SERVICE DATE

APR 12 1991

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	DOCKET NO. UE-901596
	)	
TANNER ELECTRIC COOPERATIVE	)	FIRST SUPPLEMENTAL ORDER
	)	DENYING PETITION FOR
for a Declaratory Order	)	RECONSIDERATION
. . . . .	)	

BACKGROUND

On December 27, 1990, Tanner Electric Cooperative ("Tanner") filed a Petition for Declaratory Order. Tanner sought a ruling whether RCW 80.28.110 required Puget Sound Power & Light Company ("Puget") to provide Nintendo of America ("Nintendo") upon request with electric service at Nintendo's North Bend location. A prehearing conference was held February 7, 1991. Thereafter, on February 15, 1991, Tanner and Puget jointly filed a "Stipulation of Record," containing stipulated facts and documents. Briefs were filed on March 1, 1991, by Tanner, Puget, and Commission staff.

The Commission entered a Declaratory Order on March 14, 1991, finding that Puget did not have a statutory obligation to provide service to Nintendo based upon the stipulated facts and documents. Puget petitioned the Commission on March 25, 1991, for "reconsideration/clarification."

SUMMARY

The Commission denies the petition for reconsideration filed by Puget.

MEMORANDUM

The issue posited by the parties, expressed at page five of the order is:

> Does Puget have an obligation to serve Nintendo under the facts and documents stipulated?

The Commission concluded at page 9 of the order,

> Puget does not have a statutory obligation to serve Nintendo under the facts and documents as stipulated. No Commission law prohibits such service. (Emphasis added.)

Puget asserts that the Commission could not have reached the conclusion that Puget did not have a statutory obligation to serve Nintendo based upon the Commission's analysis recited in the order.

The order is entirely consistent with the declaratory relief sought by Tanner and with the Commission's authority to make such a determination. The "specific circumstances" contemplated by the APA[1] in the instant case are the facts and documents stipulated by the parties. The Commission acted properly in reviewing the facts and documents and in applying the law to the specific circumstances of the situation in reaching its decision. As discussed at page eight of the order,

> A valid Service Area Agreement can limit Puget's statutory obligation to serve, assuming that Tanner is willing and able to provide the service. If the Service Area Agreement is found to be enforceable, Puget does not have a statutory obligation to serve Nintendo under the stipulated circumstances.

It is not necessary for the Commission to enforce the service area agreement to reach a decision in this matter. Under these specific circumstances, two equally qualified and positioned electric service providers stand ready, willing, and able to serve the needs of a customer whose property straddles the boundary dividing the providers' service territories. The actual facility to be served is not within the service territory of the regulated utility as evidenced by the service area agreement approved by the Commission in Cause No. U-73-44.

The regulated utility, under these circumstances, is thereby relieved of any statutory obligation to serve the customer. The Commission, however, as noted above, held that "[n]o Commission law prohibits such service." A later determination of the validity of the service area agreement by a court would alter the relationship between the parties and therefore the "specific circumstances" upon which the Commission decision is premised.

The Commission finds Puget's rationale in support of its petition to be inconsistent with our authority under the APA, the stipulated facts and documents, and the applicability of RCW

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1 The Administrative Procedure Act (APA) provides at RCW 34.05.240 that "[a]ny person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency." (Emphasis added.)

80.28.110 to the specific circumstances and therefore denies the company's petition for reconsideration.

O R D E R

The petition for reconsideration of Puget Sound Power & Light Company is denied.

DATED at Olympia, Washington, and effective this 12th day of April, 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

A. J. Pardini

A. J. PARDINI, Commissioner