

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 "H" STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

September 28, 2007

FORMAL CASE NO. 1054, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO INCREASE EXISTING RATES AND CHARGES FOR GAS SERVICE, Order No. 14587

I. INTRODUCTION

1. This Order addresses the Washington Gas Light Company's ("WGL" or "Company") failure to comply with Order Nos. 14383 and 14384 issued by the Public Service Commission of the District of Columbia ("Commission") on July 20, 2007, that among other things, directed WGL to submit the complete WGL-Accenture "Master Services Agreement" ("MSA") for *in camera* inspection.¹ WGL has yet to submit the complete MSA and, as we explain below, WGL's failure to comply with our Order subjects the company to a forfeiture that now totals \$350,000.

II. BACKGROUND

2. The procedural history and factual background of this rate case have been well-documented in prior Commission Orders and will not be repeated here. We will reiterate only those matters necessary to the issue being determined in this Order.

3. On July 12, 2007, the Office and Professional Employees International Union ("OPEIU") filed a motion to compel the production of the complete MSA.² The following day, July 13, 2007, the Office of the People's Counsel ("OPC") requested that the Commission review the MSA *in camera*.³ On Friday, July 19, 2007, OPC requested that WGL be ordered to produce a complete and un-redacted version of the MSA, complaining that WGL had heretofore been willing to produce only a heavily redacted

¹ *Formal Case No.1054, In the Matter of the Application of Washington Gas Light Company, District of Columbia, for Authority to Increase Existing Rates and Charges for Gas Service* ("Formal Case No. 1054"), Order Nos. 14383 and 14384 (July 20, 2007).

² *Formal Case No.1054, Motion of OPEIU to WGL's Motion to Compel Production of the WGL-Accenture Agreement* (July 12, 2007).

³ *Formal Case No.1054, OPC's Motion for Expedited Issuance of an Order Compelling Production of Documents and for Shortened Response Time* (July 13, 2007).

version of the agreement which could only be viewed at WGL's offices.⁴ WGL objected to producing the document on the grounds that the information was privileged.⁵

4. On July 20th, we granted OPC's motions and, by Order No.14384, directed WGL to either provide the documents or, if WGL continued to assert a privilege, produce those documents for an immediate *in camera* inspection.⁶ This directive included the MSA. WGL chose the latter option and, because the hearing was scheduled for Monday, July 23, 2007, the *in camera* inspection took place on Saturday and Sunday, July 21 and 22, 2007.⁷ That same day, July 20, 2007, we issued Order No. 14383, specifically ordering WGL to submit the MSA in response to Commission Data Request No. 4.⁸

5. The MSA-related document that WGL submitted for inspection was incomplete and unexecuted, and, by WGL's own admission, devoid of material terms and conditions.⁹ An unexecuted document, devoid of material terms and conditions, is not a contract. WGL declined to produce the contract despite the fact that D.C. Code Section 34-907 gives the Commission express authority to review all contracts of a public utility.¹⁰

6. After an exhaustive *in camera* review of the other documents submitted by WGL, the Commission determined that WGL's assertions of privilege were unwarranted and, on July 23rd, we served WGL and the other parties with Order No. 14385. That

⁴ *Formal Case No. 1054*, "OPC's Motion for Expedited Issuance of an Order Compelling Production of Documents and for Shortened Response Time" (July 19, 2007).

⁵ *See Formal Case No.1054*, WGL's response to OPC's Motion to Compel (July 20, 2007).

⁶ *See Formal Case No. 1054*, Order No. 14384 at 2-3 ¶ 8 (July 20, 2007).

⁷ *Id.* at 3 ¶ 10 (July 20, 2007).

⁸ *Formal Case No. 1054*, Order 14383 at 2, ¶5 (July 20, 2007).

⁹ *Formal Case No. 1054*, Letter from Beverly J. Burke, WGL Vice President & General Counsel to Dorothy Wideman, Commission Secretary, dated July 21, 2007 at 2.

¹⁰ We want to make it absolutely clear that this Order is based on the Commission's statutory authority to request and receive documents from public utilities pursuant to its jurisdiction, which differs from any rights the parties have to receive documents under the discovery rules which is the subject of a separate Order we are issuing on WGL's motion for reconsideration. D.C. Official Code § 34-907 states, in pertinent part, "Every public utility shall furnish to the Commission all information required by it Whenever required by the Commission, every public utility shall deliver to the Commission any or all maps, profiles, **contracts**, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the Commission may direct." (emphasis added). *See also* D.C. Official Code §§ 34-904 and 905. We note here at the outset that WGL's failure to provide the Commission with a complete, un-redacted version of the MSA as ordered for the Commission's *in camera* review is not only an egregious violation of these sections of the Code, but also violates Commission Order No. 14384, which will be dealt with *infra*.

Order again directed WGL to submit the MSA to the Commission (for the third time) and also directed the Company to make the document available to OPC and OPEIU.¹¹

7. On July 24, 2007, WGL requested that the Commission reconsider Order No. 14385, directing the company to provide OPC and OPEIU with complete copies of the MSA.¹² However, WGL did not request reconsideration of either Order Nos. 14383 or 14384, and the time for requesting reconsideration has expired.

III. DISCUSSION

8. Pursuant to D.C. Code §34-907, the Commission has broad and unfettered authority to require any public utility to produce any and all contracts. Order Nos. 14383 and 14384, issued July 20, 2007, compelled WGL to produce the MSA for the Commission's review. WGL's sole reason for not producing the document is WGL's belief that production was not "necessary to the vigorous airing of the issues in a rate case."¹³ Lest WGL forget, the Commission, not WGL, is the entity that has the authority to make the decisions as to what is or is not "necessary to the vigorous airing of the issues in a rate case." In fact, the purpose of the *in camera* review was to allow the Commission to make that determination -- a determination that cannot be made unless the Commission reviews all of the contested documents.

9. By failing to produce complete copies of the MSA and related documents for the Commission's *in camera* review on July 21, 2007, and subsequently, in compliance with Order Nos. 14383 and 14384, WGL has not only committed egregious violations of Sections 34-904, 905 and 907 of the D.C. Code, but is in clear violation of both Orders.¹⁴ Pursuant to D.C. Code § 34-706(a), "[i]f any public utility shall fail, neglect, or refuse to obey any lawful requirement or order made by the Commission, . . . such public utility shall forfeit and pay to the District of Columbia the sum of \$5,000 for each such offense." According to D.C. Code § 34-708, "[e]very day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the Commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of this subtitle, as the case may be." Therefore, WGL is subject to a forfeiture of \$5,000 for every day of non-compliance through the date of this Order. At

¹¹ *Formal Case No. 1054*, Order No. 14385 at 8-9, ¶¶ 16-19 (July 23, 2007).

¹² *Formal Case No. 1054*, Washington Gas Light's Application for Reconsideration of Order No. 14385 and Response to Show Cause (July 24, 2007).

¹³ *Formal Case No. 1054*, Letter from Beverly J. Burke, WGL Vice President & General Counsel to Dorothy Wideman, Commission Secretary, dated July 21, 2007 at 2.

¹⁴ We consider WGL's violation of the two Orders and the several statutory provisions as constituting one violation under the unique circumstances of this case, and we will treat it as one violation per day for purposes of the forfeiture directed in this Order.

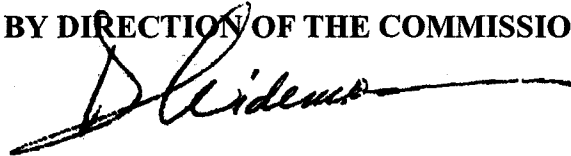
present, the amount of the forfeiture totals \$350,000.¹⁵ We direct WGL to pay this amount by the close of business on the first business day following the date of this Order, and we caution the Company that it is subject to additional forfeitures for each day going forward that WGL does not produce the entire, un-redacted MSA to the Commission.

THEREFORE, IT IS ORDERED THAT:

10. By the close of business on the first business day following the date of this Order, WGL shall submit a certified check payable to the District of Columbia Treasurer in the amount of \$350,000 for its violation of Order Nos. 14383 and 14384, as discussed herein, for the dates July 21, 2007, through September 28, 2007. The Company shall be subject to an additional forfeiture of \$5,000 per day for each day after September 28, 2007 that it does not submit the complete MSA to the Commission.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION



CHIEF CLERK:

**DOROTHY WIDEMAN
COMMISSION SECRETARY**

¹⁵ We note that WGL did state on page 8 of its motion for reconsideration that “the Company has offered to make the entire MSA available for inspection at its offices and for the Commission”, and on page 17 that “[t]he Company is confident that providing under seal to the Commission the requested complete MSA should be sufficient and limit the risk of further disclosure and reiterates the offer.” Commission Orders are not subject to negotiation. We ordered WGL to submit the entire MSA to us for our *in camera* review on July 21 as well as in response to Commission Data Request No. 4. WGL made no effort to submit the complete document to us even after its “offer” to do so, but it instead filed on August 10 another partial, redacted copy of the MSA for “informational purposes”; a copy that was made publicly available in its Form 10-Q filing with the Securities and Exchange Commission. We also note that the company has inexplicably submitted the MSA to the Maryland Commission Staff, the Maryland OPC, and other parties in a Maryland rate proceeding while simultaneously arguing that disclosure of the same document in the District is “unnecessary.” For this purpose we take Administrative Notice of WGL’s docket filing on August 15, 2007, in *Case No. 9104, Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service and to Implement a Performance-Based Rate Plan*, before the Maryland Public Service Commission. We therefore finally, and emphatically, note that WGL was, and is, required to submit the MSA as ordered. We further note that the seriousness of WGL’s affront to the Commission is exacerbated by the Company’s compliance with a ruling from the Maryland Public Service Commission’s Chief Hearing Examiner to submit the complete MSA to Commission Staff and other parties, but continues to refuse to submit the full agreement to this Commission after being ordered to do so by this Commission.