

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

WASHINGTON UTILITIES AND)	DOCKET U-061239
TRANSPORTATION COMMISSION,)	
)	ORDER 02
Complainant,)	
)	
v.)	ORDER ACCEPTING
)	SETTLEMENT AGREEMENT
PUGET SOUND ENERGY, INC.,)	SUBJECT TO CONDITION
)	
Respondent.)	
)	
.....)	

1 **Synopsis:** *The Commission finds that PSE violated Commission rules prohibiting the release of customer information as set out in the complaint. The Commission accepts the proposed settlement -- \$900,000 in penalties, a contribution of \$95,000 toward low-income heating assistance, and notice to customers of their privacy rights – on condition that the Company also notify its customers of PSE’s violation of those rights and the terms of this settlement.*

PROCEDURE

2 The Washington Utilities and Transportation Commission (Commission), through its Staff,¹ complained against Puget Sound Energy, Inc. (PSE) on October 5, 2006, alleging that PSE had permitted improper access to consumer information more than 18,000 times, contrary to Commission rules.

3 The Commission issued notice of a prehearing conference, to be held October 25, 2006. Subsequently, PSE and Staff submitted a proposed settlement agreement, a narrative explaining and supporting the proposal, and a request that the Commission

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

suspend the prehearing conference and select an appropriate process for reviewing the proposed settlement. The Commission granted the request.

- 4 Thereafter, the Public Counsel section of the Attorney General's Office entered an appearance. The Commission convened a prehearing conference, and the matter was set for hearing. Subsequently, the three parties reached a proposed settlement in concept, but were unable to finalize it for presentation at the time set for the hearing. The Commission canceled the hearing. The parties thereafter completed their negotiations on about December 20, 2006, waived a hearing, and asked that the matter be decided on the record gathered by the parties.
- 5 The three parties submitted a settlement agreement, a joint statement, and a draft notice for presentation by PSE to its customers that describes their rights to protect private consumer information. For convenience, we will identify the second settlement agreement as a "revised agreement." The parties did not withdraw the original narrative, which we rely on to the extent it is not inconsistent with the revised settlement agreement.
- 6 This Order reviews the proposed settlement on the written record submitted by the parties. We find the record sufficiently complete for us to evaluate the offenses that were charged, the penalties asked, and the proposed "Revised Agreement."

FACTS SUPPORTING THE COMPLAINT

- 7 The complaint alleges that PSE violated Commission rules that 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).*²

² 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).*

- 8 The rules protecting customers from the release of their private information were adopted in September 2001, concluding a lengthy rulemaking proceeding in which PSE was an active participant. The rules became effective on October 29, 2001. In November 2001, PSE launched a marketing program called PSE Connections.
- 9 In that program, PSE contracted to provide another company, Allconnect, Inc. (Allconnect),³—without *any* prior customer consent—private consumer information of residential utility customers who initiated or transferred gas or electric service with PSE. The purpose of “PSE Connections” was to sell products and services of third-party providers to PSE’s customers. Allconnect paid PSE for the release of information and shared revenue from any resulting sales.
- 10 The companies agreed to share information in two ways; by directly transferring telephone callers from PSE to Allconnect or transferring information about callers from PSE to Allconnect.
- 11 One method occurred when PSE transferred to Allconnect a large volume of incoming telephone calls from new or transferring PSE customers. Allconnect agents introduced themselves as “PSE Connections” and marketed non-energy services such as telephone and Internet service, lawn care, and newspaper subscriptions, that target consumers taking up residence in a new home.
- 12 At the outset of the program in November 2001, PSE customer service representatives used script options that all included a brief description of the PSE Connections program and included an opportunity for the customer to opt out of the transfer of the call to Allconnect’s representatives. The options did not secure written or oral permission from the customer to transfer the customer’s private consumer information to a third party.
- 13 In October 2005, PSE changed the possible scripts significantly. They no longer explained the PSE Connections service. Three out of the four scripts informed customers that they would be transferred to PSE Connections to “confirm your service.” Only one script allowed the customer to decline the service “confirmation” orally on the call. None of the scripts asked for oral or written permission to transfer

³ Allconnect provides the service for utility businesses and others throughout the United States.

the customer's private consumer information to a third party. Following introduction of the new scripts, the number of PSE customer calls transferred per month doubled, and even tripled in some months, as compared with comparable months of the prior year. When PSE transferred the call to Allconnect, the customer service representative electronically transferred the customer's name, address, service start date, and a product order number.

- 14 The marketing contract between PSE and Allconnect also provided that Allconnect could receive the customer's telephone and social security numbers, 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." Evidence supporting the settlement does not reveal any instances of the transfer of such information.
- 15 The second means of disclosure available under their agreement could occur if PSE shared with Allconnect the private consumer information of customers who *refused* to have their calls transferred to "PSE Connections." The evidence supporting the proposed settlement does not reveal any such disclosures.
- 16 In return for sharing its customers' calls and information with Allconnect, PSE received a quarterly payment from Allconnect. The amount of the payment varied, based on the percentage of eligible customers PSE transferred, the number of PSE customers using Allconnect's service and the amount of revenue Allconnect generated from this use. PSE represents that it collected \$95,174 in gross revenue from Allconnect during the entire length of the program since 2001.
- 17 As noted earlier, PSE started the PSE Connections program the very next month after the Commission's newly-adopted private consumer information disclosure rules, WAC 480-90-153 and WAC 480-100-153, became effective. PSE was well aware of these rules. It participated actively in the rulemaking proceeding that included these two rules by attending workshops held between 1999 and 2001 and by submitting extensive comments specifically directed to the proposed text of the rules. For example, it urged that the rules not prohibit the transfer of customer data for marketing purposes, and that the rules allow utilities to use customer data for marketing PSE's own products and services, or those of its affiliates.

- 18 Staff began investigating the PSE Connections program in March 2006. On March 15, 2006, PSE suspended the PSE Connections program pending completion of the investigation. Staff completed its investigation in July 2006.
- 19 Based on information PSE provided to the Commission, Staff calculated that PSE transferred a total of 65,260 customer calls, along with private consumer information, to Allconnect between November 2001 and March 2006. RCW 4.16.100, however, restricts actions for a penalty to violations that occurred within two years prior to filing of a complaint. Consequently, the Commission may impose penalties only for those violations that occurred between October 5, 2004, two years before the filing date of this Complaint, and March 15, 2006 (the date the program was suspended). During this two-year period, Staff concluded that PSE transferred 18,992 customer calls to Allconnect.

ALLEGATIONS IN THE COMPLAINT

- 20 The complaint states that WAC 480-90-153 prohibits gas utilities, and WAC 480-100-153 prohibits electric utilities, from disclosing private consumer information to third parties for the purposes of marketing services or products 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.
- 21 The complaint alleges that 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 gas and electric customers without their written permission so that Allconnect could market additional services to these consumers.

THE COMPLAINT'S REQUESTS FOR RELIEF

- 22 The complaint asked the Commission to find that each consumer call transferred to Allconnect constitutes one violation. Staff therefore requested that the Commission find 18,992 violations. Staff asked the Commission to impose a penalty under RCW 80.04.380 of \$50 for each violation that occurred within the statutory limitation

period, for a total of \$949,600. Finally, the complaint asked the Commission to order PSE to discontinue the PSE Connections program permanently.

THE SETTLEMENT AGREEMENT

- 23 The revised agreement is attached to this order as Appendix A and provides, *inter alia*:
- 24 PSE admits to 65,260 violations of WAC 480-90-153 or WAC 480-100-153.
- 25 PSE will pay a penalty of \$900,000 and make an additional contribution of \$95,000—representing its entire gross revenue from the “PSE Connections” program—to a fund to help low-income persons pay energy bills. PSE agrees not to seek recovery of these payments through rates in a future rate case.
- 26 In addition, PSE will mail a notice to its residential customers informing customers of PSE’s obligations under Commission rules governing disclosure of private consumer information. To ensure that customers who pay bills electronically have an opportunity to read the notice, PSE also will post the notice on its web site, accessible from both the PSE home page and the bill paying interface.
- 27 The revised settlement agreement also requires PSE to develop a new, comprehensive privacy policy, to be adopted by its board of directors within six months; provide privacy training to all personnel and enhanced privacy training to customer service representatives; and report to the Commission annually for the next two years every release of private consumer information, stating how the customer’s written consent was obtained.

DISCUSSION

- 28 **Applicable principles.** The settlement process is encouraged by the state's Administrative Procedure Act (APA).⁴ The Commission's procedural rules govern the settlement process⁵ and the Commission's options in considering a proposed settlement.⁶ Essentially, the Commission may accept a proposed settlement if it is supported by the record, it is lawful, and consistent with the public interest.⁷
- 29 The Commission may also find a settlement acceptable with certain changes. Under WAC 480-07-750(2), the Commission may state conditions for approval of the proposed settlement. When the Commission proposes a condition, the parties are free to accept or reject it. If any party to the settlement rejects a condition, the proceeding returns to litigation status.
- 30 For the most part, this proposed settlement is acceptable, and we accept its provisions as lawful and consistent with the public interest. We will, however, propose one condition relating to the notice of customers' rights and Company obligations.
- 31 **The amount and nature of the penalty.** Determining the amount of the penalty to assess for each violation involves the exercise of the Commission's discretion. The measure of a proper penalty is whether the punishment is set at a level commensurate with the violation, that is, a sanction proportionate to the nature of the offense and sufficient to provide incentives for compliance by the violator and to deter others who may be tempted to do the same thing. The penalty may recognize the loss to consumers, the gain to the company, and—although the existence of violations is not determined by the intent of the violator—whether the violation involved a conscious choice to violate a rule or law as compared with an incidental violation resulting from oversight, confusion, or inadvertence.

⁴ RCW 34.05.060.

⁵ WAC 480-07, Subpart D, especially WAC 480-07-730 and -740.

⁶ WAC 480-07-750.

⁷ WAC 480-07-750(1).

32 Here we conclude that PSE intentionally violated the rule as part of a corporate decision to sell its customers' private information for financial gain.

33 PSE actively was involved in the rulemaking proceeding in which the Commission promulgated the rules that PSE violated. There is no factual dispute that the Company was aware this promotion was wrong and violated the recently-adopted rules. However, Commission Staff notes, PSE's actions are mitigated, "by the fact that PSE voluntarily suspended the PSE Connections program as soon as Staff contacted the company to request information on the program."⁸

34 The Parties have agreed to a settlement that involves a substantial penalty—approximately one million dollars—and payment of a total amount greater than the penalty Staff requested in the complaint. The terms also stipulate a payment to low-income energy assistance that offsets PSE's revenue from the "PSE Connections" program. Further, PSE makes assurances against repetition, and provides publication of PSE's obligations under rules to protect customers' private information. Finally, the parties agree that settlement of the issues avoids expensive litigation of uncertain result.

35 **Conditional approval.** On balance, subject to one condition, we accept and approve the proposal as appropriate, based on the parties' representations and the totality of the agreement. It is within a range from which we could select the appropriate penalty after a fully contested hearing. We particularly consider PSE's cooperation and its willingness to accept a substantial penalty as factors favoring the settlement.

36 **Required disclosure.** The one critical element that the proposed resolution lacks is disclosure to customers of what PSE did. This is particularly important because it is the customers' privacy rights which were willfully violated here. At a time of heightened concern about consumer privacy rights, a fundamental right is to be advised when a company violates those rights.

⁸ Parties' Narrative, paragraph 11, page 5.

37 Therefore, we require as a condition of our acceptance of the settlement that PSE state clearly and factually; what it did that led to this complaint, that its actions violated the law relating to consumer privacy, the penalties it has paid and steps it has taken to prevent a recurrence. These disclosures must be part of the proposed notice to customers called for in paragraph 18 of the Revised Settlement.

38 PSE must, in consultation with the other parties, prepare a draft of the proposed additions to the notice and submit them to the Commission within 15 days after the date of this order. When approved by order of the administrative law judge, the Company must disseminate the notice according to the terms of the settlement agreement.

CONCLUSION

39 The Commission adopts the proposed settlement as the resolution of this complaint, subject to the parties' acceptance of the condition identified above, and orders that PSE comply with each of the terms.

40 The Commission makes the following ultimate findings of fact and conclusions of law. We incorporate herein the specific findings and conclusions set out in the text of this Order, above.

FINDINGS OF FACT

41 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington that has authority under Title 80 of the Revised Code of Washington to regulate the rates and activities of utilities, including electric and natural gas companies.

42 (2) Puget Sound energy (PSE) is an electric company and a natural gas company providing service to customers within Washington State.

43 (3) PSE repeatedly provided customers' personal data without the customers' written consent to Allconnect, Inc., for marketing purposes.

CONCLUSIONS OF LAW

- 44 (1) The Washington Utilities and Transportation Commission has jurisdiction over
this proceeding and the parties to this proceeding.
- 45 (2) PSE's releases of customer personal data violated WAC 480-90-153 or WAC
480-100-153.
- 46 (3) RCW 80.04.380 authorizes the Commission to impose penalties for violations
of Commission rules.
- 47 (4) RCW 34.05.060 and WAC 480-07-730 through 750 authorize the Commission
to consider, accept, and condition proposed settlement agreements.
- 48 (5) Terms of the proposed settlement agreement, conditioned upon notice to
PSE's customers of PSE's violations and payment of penalties as provided in
the text of this order, are appropriate and sufficient penalties under applicable
provisions of law.

ORDER

- 49 The Commission adopts the proposed settlement offered by PSE, Commission Staff
and Public Counsel, subject to the parties' acceptance of the condition identified
herein. In summary this order requires:
- 50 **Penalty.** PSE must pay a penalty of \$900,000 to the Public Service Revolving Fund
no later than 21 calendar days after the date of this Order.
- 51 **Donation.** No later than 21 calendar days after the date of this Order, PSE must
donate \$95,000, representing the revenue PSE realized from the PSE Connections
program, to PSE's Warm Home Fund.

- 52 **Notices.** PSE must mail to its residential customers and post on its website a notice in conformance with Paragraph 18 of the Revised Settlement Agreement and patterned after Attachment A to that Agreement. The notice must include language in conformance with Paragraphs 36 through 38 of this Order regarding disclosure of the nature of PSE's violations and pertinent terms of the Revised Settlement Agreement. The notice text must be approved by the Commission prior to distribution. Mailing and activation of website notices must begin within 15 days after the Commission's approval of the notice text, and PSE must complete dissemination of the notice within sixty days after the date of approval.
- 53 **Non-recoverability.** PSE must not seek recovery through rates of the penalties, donations, or other costs paid pursuant to any provision of this Agreement.
- 54 **Privacy policy.** PSE must develop as company-specific privacy policy, which will be approved by the company's board of directors within six months after the entry of this Order.
- 55 **Privacy training.** PSE must train all existing and new employees on its privacy policy and the privacy requirements of laws and rules. Customer service center staff will receive more frequent and specific training.
- 56 **Reporting release of customer information.** For the next two years PSE must file annual reports with the Commission that identify all instances in which customer information is released for marketing purposes and how written consent was obtained.
- 57 **Program termination.** PSE, which has not participated in the PSE Connections program since March 2006, must discontinue the program permanently.
- 58 **Conclusion.** For this Order to become effective, all parties must accept the condition included herein within ten days after the date of this Order. If the condition is not accepted by all parties within ten days, this Order shall become void and the Commission will set the complaint for hearing.

DATED at Olympia, Washington, and effective January 22, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. Settling parties may within 10 days reject the condition proposed in this order, pursuant to WAC 480-07-750(2), in which case this order will become void and the matter set for hearing. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

Appendix A