

# 1054-C-208

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

## ORDER ON RECONSIDERATION

November 15, 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. 14626**

### I. INTRODUCTION

1. This order addresses Washington Gas Light Company's ("WGL" or "Company") application for reconsideration of Order No. 14587.<sup>1</sup> That order imposed a statutorily-mandated civil forfeiture upon the Company for its failure to comply with Order No. 14383<sup>2</sup> ordering WGL to file its outsourcing contract with the Public Service Commission of the District of Columbia ("Commission"), and Order No. 14384,<sup>3</sup> directing WGL to submit to the Commission for *in camera* inspection, "complete un-redacted copies" of the outsourcing contract. By this Order, the Commission considers WGL's arguments seeking reconsideration, in light of the statutory criteria in D.C. Code § 34-706 (2001). For the reasons stated below, the Commission affirms the imposition of a civil forfeiture in the amount of \$350,000 upon WGL.

### II. WGL'S APPLICATION FOR RECONSIDERATION

2. WGL's application for reconsideration sets forth three major arguments. The Company first claims that it complied with Order Nos. 14383 and 14384. Alternatively, WGL argues that its application for reconsideration of Order No. 14385 automatically stayed enforcement of those orders. Finally, WGL argues that the civil forfeiture entered against it should be rescinded under the circumstances of this case.

#### A. WGL's Claim that it Complied With Order Nos. 14383 and 14384

3. WGL contends that the Company has acted in good faith to comply given that the proceeding has had a long, complex and confused history, through no fault of the parties.<sup>4</sup> WGL states that it never disputed the Commission's authority to view the

<sup>1</sup> See *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, WGL's Application for Reconsideration of Order No. 14587* (October 1, 2007) ("WGL motion").

<sup>2</sup> *Formal Case No. 1054, Order No. 14383* (July 20, 2007).

<sup>3</sup> *Formal Case No. 1054, Order No. 14384* (July 20, 2007).

<sup>4</sup> WGL motion at 1.

placed the documents on the record” and that the Maryland Commission did not have the MSA outsourcing contract “in the record even though the evidentiary hearings have concluded and the case has been fully briefed.”<sup>14</sup> The Company argues that it “has acted no differently before the District of Columbia Public Service Commission than it has with any other Public Service Commission that has jurisdiction over it.”<sup>15</sup>

7. OPC avers that there is no confusion as to the key facts and the record shows that WGL has no one but itself to blame for its current circumstances.<sup>16</sup> OPC asserts that WGL was evasive in responding to Order Nos. 14383 and 14384.<sup>17</sup> OPC also contends that instead of simply submitting the entire Agreement, the Company opted to bargain with the Commission over the terms under which it would produce the MSA, and that the Commission’s Orders called for compliance or, alternatively, the submission of a request for reconsideration, not a counter offer as to what documents would be made available if it turned out that the Commission really meant what it said.<sup>18</sup>

8. OPC argues that Order No. 14383 ordering WGL to file its outsourcing contract with the Commission expressly recites in paragraph two (2) WGL’s statement that the Company was “willing to make arrangements for the Commission to review the material,” which the Commission considered and rejected.<sup>19</sup> What the Commission did, OPC states, is direct WGL to provide the outsourcing agreement to the Commission, not simply the terms under which a full viewing might be permissible.<sup>20</sup> OPC points out that paragraph four (4) of Order No. 14383 makes it plain that the consequences of non-compliance could be severe, stating that “any subsequent failure by WGL to comply with the lawful directives of the Commission may result in a show cause order and or fine.”<sup>21</sup> OPC argues that WGL cannot credibly contend that renewing a previously-rejected offer to arrange for review of the outsourcing contract constitutes good faith compliance with Order No. 14383.<sup>22</sup>

9. Turning to Order No. 14384, OPC argues that the Commission left little to the imagination by giving the Company a choice: either provide the MSA to the parties,

<sup>14</sup> *Id.* at 10.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> See *Formal Case No. 1054*, Response of the Office of People’s Counsel to Application for Reconsideration of Order No. 14587 at 2 (October 9, 2007) (“OPC’s response”).

<sup>17</sup> OPC’s response at 2.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 3, citing Order No. 14383 at ¶ 4 (July 20, 2007).

<sup>22</sup> *Id.* at 5.

or provide it to the Commission for *in camera* review.<sup>23</sup> Moreover, OPC contends that there is no good faith basis for WGL's claim that the directive to produce a "complete un-redacted" copy of the outsourcing contract was satisfied by WGL's production of only a Company-selected excerpt.<sup>24</sup> Furthermore, OPC argues that the Company's current claims are inconsistent with its prior actions, since if WGL truly believed that Order No. 14384 required only production of an excerpt of the outsourcing contract, then WGL presumably would not have offered to produce the entire contract for the Commission.<sup>25</sup>

### III. DISCUSSION

10. The Commission finds no merit in WGL's claim that it acted in good faith and complied with Order Nos. 14383 and 14384. Moreover, the Commission finds no reasonable basis for WGL to be confused in this proceeding. The Commission agrees with OPC that WGL has no one to blame but itself for the current circumstances.<sup>26</sup> To begin with, the Company mischaracterizes Order No. 14383. The sole subject covered by that Order was the Commission's request for the outsourcing contract pursuant to its statutory powers in D.C. Code §§ 34-905, and 34-907 (2001).<sup>27</sup> The Order did not address requests for data from other parties. Commission Data Request No. 4 covered the MSA outsourcing contract<sup>28</sup> and, Order No. 14383 directed WGL to file the outsourcing agreement with the Commission.<sup>29</sup> OPC correctly points out that, on its face, Order No. 14383 considered and rejected the Company's offer "to make arrangements for the Commission to review" the outsourcing contract. Instead, pursuant to its statutory authority, the Commission ordered WGL to provide the outsourcing contract to the Commission. Furthermore, Order No. 14383 went on to warn WGL in blunt language that:

the Commission is concerned with WGL's failure to provide information to the Commission and the parties as requested in the discovery phase of this proceeding. Accordingly, any subsequent failure by WGL to comply with the

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 5-6.

<sup>26</sup> *See id.* at 2.

<sup>27</sup> D.C. Official Code § 34-907 (2001) 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. Code §§ 34-904 and 905 (2001).

<sup>28</sup> WGL admits this. *See* WGL motion at 8 n. 12 (referring to "Staff Data Request 4-1," requesting the MSA).

<sup>29</sup> Order 14383 at ¶¶ 1, 3, and 5 (July 20, 2007).

lawful directives of the Commission may result in a show cause order and or fine. (emphasis added).<sup>30</sup>

WGL never filed the outsourcing agreement with the Commission, as directed by Order No. 14383. To the contrary, WGL filed only selected excerpts of an unsigned agreement with a letter stating that it was not filing the complete outsourcing agreement.<sup>31</sup>

11. Equally without merit is WGL's claim that it complied with Order No. 14384. Order No. 14384 clearly required WGL to provide discovery to OPC, or, alternatively, to submit to the Commission for our *in camera* review, "complete un-redacted copies" of the contract.<sup>32</sup> WGL did not do that.<sup>33</sup> Instead, it filed with the Commission only very limited selected portions of the outsourcing contract. As we stated in Order No. 14587, it is the Commission, not WGL, that has authority to decide what is or is not "necessary to the vigorous airing of the issues in a rate case."<sup>34</sup> Nor is it tolerable to allow WGL to pick and choose which Commission Orders it will obey.

12. The Commission does not find persuasive WGL's claim that it was not providing the entire MSA to the Commission because it considered the contract confidential. There are well-established procedures and safeguards for handling confidential and proprietary information in Commission cases, which WGL could have utilized in submitting the outsourcing contract to the Commission.<sup>35</sup> Filing with this Commission under these well-settled procedures, which WGL is well aware of and has often used, does not put allegedly confidential records in the open public record. The Commission, by Order No. 14384, informed WGL that if it believed some of the requested records were truly privileged, then the Company should submit those records to the Commission for *in camera* inspection together with a concise but detailed explanation for its claim of privilege.<sup>36</sup> Furthermore, the Commission *sua sponte* issued a protective

<sup>30</sup> Order No. 14383 at ¶ 4 (emphasis added).

<sup>31</sup> See WGL letter dated July 21, 2007.

<sup>32</sup> Order 14384 at ¶¶ 9, 10 and 13 (July 20, 2007).

<sup>33</sup> OPC's July 20<sup>th</sup> filing specifically identified "the meat" of the outsourcing contract as contained in at least 15 separately titled Appendices, which OPC had seen briefly at WGL's corporate offices. OPC was not afforded an opportunity to review the entire MSA. Thus there is no basis for WGL's claim (*see* WGL motion at 3) that it fully complied with the Commission's directive since it only made available selected portions of the MSA at WGL's corporate offices. *Formal Case No. 1054*, Supplement to the Motion of the Office of People's Counsel for Expedited Issuance of an Order compelling Production of Documents and for Shortened Response Time (July 20, 2007) ("OPC's Supplement").

<sup>34</sup> *Formal Case No. 1054*, Order No. 14587 at ¶ 8 (September 28, 2007).

<sup>35</sup> See 15 DCMR §150 (setting out safeguards and procedures for handling confidential and proprietary information in Commission cases).

<sup>36</sup> Order No. 14384 at ¶ 8.

order, in addition to the parties' Confidentiality Agreement, to safeguard the confidentiality of all the WGL records ordered produced.<sup>37</sup>

### B. WGL's Application for Stay of Order 14385

13. WGL argues that any enforcement of Order Nos. 14383 and 14384 was automatically stayed when the Company filed its application for reconsideration of Order No. 14385.<sup>38</sup> WGL insists that Order Nos. 14383, 14384, and 14385 should be treated as "a series of discovery orders on one issue and one issue alone, which is the production of documents related to the MSA."<sup>39</sup> According to WGL, Order No. 14385 constitutes the final and dispositive decision that resolves the discovery dispute underlying Order Nos. 14383, 14384, and 14385.<sup>40</sup> When WGL applied for reconsideration of Order No. 14385, WGL believes, it not only stayed the execution of that Order pursuant to D.C. Code § 34-604(b), but similarly stayed the execution of Order Nos. 14383 and 14384 which were subsumed in Order No. 14385.<sup>41</sup> WGL similarly claims that if the Company had prevailed in Order No. 14385, "then Order Nos. 14383 and 14384 would have been rendered moot on their face."<sup>42</sup> WGL contends that it could not have produced the entire MSA outsourcing contract in response to Order Nos. 14383 and 14384, and still preserved its objections to Order No. 14385.<sup>43</sup>

14. OPC argues that, in order to obtain a stay of a Commission Order, a litigant must either seek reconsideration or file a motion asking for a stay.<sup>44</sup> According to OPC, Order No. 14385 does not explicitly or implicitly "subsume" the earlier Orders issued on July 20<sup>th</sup>.<sup>45</sup> OPC argues that WGL sought reconsideration of a third order (Order No. 14385), failed to mention the other two orders, and thereby waived whatever rights it may have had to challenge the effectiveness of those earlier orders (Order Nos.

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<sup>37</sup> *Formal Case No. 1054*, Order No. 14385 at ¶ 19 (July 23, 2007). (The Commission stated "these WGL records shall not be disclosed to the public. Nor shall they be used by any party outside these Commission proceedings. Instead, they shall be handled appropriately, as confidential materials, in these proceedings.").

<sup>38</sup> WGL motion at 12.

<sup>39</sup> *Id.* at 13-14. According to WGL, it "would have been impossible to sever Order Nos. 14383 and 14384 from Order No. 14385," because the "same motions were at issue in all three orders and the motions were only fully granted in Order No. 14385." *Id.* at 14

<sup>40</sup> *Id.* at 14.

<sup>41</sup> *Id.* at 13.

<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.* at 14.

<sup>44</sup> OPC's response at 6.

<sup>45</sup> *Id.* at 6, n.7.

14383 and 14384), which have long since become final.<sup>46</sup> Moreover, OPC contends that since WGL did not request reconsideration of the July 20<sup>th</sup> orders, the only option available was to comply fully, which it chose not to do.<sup>47</sup>

15. The Commission observes that Order No. 14383 was a directive for WGL to deliver records to the Commission. It was not, as WGL claims, just one of "a series of discovery orders"<sup>48</sup> issued in response to the OPC and OPEIU motions, directing WGL to provide the outsourcing agreement. The Commission Chairperson publicly emphasized this point to WGL at the July 23<sup>rd</sup> Commission hearing:

**CHAIRPERSON YATES:** Ms. McIntyre, the Commission also asked for a copy of the contract. It's just not OPC. It's OPC, it is the Commission, it is the Order.<sup>49</sup>

WGL is quite wrong to suggest that Order No. 14383, ordering WGL to file the outsourcing contract with the Commission, was essentially a directive to deliver the outsourcing contract "presumably to OPC."<sup>50</sup> Order No. 14383 demonstrates on its face that it has nothing to do with OPC's motion.<sup>51</sup> Instead, it was an Order issued to ensure the Commission's own access to the outsourcing contract pursuant to D.C. Code Section 34-905. The Commission's directive in Order No. 14383 that WGL file its outsourcing contract with the Commission, was never "subsumed in" Order No. 14385, nor was it stayed by WGL's application for reconsideration of Order No. 14385. It is also inaccurate to assert that had the Company succeeded on its motion for reconsideration of Order No. 14385, then Order Nos. 14383 and 14384 would have been rendered moot on their face, as WGL claims.<sup>52</sup> To the contrary, the Commission's directive in Order No. 14383 (ordering WGL to file the outsourcing contract with the Commission) could not have been undercut by the outcome of the discovery dispute that Order No. 14385 resolved between WGL, OPC, and OPEIU.

### C. Equitable Considerations

16. WGL argues that it should not be subject to a civil forfeiture under the circumstances of this case, insisting that the Company was acting in good faith at all

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.* at 6. OPC also notes that "if the Company was unsure about how to proceed, it could have sought clarification. No request was filed." *Id.* at 6, n. 8.

<sup>48</sup> WGL motion at 12-14.

<sup>49</sup> Transcript of July 23, 2007 hearing at 16 ("Tr."). *Accord id.* at 17-18.

<sup>50</sup> Tr. at 12.

<sup>51</sup> Order No. 14383 at ¶ 3.

<sup>52</sup> WGL motion at 13.

times and that its actions were neither defiant nor egregious.<sup>53</sup> WGL argues that the circumstances presented in this case "do not rise to the level of circumstances in other proceedings where sanctions have been imposed."<sup>54</sup>

17. WGL also contends that the Commission's calculation of the period of time within which the Company is subject to a forfeiture should be reconsidered.<sup>55</sup> The Company states it is accused of violating Commission Orders issued on July 20<sup>th</sup>, but believed it complied with those until receiving Commission Order No. 14587 imposing sanctions.<sup>56</sup> WGL suggests that if the Company had been put on notice, through a letter, a telephone call, an order to show cause, or some other communication from the Commission that the clock was ticking on an obligation, it would have had an opportunity to mitigate the extreme level of the forfeiture now imposed.<sup>57</sup> Moreover, WGL argues that "because the Commission issued two tolling orders, thus delaying the resolution of the pending application for reconsideration and motion for sanctions, the Commission is now subjecting the Company to a penalty that potentially could have been mitigated by an earlier Commission decision."<sup>58</sup> WGL contends that it is fundamentally unfair and could be viewed as arbitrary and capricious for the Commission to delay a decision for its own administrative convenience, and then impose monetary penalties that accrued during the delay.<sup>59</sup> WGL further submits that to reach a different conclusion would be to authorize the imposition of unlimited amounts of penalties, simply as a result of Commission inaction.<sup>60</sup>

18. In a related argument, WGL contends that the Commission's suspension of the proceeding, by Order No. 14403, should have stayed any further "running of the clock" for purposes of calculating the forfeiture, and that it viewed the suspension of the proceeding as a suspension of all of the Company's obligations until the Commission issued its decision on reconsideration of Order No. 14385.<sup>61</sup> WGL states that once the Commission issued its decision on reconsideration of Order No. 14385, it promptly

<sup>53</sup> *Id.* at 1, 15 and 16.

<sup>54</sup> *Id.* at 16. WGL argues that, as a general matter, "sanctions are a drastic remedy" to be used "only after a showing of severe circumstances" and that "the sanctions imposed must be commensurate with the violation." *Id.* citing (among other cases) *King v. DC Water & Sewer Author*, 803 A.2d 966, 970 (D.C. 2002) and *Murphy v. AA Beiro Constr. Co.*, 679 A.2d 1039, 1044 (D.C. 1996).

<sup>55</sup> *Id.* at 16.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 17.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 17-18.

complied by providing the entire MSA to the Commission and parties that had signed a confidentiality agreement.<sup>62</sup> WGL argues that, given the lack of notice on the extreme level of forfeiture, the tolling orders on the pending motion for reconsideration, the suspension of proceedings, the Company's repeated expression of willingness to provide the entire MSA to the Commission, and the absence of severe circumstances that warrant forfeiture sanctions, the Commission should not impose sanctions on the Company.<sup>63</sup>

19. OPC argues that, without regard to WGL's claims of good faith, the civil forfeiture provisions of D.C. Code § 34-706(a) are triggered if a public utility "shall fail, neglect or refuse to obey any lawful requirement or order made by the Commission..."<sup>64</sup> OPC submits it is beyond dispute that WGL failed or, at a minimum neglected to comply with Order Nos. 14383 and 14384.<sup>65</sup>

#### IV. DECISION

20. The Commission agrees with OPC that, D.C. Code §§ 34-706 and 34-708 (2001), contemplate the imposition of civil forfeitures for a violation of lawful, un-tolled Commission Orders.<sup>66</sup> The statutory requirements in D.C. Code § 34-706, not the civil contempt or other general standards cited by WGL, control the present case. 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." In addition, D.C. Code § 34-708 provides that, "[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."<sup>67</sup>

21. The Commission is unpersuaded by WGL's claim that, under the circumstances of the present case, it was reasonable for WGL to delay compliance with Order No. 14383 (ordering WGL to file its outsourcing contract with the Commission) until the Commission made some further "arrangement" for a time for WGL to deliver the 600 pages of documents in the outsourcing agreement.<sup>68</sup> The record shows that WGL vigorously resisted disclosing the complete outsourcing agreement to parties, as well as

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<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.* at 17-18.

<sup>64</sup> OPC response at 7.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *See id.* at 7.

<sup>67</sup> D.C. Official Code § 34-708.

<sup>68</sup> WGL motion at 15.

to the Commission, until after WGL had fully litigated, both initially and on reconsideration, its claim that the complete outsourcing agreement was not "relevant" to the issues in the case-in-chief.<sup>69</sup> WGL claims it was waiting for the Commission to make further arrangements for a time to deliver the MSA. There were no further arrangements to be made. The Commission repeatedly ordered WGL to deliver the MSA to the Commission and to parties, but WGL deliberately chose not to comply with those orders.<sup>70</sup> It is impossible to credit WGL's statements that as late as July 27<sup>th</sup> the Company never refused to provide the entire MSA to the Commission upon request, but instead needed some further signal from the Commission before providing the entire MSA to the parties.<sup>71</sup> The Commission could not have given any clearer signals than what was directed in its prior orders. The Commission need not question the credibility of WGL's willingness to deliver the MSA since it had several opportunities to comply with prior Commission orders but refused. WGL's actions in withholding the MSA were calculated and deliberate, pursued as part of a litigation strategy.

22. The Commission repeats that, no matter what litigation strategy or positions WGL is taking regarding discovery to OPC and other parties, the Commission has an express and unqualified right under D.C. Code § 34-907 to review all WGL contracts. This right is not subject to bargaining, strategic resistance, dispute or delay by WGL, and WGL engages in such tactics at its peril. When we assess the gravity of the violation, we find that WGL engaged in deliberate, unreasonable, and prolonged resistance to this important principle.

23. The Commission's assessment of WGL's claims of good faith is also colored by other facts. Throughout the preliminary matters involving discovery disputes and proposed sanctions for WGL's noncompliance, WGL has shown no inclination toward compromise or contrition. For reasons inexplicable to this Commission, WGL contends that the proceeding has had a long, complex and confusing history.<sup>72</sup> However, WGL has created whatever confusion it believes exists in this proceeding, and has

<sup>69</sup> Technically, Order No. 14385 dealt only with the discovery motions of OPC and OPEIU. However, in an attempt to eliminate any doubt about the Commission's directive to provide the Commission with the complete, un-redacted outsourcing contract, the Commission stated:

The whole MSA agreement, including all of its Appendices, and specifically including at least fifteen (15) separately titled Appendices, which OPC has identified as containing "the meat" of the MSA, must be produced in discovery by WGL for *the Commission*, OPC and OPEIU. WGL's MSA materials shall be treated as confidential by the Commission and the parties. The Commission is ordering discovery of the complete MSA, including all its Appendices, under a protective order (in addition to the parties' confidentiality agreement), for appropriate use in these proceedings. Our order today is intended to ensure the confidentiality of the MSA. Order No. 14385 at ¶8 (emphasis added).

<sup>70</sup> See Order Nos. 14383, 14384, and 14385.

<sup>71</sup> WGL motion at 6-7.

<sup>72</sup> *Id.* at 1.

advanced a series of unpersuasive arguments seeking complete immunity and exoneration for its failed litigation strategy of withholding the outsourcing contract from proper examination by the Commission in this proceeding.<sup>73</sup> Nor is this all. Once the Commission issued Order No. 14385 containing strengthened protections for maintaining the confidentiality of the outsourcing contract in discovery, and WGL decided to submit its outsourcing contract in discovery to the parties and to the Commission in Maryland,<sup>74</sup> there was no good reason for WGL to persist with these discovery disputes here in the District of Columbia.<sup>75</sup> Similar or identical safeguards exist, protecting WGL's confidential information against public disclosure, in both forums before the Maryland and District of Columbia Commissions. It does not appear from WGL's actions that it was confused in the Maryland proceeding, and we do not accept WGL's arguments that it was confused here.

24. The Commission also finds, based on our review of the entire record, that WGL's claims of simply misunderstanding the Commission's orders are not credible.<sup>76</sup> The Commission made it abundantly plain in Order No. 14383 that it was "concerned with WGL's failure to provide information to the Commission and the parties as requested in the discovery phase of the proceeding."<sup>77</sup> The Commission even went a step further to warn the Company that "any subsequent failure by WGL to comply with the lawful directives of the Commission may result in a show cause order and or fine."<sup>78</sup> A fair reading of the entire record shows that the Company violated Order No. 14383 ordering WGL to file its outsourcing contract with the Commission, in pursuit of WGL's now-abandoned litigation strategy that attempted to avoid disclosure of the complete outsourcing contract to all parties, including the Commission. While WGL may have thought that the filing of its motion for reconsideration stayed the effectiveness of Order

<sup>73</sup> WGL's October 10<sup>th</sup> filing for example, contains a sworn affidavit apparently seeking to buttress WGL's meritless claim that the Company literally complied with Order No. 14384. This submission is unpersuasive because it seeks to parse Order No. 14383 very narrowly in a way that defies the ordinary meaning of the words in that Order. WGL's strained interpretation also overlooks the clear "signals" given to WGL in Order No. 14385 and in the Commission's public proceedings on July 23<sup>rd</sup> that the Commission itself wanted the complete, un-redacted outsourcing contract submitted to it.

<sup>74</sup> See 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, filed August 15, 2007.

<sup>75</sup> The Commission, *sua sponte*, provided the additional safeguards for confidentiality in Order No. 14385, and augmented them slightly in Order No. 14586 without WGL requesting these additional safeguards. WGL, instead, was emphasizing its claim that the complete outsourcing contract was not "relevant" to this WGL rate case, a claim that the Commission rejected in Order Nos. 14385 and 14386.

<sup>76</sup> WGL complains that there was a long period of time, between the issuance of the July 20<sup>th</sup> Order and the September 28<sup>th</sup> Order, and that the Company was not put on notice that the Commission considered it in violation until the issuance of the September 28<sup>th</sup> Order.

<sup>77</sup> Order No. 14383 at ¶ 4.

<sup>78</sup> *Id.*

No. 14383, or somehow finessed it, that is not the case here. The Commission concurs with OPC in that there is no provision in the Commission's Rules of Practice for an automatic stay of an order.<sup>79</sup> The truth of the matter is that WGL never requested reconsideration of Order No. 14383, and the time for requesting any such reconsideration has long since expired.<sup>80</sup>

25. WGL claims that the procedural schedule for the case-in-chief should have been stayed by Order No. 14403.<sup>81</sup> However, Order No. 14403 simply suspended the schedule for future hearings and filings in this case, and did not suspend WGL's obligations to comply with outstanding Commission orders to provide information to the Commission. As OPC points out, if the Company was unsure about how to proceed, it could have sought clarification.<sup>82</sup>

26. The Commission also considers WGL's claim that it is inequitable to impose civil forfeitures during the period of time between the issuance of Order No. 14383 and Order No. 14587 (imposing civil forfeitures). WGL argues that the issuance of Order No. 14587 and a decision on the motion for reconsideration was delayed by two tolling orders for the Commission's own administrative convenience, and that the Commission allowed monetary penalties to accrue during the delay.<sup>83</sup> While the Commission takes this circumstance into account, it finds that the circumstance is outweighed by the willfulness of the violation, the gravity of the violation, and (as recited above) the many warnings and opportunities that existed for WGL to comply earlier, as it should have done, with Order No. 14383. The Commission finds that it is only because of WGL's noncompliance with a prior order that we find ourselves at this juncture in the proceeding. While WGL could have complied earlier, it chose another course of action that has now resulted in an appropriate sanction for the Company's behavior.

27. The Commission has carefully considered all of WGL's claims in light of the controlling statutory criteria in D.C. Code § 34-706 (2001) and finds that WGL's failure to comply with the Commission's orders subjects the Company to an appropriate sanction as set forth in the statute. The statute imposes an automatic forfeiture of \$5,000 per day is imposed for any violation. WGL did not request nor do the circumstances warrant a compromise of the sanction, *sua sponte*. Therefore, the Commission finds that the "appropriate" civil forfeiture penalty under the circumstances is \$350,000.

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<sup>79</sup> *Id.* at 6.

<sup>80</sup> See also Order No. 14587 at ¶ 7.

<sup>81</sup> WGL motion at 17.

<sup>82</sup> OPC's response at 6, n. 8.

<sup>83</sup> WGL's motion at 17.

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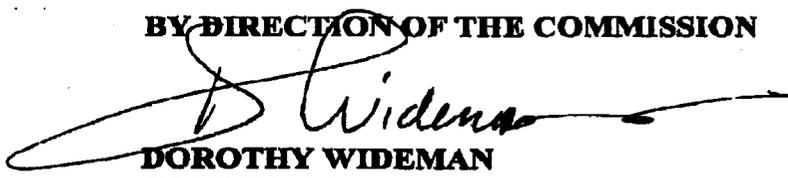
**THEREFORE, IT IS ORDERED THAT:**

28. WGL's application for reconsideration is **DENIED**; and

29. WGL shall immediately submit a certified check payable to the District of Columbia Treasurer in the amount of \$350,000 for its violation of Order No. 14383, issued July 20, 2007, as discussed herein, for the dates July 21, 2007, through September 28, 2007.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION**



**CHIEF CLERK:**

**DOROTHY WIDEMAN  
COMMISSION SECRETARY**