BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. CITY OF ENUMCLAW, Respondent.	DOCKET PG-080097 COMMISSION STAFF'S RESPONSE TO CITY OF ENUMCLAW'S OBJECTION

1 On March 24, 2009, Administrative Law Judge Clark (ALJ) requested Commission Staff (Staff) to respond to the City of Enumclaw's (City) March 23, 2009, Objection to Prehearing Order as to Paragraphs 5 and 7. The ALJ further requested Staff to address "the question of whether Commission precedent permits a public service company to collect from its ratepayers any penalties assessed by the Commission."[1]

2 In its Notice Requesting Response, the ALJ addressed the City's objection to Paragraph 5 by changing the status conference date from May 6, 2008, to May 6, 2009. Therefore, Staff responds only to the City's objection to Paragraph 7.

BACKGROUND

3 In Paragraph 7 of Order 01, the ALJ states that for investor-owned public service companies, "any penalties assessed by the Commission may not be collected from

[1] We understand this to mean that penalty amounts are not included in the Commission's determination of the investor-owned utility's rates.

ratepayers." Because the City is a municipal utility, the ALJ observes that the source of revenue to pay for any penalty against the City "would be revenue collected from the City's taxpayers." The ALJ uses this concern as a basis for scheduling a ratepayer comment hearing.

4 The City objects to Paragraph 7 because the City "believes that the source of revenue to discharge a financial obligation would be from the utility, as an enterprise account, not from the general fund." The City does not object to the public comment hearing.

RESPONSE

5 Because the ALJ raised the penalty recovery issue in the context of her decision to set a public comment hearing, and the Commission needs no specific reason to set such a hearing, it is not necessary to address the penalty recovery issue. Even if it were, it is premature to address that issue now because the Commission has yet to decide whether or not it will impose penalties against the City, and, if so, that such penalties will not be mitigated.

6 In any event, without more information from the City, Staff cannot respond to the City's counterpoint because the City fails to adequately describe "an enterprise account." On its face, Staff cannot determine how the existence and requirements of any such enterprise account address the penalty recovery issue.

7 With regard to Commission precedent, while cities are subject to Commission monetary penalty authority,[2] Staff is unaware of any monetary penalty assessed by the

[2] Under RCW 81.88.040, any person that violates pipeline safety standards "is subject to a civil penalty to be assessed by the commission;" per RCW 81.88.010(11), the term "person" includes a city.

Commission against a municipal-owned pipeline, to date. Consequently, the Commission has yet to set policy in this context.

8 This is important, because in the investor-owned utility context, the Commission sets the rates the utility may charge, and thus the Commission is in a position to establish ratemaking policies and practices. By contrast, the Commission does not set the rates for municipal-owned pipelines, such as the City. Based on RCW 80.04.500, we question whether the Commission's regulatory authority over the City extends to its financial accounting and rate-setting practices.

DATED this 31st day of March, 2009.

Respectfully submitted,

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