

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

WASHINGTON UTILITIES AND)	DOCKET PG-080097
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	ORDER SUSTAINING
CITY OF ENUMCLAW,)	OBJECTION; MODIFYING
)	ORDER 01
Respondent.)	
)	
.....)	

1 **NATURE OF PROCEEDING.** On February 10, 2009, the Washington Utilities and Transportation Commission (Commission) issued a complaint against the City of Enumclaw (City) for alleged violations of the Commission’s statutes and rules governing pipeline construction, maintenance, and safety. The total violations, if proven, could result in \$11 million in penalties.

2 **PREHEARING CONFERENCE ORDER.** On March 12, 2009, the Commission entered Order 01- Prehearing Conference Order that, among other things, scheduled a public comment hearing in this matter. In conjunction with scheduling the public comment hearing, the Commission noted that:

In proceedings involving investor-owned public service companies, any penalties assessed by the Commission may not be collected from ratepayers. In this case a municipality, the City of Enumclaw, provides utility service. Therefore, the group of ratepayers and tax payers in Enumclaw overlap to some extent. That is, many of the same individuals who pay the City for natural gas public utility service as ratepayers are the same individuals who provide revenue to the City as taxpayers. If, at the conclusion of this proceeding, the Commission determines it is appropriate to assess penalties, the source of revenue to discharge that financial obligation would be revenue collected from the City’s taxpayers.

Accordingly, it is reasonable to provide an opportunity for ratepayers/taxpayers to comment orally on the record of this proceeding.¹

3 **OBJECTION TO ORDER.** On March 23, 2009, the City timely filed an objection to the Prehearing Conference Order.² The City objected to the foregoing paragraph and stated that the source of revenue to discharge any financial obligation would be from the utility, as an enterprise account, not from the general fund.

4 **RESPONSE TO OBJECTION.** On March 31, the Commission Staff (Staff) filed a response.³ Staff notes that the City does not object to the Commission conducting a public comment hearing. Staff states that the language in the Prehearing Conference Order regarding penalty collection is raised in support of the decision to conduct a public comment hearing. Staff asserts that the Commission does not need to cite a rationale in support of conducting such a hearing therefore it is unnecessary to cite support for that decision. Even if it were necessary, it is premature to address penalty recovery because the Commission has yet to decide whether or not to assess penalties.

5 Moreover, Staff asserts that while the Commission has authority to assess penalties against municipalities, it has not yet assessed a penalty against a municipally-owned pipeline. Therefore, the Commission has yet to set policy on this issue. Staff further notes that the Commission does not set rates for municipally-owned pipelines and based on RCW 80.04.500, it is unclear if the Commission's regulatory authority over the City extends to financial accounting and rate-setting practices.

¹ Order 01 at ¶ 7.

² One objection was a typographical error in the date scheduled for a Status Conference. That typographical error was corrected in the Notice Requesting Response to the Objection entered March 24, 2009.

³ In formal proceedings, such as this, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including regulatory staff. RCW 34.05.455.

6 **DISCUSSION AND DECISION.** The Commission determines that any discussion of the issue of penalty recovery is unnecessary and premature at this juncture. As Staff notes, the Commission does not have to provide rationale for a decision to conduct a public comment hearing. In addition, the Commission has not decided to assess any penalties, so it is premature to consider the source of any penalty recovery. Accordingly, the City's objection to the Prehearing Conference Order is sustained, and Order 01 is modified to remove the portion of paragraph 7 quoted in this Order. The last sentence in paragraph 7, stating that "The Commission will accept written comments after the public comment hearing until July 23, 2009," remains a necessary part of the order.

ORDER

THE COMMISSION ORDERS:

- 7 (1) The City of Enumclaw's objection to paragraph 7 of Order 01 is sustained.
- 8 (2) Order 01- Prehearing Conference Order is modified by striking paragraph 7, except for the last sentence of the paragraph.

Dated at Olympia, Washington, and effective April 16, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge