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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NORTHWEST GAS ASSOCIATION,
ET AL.,

Appellants,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent,

and

BELLINGHAM HERALD and ALLIED
DAILY NEWSPAPERS,

Intervenors.

No. 36057-8-II

RULING GRANTING STAY
AND ACCELERATING
REVIEW

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY *[Signature]*
REGENCY

A group of pipeline owners and operators (collectively referred to as Northwest Gas Association)¹ move to stay the trial court's order that denied their motion for an injunction

¹ Northwest Gas Association, Olympic Pipe Line Company, Chevron Pipe Line Company and Northwest Terminaling Company, Yellowstone Pipe Line Company, ConocoPhillips Pipe Line Company, BP West Coast Products LLC, Intalco Aluminum Corporation, McChord Pipeline Company, Terasen Pipelines (Puget Sound) Corporation, Valero L.P., Portland General Electric, B-R Pipeline Company and KB Pipeline Company.

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and ordered the Washington Utilities and Transportation Commission (WUTC) to comply with public disclosure requests for pipeline data. Concluding that Northwest Gas Association has demonstrated it is entitled to a stay, this court grants the motion.

Under RCW 81.88.060, Northwest Gas Association provided WUTC with geographic and systems data regarding their pipelines. That statute required WUTC to consolidate that data into a statewide geographic information system (GIS).

In February 2007, an individual and four newspapers made public records requests for the GIS data from WUTC. As required by RCW 42.56.540 and 80.04.095, WUTC notified Northwest Gas Association of its intent to release the GIS data to the requestors unless restrained by a court order.

Northwest Gas Association requested an injunction restraining WUTC from releasing the GIS data. It contended that the GIS data was exempt from public disclosure under six exemptions: (1) RCW 42.56.270(1), which exempts some proprietary information provided to an agency; (2) RCW 80.04.095 and 42.56.330(1), which exempt some records of public utilities the release of which would cause private loss to the utility; (3) RCW 42.56.540, which allows a court to enjoin the release of records the release of which would not be in the public interest or would damage vital governmental functions; (4) RCW 42.56.420, which exempts some records "relating to security;" (5) House Bill 1478, which was pending and which would limit release of the GIS data; and (6) federal preemption under the Freedom of Information Act.

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The trial court entered a series of agreed temporary restraining orders to allow the motion for an injunction to be briefed and argued. After that briefing and argument, on March 16, 2007, the court issued a memorandum opinion that rejected all of Northwest Gas Association's arguments that an exemption applied to the GIS data. The court denied the motion for an injunction and directed WUTC to comply with the requests for the GIS data. It denied Northwest Gas Association's motion for a stay pending appeal.

WUTC informed Northwest Gas Association that it intended to release the GIS data on March 19, 2007. On that day, Northwest Gas Association filed in this court an emergency motion for stay of the trial court's order pending its appeal from that order. This court granted an emergency stay of the trial court's order, leaving the temporary restraining order in effect pending further ruling by this court on the motion for stay. The ruling set a briefing schedule, with which the parties and the Intervenor complied.

Northwest Gas Association seeks a stay of the trial court's order under RAP 8.1(b)(3). Under that rule, it must first "demonstrate that debatable issues are presented on appeal." RAP 8.1(b)(3)(i). If they do, then this court must consider the injury that Northwest Gas Association would suffer if a stay is not granted against the injuries that the requestors and Intervenor would suffer if a stay is granted. RAP 8.1(b)(3)(ii). If the fruits of an appeal would be totally destroyed in the absence of a stay, then a stay should be granted, unless the appeal is totally devoid of merit. *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291 (1986), *rev'd on other grounds*, 108 Wn.2d 38 (1987).

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If this court does not stay the trial court's order, the fruits of Northwest Gas Association appeal will be destroyed. Therefore, this court should grant a stay unless Northwest Gas Association's appeal is totally devoid of merit.

Under the Public Disclosure Act, WUTC must release the GIS data unless Northwest Gas Association meets the burden of proving that one of the enumerated exemptions to the Public Disclosure Act applies. *Newman v. King County*, 133 Wn.2d 565, 571 (1997). Courts must narrowly construe those exceptions. *Progressive Animal Welfare Soc'y v. University of Washington*, 125 Wn.2d 243, 260 (1994).

Northwest Gas Association contends that the trial court erred in rejecting a number of its proposed exemptions to the Public Disclosure Act. This court concludes that it has presented debatable issues, particularly regarding the application of RCW 42.56.420, which exempts some records pertaining to security. Its appeal is not totally devoid of merit. Thus, its motion for a stay under RAP 8.1(b)(3) is granted.

The Intervenor's argue that in the event of a stay pending appeal, Northwest Gas Association should be required to post security. This court concludes that no purpose would be served by such a requirement to post security.

In light of the public interests involved in this matter, this court accelerates review on its own motion and orders the following schedule.

It is hereby

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ORDERED that Northwest Gas Association's motion for a stay of the trial court's order, which denied its request for an injunction and which ordered the WUTC to comply with the records requests, is GRANTED under RAP 8.1(b)(3). It is hereby further

ORDERED that the trial court's temporary restraining order shall remain in effect until further order of this court. It is hereby further

ORDERED that review is accelerated and that the following schedule is enacted:

1. Northwest Gas Association will file the statement of arrangements and designation of clerk's papers by April 6, 2007.
2. Northwest Gas Association will file its opening brief by April 27, 2007.
3. WUTC and the Intervenors will file their response briefs by May 25, 2007.
4. Northwest Gas Association will file any reply brief by June 8, 2007.
5. This court will hear oral argument on the appeal during the last week of June 2007.

DATED this 30th day of March, 2007.



Eric B. Schmidt
Court Commissioner

cc: Michael A. Nesteroff
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