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June 11, 1993

Lisa Anderl  
Administrative Law Judge  
Office of Administrative Hearings  
2420 Bristol Court SW  
P. O. Box 42489  
Olympia, WA 98504-2489

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STATE OF WASH.  
JULY AND TRANS.  
COMMISSION

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Re: WUTC v WNG  
Docket No. UG-920840

Dear Judge Anderl:

I am writing concerning the issue of whether or not there should be a recommended decision in this case. In light of the recent appointment of Commissioner Hemstad to the Commission, we are no longer faced with the "hypothetical" situation as previously discussed, and it now appears appropriate for me to restate my concerns.

The two issues I have previously raised are as follows:

1. The issue of "ex parte" types of contacts that may have occurred prior to his appointment; and
2. The failure to "hear and read" substantially all of the record, which in this case really is an issue of the fairness to all parties of hearing "live" only those witnesses of the requesting utility.

I should add that all of the intervening parties indicated similar concerns. Let me briefly address each issue:

1. Ex parte contacts. Public Counsel has no knowledge of any such contacts, nor do we allege such contacts. However, we do believe that disclosure of any such contacts should be stated, if they have occurred. This issue was quickly resolved recently in a Puget Sound Power & Light Company case (UE-921262) by Commissioner Hemstad on the record. We believe that this issue can also easily be resolved in this proceeding.

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2. Hear and Read Issues. Our principal concern is with the fairness to all parties of a decision-maker hearing "live" testimony of only the moving party's rebuttal case. This is different from the situation in the current Puget case, where Commissioner Hemstad will hear the Staff/Public Counsel/Intervenor testimony, as well as Puget's rebuttal case. WNG, as expected, has filed a very substantial rebuttal case, which appears to contain substantial changes in approach. This case is clearly controversial, with substantial differences between the parties on many issues, and this makes judgments on the credibility of witnesses very important. Under these circumstances, we continue to believe that the fairest approach to the parties is to request that Commissioner Hemstad review the record but not hear the live testimony. In that manner, there would be no need for a recommended order, with its associated schedule dislocations, and no party would be disadvantaged.

In conclusion, we view these requests as necessary and reasonable to assure that the evidence of all parties is considered fairly while not requiring the necessity of a recommended decision. Public Counsel urges speedy resolution of these issues.

Sincerely,



CHARLES F. ADAMS  
Assistant Attorney General  
Public Counsel Section

cc: Service List  
Commissioners