- and I think I have a cover letter
9 to Mike Kitz with the agreement, and then he responded that
10 he had passed it on to his attorney, the Clallam County
11 PUD's attorney.

12 Q. And then what -- what is -- what happened after
13 that?

14 A. There was an entanglement having to do with the
15 recorded easements. And that's what we're trying to
16 untangle.

17 Q. So --

18 A. Lower assigned -- when I built the water system
19 in 1995, and again expanded it in 2003, 2004, Lower gave
20 and recorded easements in favor of Iliad, Inc. And -- well,
21 maybe it was Lower, I can't remember. But apparently some
22 of those recorded documents were in conflict, and we're
23 trying to get it unscrambled now.

24 Q. Isn't it true though that that agreement was
25 rejected and now we're dealing with the entanglements?

0063

1 A. No, that agreement --

2 MR. FINNIGAN: I'm sorry, I'm sorry. No. Excuse
3 me for interrupting, but I do have an objection. The
4 objection -- the question assumes a fact not in evidence,
5 and there's no foundation for the question as phrased by
6 Mr. Fassio.

7 JUDGE FRIEDLANDER: What is the fact not in
8 evidence?

9 MR. FINNIGAN: That the agreement was rejected.

10 JUDGE FRIEDLANDER: I think in Ms. Pearson's
11 testimony though, if I'm not mistaken, and I don't want to
12 mischaracterize any here, she had indicated that Mr. Kitz
13 had said to her that the agreement had been rejected.

14 Mr. Fassio, is that correct?

15 MR. FASSIO: That's my understanding of her
16 testimony, yes.

17 MR. FINNIGAN: That's -- that was not my
18 understanding of it. But if it is I'm going to need to
19 recall her because that's factually incorrect.

20 MR. FASSIO: And I asked this in the form of a
21 question, as well, to ask if Mr. Dorland would confirm
22 whether that was indeed true, that it had been rejected in
23 its entirety.

24 A. No. And I think where the confusion is is that
25 when Staff talked to Mike Kitz his response had nothing to

0064

1 do with that agreement. And I think if we get the dates and
2 make a comparison on when he got the agreement and when
3 Staff talked to him we could iron that out.

4 Q. (By Mr. Fassio) I believe that Ms. Pearson
5 testified that she spoke to Mr. Kitz on April 13th?

6 A. On what?

7 Q. On April 13th of this year.

8 A. Okay.

9 Q. And that she also testified that the proposed
10 agreement was submitted after the Commission initiated its
11 classification proceeding and issued its penalty assessment?

12 A. No, that isn't what she said at all. What she
13 said is she called Mike Kitz and Mike Kitz said to her that
14 Mr. Dorland had called him to negotiate --

15 JUDGE FRIEDLANDER: I'm going to go ahead and stop
16 you right here. Because we allow hearsay at the Commission,
17 but we don't allow it when the witness is in the room.

18 THE WITNESS: Okay.

19 JUDGE FRIEDLANDER: So if we need to we'll recall
20 Ms. Pearson and she can testify as to what she intended when
21 she was testifying previously.

22 So, Mr. Fassio, if you want to explore this
23 further, or if you want to continue I'll leave that up to
24 you.

25 MR. FINNIGAN: Your Honor, as an officer of the

0065

1 court I'm perfectly willing to make a representation as to
2 the status of these documents. And the agreement has not
3 been rejected in its entirety. The agreement discussions
4 have been put on hold while the easement issue that
5 Mr. Dorland has discussed is being worked out. So that's
6 the status. I have been in contact with Mr. Erwin, who is
7 the attorney for the PUD, and we're both in agreement as to
8 where things stand. So I'll make that representation just
9 so the record can be clear, because that's what the fact is,
10 and I'll make that as an officer of the court.

11 JUDGE FRIEDLANDER: Mr. Fassio.

12 MR. FASSIO: That's fine.

13 Q. (By Mr. Fassio) I think just, Mr. Dorland, you
14 represented to the Commission, you know, back in 2009 that
15 you were in the process of selling to a purveyor, and that
16 you would keep the Commission informed. Isn't it true that
17 you didn't file -- you didn't submit any additional written
18 documentation as to your progress of that sale?

19 A. No, I did not.

20 Q. And again on January -- or February 24, 2010, in
21 your letter back to the Commission, after the -- after you
22 sent that letter you did not follow up with additional
23 written documentation as to what we've been speaking to
24 today as to any progress that had been done?

25 MR. FINNIGAN: Objection. I did not ask

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1 Mr. Dorland a single question about that exhibit. I
2 cross-examined Staff witness about that exhibit, but
3 Mr. Dorland was not asked about that exhibit and that
4 exceeds the scope of cross-examination.

5 JUDGE FRIEDLANDER: I think you mean it exceeds --

6 MR. FINNIGAN: Scope of direct.

7 JUDGE FRIEDLANDER: -- the scope of direct.

8 MR. FINNIGAN: I'm sorry.

9 Q. (By Mr. Fassio) So isn't it -- let me rephrase.

10 Isn't it true that as of today, until this hearing
11 today, you haven't provided the Commission with any--other
12 than what has already been admitted into the record
13 today--any other documentation as to the progress of this
14 sale?

15 MR. FINNIGAN: Objection. I'm sorry, progress of
16 the sale. Okay, that's fine.

17 JUDGE FRIEDLANDER: Objection withdrawn?

18 MR. FINNIGAN: Yes.

19 JUDGE FRIEDLANDER: Okay. Thank you.

20 A. I'm going to provide probably by Friday all the
21 letters between Mike Kitz and myself and his attorney. And
22 I don't have the dates of them other than the one I
23 mentioned that was a -- I think an April 11th where Mr. Kitz
24 says that they're definitely going ahead with this. And I
25 will get all those documents to you.

0067

1 Q. (By Mr. Fassio) But as of today you have not
2 provided those for the record?

3 A. No, we have not.

4 MR. FASSIO: I don't believe we have any further
5 questions for Mr. Dorland. Thank you.

6 JUDGE FRIEDLANDER: Thank you. And any redirect?

7 MR. FINNIGAN: No, Your Honor.

8 JUDGE FRIEDLANDER: Okay. Thank you. Give me
9 just one moment. I want to make sure I don't have any
10 clarification questions. So we'll go off the record for a
11 minute.

12 (Brief break taken off the record.)

13 JUDGE FRIEDLANDER: We'll go back on the record.
14 I do not have any clarification questions for you, so you're
15 dismissed. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE FRIEDLANDER: You can return to your seat.
18 Thank you.

19 Okay. At this point I believe we're done with the
20 testimony. Would counsel like to make any closing
21 arguments?

22 MR. FINNIGAN: No, Your Honor. I think the
23 records -- if that's fine with Mr. Fassio. I mean if he's
24 going to say something obviously I'll feel compelled to say
25 something.

0068

1 JUDGE FRIEDLANDER: Sure. Does anybody have any
2 compulsion to say something at this point?

3 MR. FASSIO: I would like to make a brief closing
4 just to wrap things up.

5 We already have presented a stipulation concerning
6 the classification proceeding, which we will be following up
7 with a written stipulation memorializing that.

8 Regarding the penalty assessment in this case I
9 believe Staff has established that Lowerper violated WAC
10 480-110-433(3) by failing to file an initial tariff with the
11 Commission at the point in which it became jurisdictional.
12 Staff has established that there are at least -- there are
13 105 violations as set forth in the penalty assessment of
14 that. And Staff established that this is one each per month
15 for a billing cycle over a 15-month period billed to each of
16 seven customers. Staff did establish that this was a
17 continuing violation.

18 The Company still has not filed an initial tariff.
19 The Company has committed to doing so in the classification
20 proceeding, but this is a continuing violation. But as of
21 Commission staff's investigation, which led to the penalty
22 assessment, Staff has established 105 violations.

23 The maximum penalty authorized under RCW 80.04.405
24 is \$100 per violation, and the maximum penalty in this case,
25 \$10,500, is authorized under that statute. It is

0069

1 reasonable. Staff believes that that penalty should not be
2 mitigated, that Mr. Dorland has experience operating this
3 Company and in the water business. He should be aware of
4 the requirements, the Commission requirements.

5 And based on -- because of the Company's failure
6 to comply with the Commission requirements on filing an
7 initial tariff the Commission has been unable to exercise
8 its full regulatory authority over this water company and
9 this water system that we believe has hurt customers.

10 The rules exist for a reason, to protect both the
11 customers and the Company. As an example, the Commission's
12 authority over water companies helps protect consumers and
13 the Company by insuring that the rates that they charge to
14 their customers are fair, just, reasonable and sufficient to
15 insure the safe and reliable water service of the Company.
16 And Staff has been unable to review the Company's rates and
17 tariffs to determine whether or not those rates are
18 reasonable. And if it is determined to be necessary to
19 issue a complaint against those rates and tariffs. Because
20 the Company has yet to file a tariff the Commission has been
21 unable to do so.

22 Commission staff believes that the violations
23 basically hurt consumers. And so the penalty in this case
24 is appropriate. Thank you.

25 JUDGE FRIEDLANDER: Thank you.

0070

1 Mr. Finnigan.

2 MR. FINNIGAN: Yes, Your Honor. The Commission
3 staff's premise that the failure to file has hurt customers
4 and therefore the penalty is appropriate lacks some logic to
5 it. And this is why it lacks some logic. In February of
6 2009 they, or approximately -- let me get this out.

7 In July of -- in June of 2009 the Commission sent
8 a letter and questionnaire to Mr. Dorland, or to Lowper
9 Incorporated, and Lowper Incorporated responded on July 2,
10 2009, referencing the sale, or the proposed transfer to the
11 Clallam PUD. If there was a customer issue that concerned
12 Commission staff it could have and should have followed up
13 at that time.

14 The obvious normal response on the part of the
15 Company is that it's explained the situation and that it
16 wouldn't make sense to regulate a company to have it become
17 deregulated shortly thereafter. But Staff did not come
18 forward. If Commission staff is sitting here today and
19 saying the premise for this penalty is that customers were
20 harmed, then why didn't Staff follow up in July of 2009?

21 The same type of exchange happened a second time.
22 Again, as was testified to by Commission staff witness,
23 there was no additional follow-up. So if the whole premise
24 for this is that customers are being harmed then this is not
25 appropriate.

0071

1 As Mr. Dorland testified, the amount of the
2 proposed penalty far exceeds the annual revenue. A
3 substantial amount of that annual revenue is required -- is
4 not kept by the Company, it's required to be paid to Clallam
5 PUD so customers can remain in service so they can continue
6 to get water.

7 So the relation -- both the premise for the
8 seriousness of the penalty and the size of the penalty
9 compared to the size of the Company are two points that we
10 would like the Commission to take into account in
11 considering mitigation. Thank you.

12 JUDGE FRIEDLANDER: Thank you.

13 MR. FASSIO: I would like to make, if I may, one
14 clarification to a point, one point, that Mr. Finnigan just
15 made, which was regarding the premise of the penalty in this
16 matter.

17 The premise of the penalty is the violation of
18 Commission statute. That is the basis for the penalty
19 assessment in this matter, not customer harm. My
20 illustration of customer harm was an illustration of the
21 policy behind why we -- why having an initial tariff on file
22 benefits the customers and the Company both. It allows the
23 Commission to exercise its authority and to protect the --
24 both the regulated entity and the customer -- and the public
25 service. That is the premise behind the penalty assessment.

0072

1 JUDGE FRIEDLANDER: Thank you.

2 Mr. Finnigan, did you want to respond?

3 MR. FINNIGAN: No. I'll stand by what the
4 transcript says.

5 JUDGE FRIEDLANDER: Okay. Thank you.

6 Well, I think at this point we've completed the
7 testimony and the evidentiary portion of the hearing. So
8 it's time to get into more of the procedural matters.

9 And I will be issuing an order laying out the
10 deadlines, but I want everybody to know, because they are
11 coming up quick, what is expected from them as of this
12 Friday and in the future.

13 But before I do that, as a housekeeping matter,
14 Mr. Finnigan did reference the erroneous caption, and the
15 correct name of the Company, and I do appreciate that.
16 However, I'm not going to change the caption. I think as a
17 -- it is a snapshot in time, and it was the best that Staff
18 could come up with based on the information that they had.
19 I'm going to leave it as is. I think that appropriate
20 notice was given, and we do have the correct company before
21 us. So the caption is going to stay as is.

22 As far as the deadlines for paperwork to come into
23 the Commission, it's my understanding that the parties will,
24 to the best of their ability, file the stipulation this
25 Friday on the 29th. And I will also at that time receive

0073

1 the emails, correspondence, etc., between Lower and Clallam
2 County PUD relating to the offers of purchase or donation.
3 And I will also receive the purchase agreement that was
4 drafted and sent to Clallam sometime earlier this year. And
5 Staff will receive a copy of the notice that is to be sent
6 to customers regarding the rates, I believe, of Lower.

7 MR. FINNIGAN: The tariff filing, Your Honor.

8 JUDGE FRIEDLANDER: The tariff filing, I beg your
9 pardon.

10 We also have the matter of Staff having the
11 opportunity to respond to the documents that Lower files.
12 And I'm prepared to give a week to Staff to respond to those
13 documents. If you have any objections to those documents
14 that would be the appropriate time. That would be the
15 deadline for any response and objection would be May 6th,
16 2011, which should be a Friday if my calculation is correct.

17 At that time I would also appreciate, on that
18 Friday, or by that Friday, any legal arguments relating to
19 RCW 80.04.405, which is the 15-day penalty assessment
20 mitigation request. And these responses, be it the legal
21 argument or Staff's response, they are to be very narrowly
22 tailored. I want it just to address the specific subjects
23 that I've put before you.

24 And then of course the tariff itself should be
25 filed on May 13th, at least by May 13th, 2011. If the

0074

1 parties can't reach a stipulation by this Friday you'll let
2 me know.

3 Have I missed anything?

4 MR. FASSIO: The response that's due on the -- to
5 your legal question about RCW 80.04.405.

6 JUDGE FRIEDLANDER: Yes.

7 MR. FASSIO: I know we have lots of notes on this.
8 Could you in summary statement just set forth the precise
9 question that you wish answered?

10 JUDGE FRIEDLANDER: Right. And you're certainly
11 not required to respond to it. It's my own -- it's for my
12 edification because I want to know if the Commission has a
13 basis to entertain a penalty assessment mitigation request
14 when the request was made after the 15 days. The request
15 for hearing is in the same form as the application for
16 mitigation; however, it was -- the precise request for
17 mitigation was not made until at this hearing, that is after
18 the 15 days, you know. And as I said, it may be a
19 technicality to the legal minds, but I want to know that
20 from the parties.

21 MR. FASSIO: And my understanding, just for
22 clarification, was that there was -- was there not -- that
23 there was only a request for a hearing issued in the docket,
24 there was not a separate request for mitigation.

25 JUDGE FRIEDLANDER: No, there was not. My copy of

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1 the form that was returned from Lower has, of the three
2 boxes checked--payment of penalty, the application for
3 mitigation or the request for hearing and denial of the
4 violations--the denial of violations was the only box that
5 was checked. So to my way of thinking, you know, from the
6 face of it it would appear that the application for
7 mitigation was made after 15 days. I'm leaving that
8 completely in your legal hands to tell me. So that in a
9 very long summary is what I'd like to know.

10 If there's nothing further and I haven't missed
11 any dates. As I said before I'll be issuing an order
12 letting you know, just reiterating these dates.

13 Yes, Mr. Fassio.

14 MR. FASSIO: Just another point of
15 clarification -- I'm sorry, another point of clarification.
16 You mentioned that your understanding was the application
17 for mitigation was received after.

18 JUDGE FRIEDLANDER: And by that --

19 MR. FASSIO: How are you -- how are you
20 interpreting that? Are you interpreting that as --

21 JUDGE FRIEDLANDER: The request today.

22 MR. FASSIO: The request today at hearing, verbal
23 request?

24 JUDGE FRIEDLANDER: Right. Because that is the
25 first indication I have that they are -- that Lower is

0076

1 seeking mitigation. Because in the format, and again I'm
2 not going to get into the substance of the arguments or the
3 merits of any of these arguments, but the form that is
4 filled out by anyone who receives a penalty assessment it
5 says when you check the box for hearing that you are denying
6 the applications -- the allegations. You have effectively
7 denied the allegations. When you check the box for an
8 application mitigation it is an affirmative defense. You
9 have admitted the allegations but you are saying here is why
10 I am requesting that the penalty assessment be mitigated.

11 Therein is a little bit of a confusion I have. So
12 that's why I want the issue to be briefed. It does not have
13 to be long. But again, you know, I would like to hear from
14 the legal minds on that so... And that would be due a week
15 from Friday.

16 So if there's nothing further then we're
17 adjourned. Thank you.

18 MR. FASSIO: Thank you.

19 MR. FINNIGAN: Thank you.

20 JUDGE FRIEDLANDER: Thank you all for your
21 participation.

22 * * * * *

23 (Off the record at 3:31 p.m.)

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C E R T I F I C A T E

I, TAMI LYNN VONDRAN, a Certified Court Reporter,
do hereby certify that I reported in machine shorthand the
foregoing proceedings in the above-entitled cause; that the
foregoing transcript was prepared under my personal
supervision and constitutes a true record of the testimony
of the said witness.

I further certify that I am not an attorney or
counsel of any parties, nor a relative or employee of any
attorney or counsel connected with the action, nor
financially interested in the action.

DATED at Edgewood, Washington this 11th day of
May, 2011.

Tami Lynn Vondran, CCR
Certified Court Reporter
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