

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Proposal by)	
)	
PUGET SOUND POWER & LIGHT)	
COMPANY)	DOCKET NO. UE-951270
)	
to Transfer Revenues from PRAM Rates)	
to General Rates.)	
.....)	
)	
In the Matter of the Application of)	
)	
PUGET SOUND POWER & LIGHT)	
COMPANY and WASHINGTON NATURAL)	DOCKET NO. UE-960195
GAS COMPANY)	
)	
for an Order Authorizing the Merger of)	
WASHINGTON ENERGY COMPANY and)	SIXTH SUPPLEMENTAL
WASHINGTON NATURAL GAS COMPANY)	ORDER MODIFYING
with and into PUGET SOUND POWER &)	PROTECTIVE ORDER;
LIGHT COMPANY, and Authorizing the)	RESTRICTING DISTRIBUTION
Issuance of Securities, Assumption of)	OF EXHIBITS DESIGNATED
Obligations, Adoption of Tariffs, and)	TOP SECRET EXHIBITS
Authorizations in Connection Therewith.)	
.....)	

This is a consolidated proceeding. Docket No. UE-951270 is a proposal by Puget Sound Power & Light Company (Puget) to transfer to Puget's permanent rate schedules, currently-collected revenue of approximately \$165.5 million authorized in the PRAM ("Periodic Rate Adjustment Mechanism") under Schedule 100. Docket No. UE-960195 is the application of Puget Sound Power & Light Company and Washington Natural Gas Company (WNG) for a Commission order authorizing the merger of Washington Energy Company and Washington Natural Gas Company with and into Puget Sound Power & Light Company, and authorizing the issuance of securities, assumption of obligations, adoption of tariffs, and authorizations in connection therewith.

On May 2, 1996, the Commission issued a protective order governing disclosure of proprietary and confidential information in Docket No. UE-960195. Subsequently, the Commission authorized the intervention of a number of parties, including several parties which are competitors or potential competitors of Puget or

WNG.¹ Several of the intervenors were granted limited-scope intervention. Labor union intervenors are limited to customer safety and customer service issues. The Bonneville Power Administration (BPA) and the Public Power Council are limited to issues relating to the Residential Exchange Credit. As stated in the Fourth Supplemental Order, competitors are limited to assisting the Commission in determining the economic effects of the merger upon competition generally as the industry transitions from monopoly to retail competition.

Puget and WNG ("the applicants") opposed the intervention of competitors, in part, on the ground that competitors might use the Commission's discovery rule to uncover the applicants' most sensitive proprietary information and use that information to gain an unfair competitive advantage. They argued that the Commission's procedures are not adequate to prevent a misuse of sensitive competitive information.

The Fourth Supplemental Order addressed that concern as follows:

The Commission believes that access to confidential information should be granted on a need to know basis. It may be that none of the applicants' most sensitive data are relevant to the competitive issues which the competitors may address. Intervenors do not necessarily need to review all of the information provided to statutory parties. If data are sought which the applicants believe should not be released, those discovery disputes may be brought to the Commission for resolution.

On July 29, 1996, the applicants filed a Motion for Modification of the Protective Order. The motion states that it is filed to implement the Commission's "need to know" standard as set forth in the Fourth Supplemental Order. The motion expresses concern that as the protective order now stands, parties whose participation is limited, whose counsel have signed the protective order, may seek disclosure of confidential information from other parties, even though the seeking

¹ The Second Supplemental Order on Prehearing Conference, entered May 23, 1996, as modified by the Third Supplemental Order, entered June 10, 1996, and by the Fourth Supplemental Order, entered July 12, 1996, authorized the intervention of nineteen entities, some of which are or represent customers of Puget or WNG, some of which are labor unions which represent employees of Puget or WNG, and some of which are or represent competitors or potential competitors.

parties would not be entitled to gain access to the information under the Commission's "need to know" standard.

The motion was heard at a prehearing conference on July 31, 1996. The applicants argued that the Commission should eliminate the possibility that a competitor who had signed a confidentiality agreement would seek the applicants' confidential information from Commission Staff, Public Counsel, or another party to whom the applicants had given the information, thereby preventing the applicants from challenging the competitor's need to know the information. The applicants agreed that their concern would be adequately addressed if the protective order were modified to require that parties who properly had obtained confidential information from the applicants were barred from distributing it to or discussing it with other parties who had not properly obtained the information. The effect of this modification would be to require all parties to obtain confidential information only from the applicants, and to give the applicants the opportunity to challenge specific data requests on a need to know basis. The presiding officer granted that relief. The added language would modify the third sentence of paragraph B.5 of the Protective Order to read as follows:

The parties hereto shall not distribute copies of Confidential Information to, nor shall they discuss their contents with, any person(s) other than the party's retained experts in this matter and other persons who properly have such information; provided, however, that the expert must first have complied with the Nondisclosure Agreement provisions of Paragraph B.4 above.

The presiding officer orally ruled that the parties should thereafter observe that modification of the protective order.

At hearing on July 31, 1996, the Commission orally affirmed the presiding officer's modification of the protective order.

At hearing on July 31, 1996, the applicants further requested that three exhibits which contained confidential information which is highly competitive-sensitive be specially designated to facilitate restriction of disclosure. They argued that certain confidential information contains sensitive data relating to long-range strategic plans and projections, and that if such information should fall into the hands of competitors, the effect on the applicants could be devastating. They stated that the information contained in the documents was considered "insider information" by the Securities and Exchange Commission and that, if such information were disclosed, they would risk being forced to publicize this highly confidential information. The applicants cited Brown Bag Software v. Symantec

Corp., 960 F.2d 1465 (9th Cir. 1992), cert. denied sub nom. BB Asset Management v. Symantec Corp., 506 U.S. 869, 121 L. Ed. 2d 141 (1992), and RCW 4.24.601 in support of the contention that it is appropriate that the confidentiality of such information be given heightened protection.²

The Commission orally ruled that exhibits which are highly competitive-sensitive should be specially designated as "TS" exhibits, indicating that they are considered "top secret," as a protection against their inadvertent disclosure to parties who do not have a "need to know" that particular confidential information. The Commission limited distribution of exhibits which have been designated as "TS" exhibits to the Commission Staff, Public Counsel, and customers of the applicants; counsel for other parties who have signed confidentiality agreements are not allowed access to those exhibits.

The protective order should be modified consistent with the above oral rulings.

ORDER

THE COMMISSION ORDERS:

1. The third sentence of paragraph B.5 of the Protective Order entered in this proceeding is replaced with the following sentence:

The parties hereto shall not distribute copies of Confidential Information to, nor shall they discuss their contents with, any person(s) other than the party's retained experts in this matter and other persons who properly have such information; provided, however, that the expert must first have complied with the Nondisclosure Agreement provisions of Paragraph B.4 above.

As modified, Paragraph B.5 of the Protective Order reads as follows:

² RCW 4.24.601 provides, in pertinent part: "The legislature also recognizes that protection of trade secrets, other confidential research, development, or commercial information concerning products or business methods promotes business activity and prevents unfair competition. Therefore, the legislature declares it a matter of public policy that the confidentiality of such information be protected and its unnecessary disclosure be prevented."


5. Access to Confidential Information. Copies of documents shall be provided in the same manner as customary under Commission rules and practice. Requests for special provisions for inspection of documents must be submitted to the Administrative Law Judge if not agreed upon by the parties. The parties hereto shall not distribute copies of Confidential Information to, nor shall they discuss their contents with, any person(s) other than the party's retained experts in this matter and other persons who properly have such information; provided, however, that the expert must first have complied with the Nondisclosure Agreement provisions of Paragraph B.4 above. Persons to whom copies of documents are provided pursuant to this Order shall be deemed to warrant that they will exercise all reasonable diligence to maintain the documents consistent with the claim of confidentiality.

2. Exhibits which the presiding officer designates as "TS" exhibits shall not be disclosed to any party other than Commission Staff, Public Counsel, Northwest Industrial Gas Users, Industrial Customers of Northwest Utilities, and Seattle Steam Company.

DATED at Olympia, Washington, and effective this 12th day of August 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner