

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET U-061239
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	COMPLAINT AND NOTICE OF
v.)	PREHEARING CONFERENCE
)	
PUGET SOUND ENERGY, INC.,)	(Set for Wednesday, October 25,
)	2006, at 1:30 pm)
Respondent.)	
)	
.....)	

1 The Washington Utilities and Transportation Commission (Commission) on its own motion, and through its Staff, alleges as follows:

I. INTRODUCTION

2 This complaint concerns violations of Commission rules governing the disclosure by gas and electric companies of private consumer information. The Commission’s private information disclosure rules, WAC 480-90-153 and WAC 480-100-153, prohibit gas and electric companies, respectively, from disclosing private consumer information to a third party for marketing purposes unless the utility has first obtained the customer’s written permission to do so.

3 As alleged below, Puget Sound Energy, Inc. (PSE), disclosed its customers’ private consumer information in violation of WAC 480-90-153 and WAC 480-100-153. For these violations, the Commission staff (Staff) requests that the Commission impose penalties of \$949,600 for these violations.

II. BACKGROUND INFORMATION

4 Commission rules prohibit gas and electric companies from disclosing or selling private consumer information to any third party “for the purposes of marketing services or

product offerings to a customer who does not already subscribe to that service or product, unless the utility company has first obtained the customer's written permission to do so." WAC 480-90-153(1) and WAC 480-100-153(1). Under these rules, *private consumer information* includes "the customer's name, address, telephone number, and any other personally identifying information ... that is available to the utility solely by virtue of the customer-utility relationship." WAC 480-90-153(2); WAC 480-100-153(2).

5 In November of 2001, PSE launched a program called PSE Connections. PSE Connections is a marketing program that PSE terms a "customer convenience program."

6 Through this program, PSE provides another company, Allconnect, Inc. (Allconnect), with the private consumer information of residential utility customers who initiate or transfer gas or electric service to PSE.

7 Allconnect is a Delaware corporation located in Atlanta, Georgia. Allconnect is not a subsidiary or affiliate of PSE.

8 According to the agreement between PSE and Allconnect, PSE may share the private consumer information of its customers with Allconnect in two ways.

9 One method of data sharing occurs when PSE transfers its customer calls to Allconnect. When consumers call PSE to order new residential service or switch existing residential service to a new address, PSE may transfer these telephone calls to Allconnect. Allconnect service representatives announce "Welcome to PSE Connections" when they connect with the PSE customer, and then they market other services, including telephone service, Internet service, lawn care, and newspaper subscriptions, that target consumers taking up residence in a new home.

10 At the time that PSE transfers the call, it electronically transfers at least the customer's name, address, service start date, and a product order number. The agreement between PSE and Allconnect also provides for the transfer of the following information from PSE to Allconnect: the customer's telephone number and social security number, the name of the customer's spouse or roommate, the spouse or roommate's social security number, and whether the new residence is "new home construction."

11 In addition, the parties' agreement provides that PSE may share with Allconnect the data of customers who did not want to have their calls transferred to Allconnect. Providing

these customers' data to Allconnect at Allconnect's request is the second way that PSE may disclose its customers' private consumer information to Allconnect.

- 12 In return for transferring its customers' calls and data to Allconnect, PSE receives a quarterly payment from Allconnect. The amount of the payment depends on the percentage of eligible customers that PSE transferred during the period, the number of PSE customers that used the PSE Connections service, and the amount of revenue Allconnect generated from this use.
- 13 When PSE began transferring customer calls to Allconnect in November 2001, PSE telephone representatives used script options that all included a brief description of the PSE Connections program. Each of the three script options included an opportunity for the customer to opt out of transferring to PSE Connections.
- 14 In October 2005, however, PSE changed the scripts significantly. The scripts no longer explain the PSE Connections service. Three out of the four new scripts inform customers that they will be transferred to PSE Connections to "confirm your service." Only one script allows the customer to decline the service confirmation.
- 15 Following introduction of the new scripts, the number of PSE customer calls transferred per month doubled, and even tripled in some months, as compared to the prior year.
- 16 PSE started the PSE Connections program approximately two months after the Commission adopted the private consumer information disclosure rules, WAC 480-90-153 and WAC 480-100-153, in 2001. PSE was aware of these rules. PSE participated in the rulemaking proceeding that included these two rules by attending workshops held between 1999 and 2001 and submitting comments specifically on the proposed text of the private consumer information disclosure rules.
- 17 Staff began investigating the PSE Connections program in March 2006. On March 15, 2006, PSE suspended the PSE Connections program pending completion of the Commission's investigation. Staff completed its investigation in July 2006.
- 18 Based on information PSE provided to the Commission, Staff calculated that PSE transferred a total of 65,260 customer calls, along with customer data, to Allconnect between November 2001 and March 2006.

- 19 Under RCW 80.04.380, PSE is subject to penalties of up to \$1,000 for each violation of Commission rules.
- 20 The statute of limitations set out in RCW 4.16.100 restricts actions upon a statute for a forfeiture or penalty to two years. Consequently, the Commission may impose penalties only for those violations that occurred prior to March 15, 2006 (the date the program was suspended), and extending back two years from the filing date of this Complaint. During that period PSE transferred 18,992 customer calls to Allconnect.

III. PARTIES

- 21 The Washington Utilities and Transportation Commission is an agency of the state of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including gas and electric companies, under the provisions of RCW Title 80.
- 22 Puget Sound Energy, Inc., is a gas and electric company subject to regulation by the Commission pursuant to RCW 80.01.040(3).

IV. JURISDICTION

- 23 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, 80.04.160, 80.04.380, and 80.04.470, and pursuant to WAC 480-90 and WAC 480-100.

V. CLAIMS AND CAUSES OF ACTION

A. FIRST CAUSE OF ACTION (Violation of WAC 480-90-153)

- 24 The Commission through its Staff, realleges the allegations contained in paragraphs 4 through 20 above.
- 25 WAC 480-90-153 prohibits gas utilities from disclosing private consumer information to third parties for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written permission to do so.

26 Between October 1, 2004, and March 15, 2006, PSE disclosed to Allconnect the names
and addresses, and possibly other personally identifying information, of 18,992 of its
customers without their written permission so that Allconnect could market additional
services to these consumers.

B. SECOND CAUSE OF ACTION (Violation of WAC 480-100-153)

27 The Commission through its Staff, realleges the allegations contained in paragraphs 4
through 20 above.

28 WAC 480-100-153 prohibits electric utilities from disclosing private consumer
information to third parties for the purposes of marketing services or product offerings to
a customer who does not already subscribe to that service or product, unless the utility
has first obtained the customer's written permission to do so.

29 Between October 1, 2004, and March 15, 2006, PSE disclosed to Allconnect the names
and addresses, and possibly other personally identifying information, of 18,992 of its
customers without their written permission so that Allconnect could market additional
services to these consumers.

VI. REQUEST FOR RELIEF

30 Staff asks the Commission to find that each customer call that PSE transferred to
Allconnect constitutes one violation. Although Staff alleges that PSE violated both WAC
480-90-153 and WAC 480-100-153, Staff suggests that each call and data transfer count
as one violation rather than two. Consequently, Staff requests that the Commission find
that PSE committed a total of 18,992 violations of Commission rules.

31 Staff further requests that the Commission impose a penalty on PSE under RCW
80.04.380 of \$50 for each violation that occurred since October 1, 2004.

32 In sum, Staff requests penalties totaling \$949,600.

33 Finally, Staff asks the Commission to order PSE to permanently cease operating the PSE
Connections program.

VII. PROBABLE CAUSE

34 Based on a review of Staff's July 2006 report on its investigation of the PSE Connections program and all supporting documents, and consistent with RCW 80.01.060, as amended by SHB 2426, Chapter 346, Laws of 2006, the Commission finds probable cause exists to issue this Complaint.

VIII. NOTICE OF PREHEARING CONFERENCE

35 **THE COMMISSION GIVES NOTICE That it will hold a prehearing conference in this matter on Wednesday, October 25, 2006, beginning at 1:30 a.m., in Room 206, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.** The purpose of the prehearing conference is to discuss procedural issues.

36 The Commission will hear this matter under the Administrative Procedure Act (APA), particularly Part IV of chapter 34.05 RCW relating to adjudications. The provisions of the APA that relate to this proceeding include but are not limited to RCW 34.05.413, RCW 34.05.431, RCW 34.05.434, RCW 34.05.440, RCW 34.05.449, and RCW 34.05.452. The Commission will also follow its procedural rules in chapter 480-07 WAC in this proceeding.

37 Party representatives must file a notice of appearance with the Commission no later than the business day before the conference. *See, WAC 480-07-345(2).*

38 **THE COMMISSION GIVES FURTHER NOTICE that any party who fails to attend or participate in the hearing set by this notice, or any other stage of this proceeding, may be held in default in accordance with RCW 34.05.440 and WAC 480-07-450. The Commission specifically invokes the sanction provisions of WAC 480-07-450 which allow the Commission to seek penalties for a party in default.**

39 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.

40 The names and mailing addresses of all known parties and their known representatives are as follows:

Complainant: Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
PO Box 47250
Olympia, WA 98504-7250

Representative: Jennifer Cameron-Rulkowski
Assistant Attorney General
1400 S. Evergreen Park Drive S.W.
P.O. Box 40128
Olympia, WA 98504-0128
(360) 664-1186

Respondent: Tom DeBoer
Director, Rates and Regulatory Affairs
Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009
(425) 462-3495

41 C. Robert Wallis is appointed as the Administrative Law Judge from the Utilities and
Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park
Drive S.W., Olympia, Washington 98504-7250, and will preside at the hearing.

42 Notice of any other procedural phase will be given in writing or on the record as the
Commission may deem appropriate during the course of this proceeding.

DATED at Olympia, Washington, and effective October 5, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL
Administrative Law Judge

Inquiries may be addressed to:

Executive Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

NOTICE

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington Utilities and Transportation Commission, Attention: Carole J. Washburn, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket _____

Case Name: _____

Hearing Date: _____ Hearing Location: _____

Primary Language: _____

Hearing Impaired (Yes) _____ (No) _____

Do you need a certified sign language interpreter:

Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be contacted if there are questions:

Name: _____

Address: _____

Phone No.:(____) _____