

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS UE-151871 and
TRANSPORTATION COMMISSION,)	UG-151872 (<i>Consolidated</i>)
)	
Complainant,)	ORDER 02
)	
v.)	PREHEARING CONFERENCE
)	ORDER; ORDER OF
PUGET SOUND ENERGY,)	CONSOLIDATION; NOTICE OF
)	HEARING
Respondent.)	(Set for June 22-23, 2016)
)	
)	
.....)	

1 **NATURE OF PROCEEDINGS.** On September 18, 2015, Puget Sound Energy (PSE or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective tariffs WN U-60 schedule 75 and WN U-2 schedule 175 to offer electric and natural gas equipment lease service to its customers. The stated purpose of the filings is to “stimulate the installation of additional energy efficient equipment, provide customers with simple and comprehensive turn-key solutions, provide broader more affordable access to services, and expand existing market activity.”

2 **CONFERENCE.** The Commission convened a prehearing conference in this docket at Olympia, Washington on January 5, 2016, before Administrative Law Judge Gregory J. Kopta.

3 **APPEARANCES.** Sheree Strom Carson, Perkins Coie, Seattle, Washington, represents PSE. Joseph Wiedman, Keyes, Fox, and Wiedman LLP, Oakland, California, represents Sunrun, Inc. (Sunrun). James L. King, Jr., pro se, Olympia, Washington, represents the Washington State Heating, Ventilation, and Air Conditioning Contractors Association (WSHVACCA). Jeffrey D. Goltz, Cascadia Law Group, Olympia, Washington, represents the Western Washington Chapter of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA-WW). Simon J. ffitich, Senior Assistant Attorney General, Seattle, Washington, represents the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel). Christopher M. Casey, Assistant Attorney General, Olympia, Washington, represents the Commission’s

regulatory staff (Commission Staff or Staff).¹ Contact information provided at the conference for the parties' representatives is attached as Appendix A to this order.

4 **PETITIONS FOR INTERVENTION.** Sunrun, SMACNA-WW, and WSHVACCA filed petitions to intervene in these dockets. PSE and Staff oppose those petitions, and Public Counsel supports the interventions with limitations.

5 Sunrun designs, installs, monitors, and maintains solar panels on homeowner rooftops. Sunrun "is concerned that a decision approving the proposed Equipment Lease Service for distributed energy resources (DER) will encourage anti-competitive behavior by PSE and inhibit the growth of a private marketplace for distributed rooftop solar and other DERs in the state. Such an outcome would have a material and adverse impact on Sunrun's interests."²

6 SMACNA-WW is a trade association whose members specialize in the sale, installation, and servicing of heating, ventilation, and air conditioning (HVAC) equipment and energy management services in western Washington. SMACNA-WW contends, "Given that PSE is proposing to have this service as part of its regulated operations, there is a substantial danger that some costs of the proposed service may not be reflected in the prices for the service, thereby unfairly giving PSE a competitive advantage in this market. Such a competitive advantage for PSE would adversely affect SMACNA-WW members and PSE customers and would be contrary to the public interest."³

7 WSHVACCA is a statewide association representing the HVAC industry in Washington. "WSHVACCA is concerned that approving the PSE proposals for equipment leasing will hinder further improvements in getting energy efficient appliances into homes and businesses, will encourage anti-competitive behavior by PSE, and weaken consumer protection. Such outcomes would have material and adverse impacts on the interests of the members of the WSHVACCA and on the interests of their customers."⁴

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² Sunrun Petition ¶ 1.

³ SMACNA-WW Petition ¶ 6.

⁴ WSHVACCA Petition ¶ 1.

8 PSE and Staff oppose all three petitions to intervene. These parties contend that the petitioners are not subject to the Commission’s jurisdiction and thus have no substantial interest that the Commission can or should address in this proceeding. Because they seek intervention only to further their business interests, PSE and Staff maintain, the petitioners’ participation also would not serve the public interest. PSE and Staff argue that these circumstances are indistinguishable from those in *Cole v. WUTC*.⁵ The Washington Supreme Court in that case affirmed the Commission’s denial of intervention to an association of nonregulated fuel oil dealers in a proceeding to consider a natural gas company program to lease appliances because the association was comprised of business entities that were not subject to Commission regulation. PSE and Staff claim that the Commission cannot address the competitive interests of the proposed intervenors consistent with the decision in *Cole*.

9 The Commission may grant a petition to intervene if the petitioner “discloses a substantial interest in the subject matter of the proceeding or if the petitioner’s participation is in the public interest.”⁶ The Commission finds that both of the HVAC associations have a substantial interest in the subject matter of the proceeding and that their participation is in the public interest. The Commission, therefore, grants the petitions of SMACNA-WW and WSHVACCA to intervene.

10 The tariff filings in this proceeding implicate the market for HVAC equipment. PSE represents that its proposed leasing program “will fill an unmet customer need . . . , stimulate the installation of additional energy efficient equipment, . . . provide broader more affordable access to services, and . . . expand existing market activity.”⁷ The Company contends that “[t]he existing market is not currently adequately addressing this issue” of customer usage of “appliances that have exceeded their useful life and are not energy efficient.”⁸ PSE claims that its “expanded optional energy equipment lease service provides increased public benefit by stimulating replacement of inefficient and unsafe energy equipment that has exceeded its useful life, with new high efficiency energy equipment.”⁹ According to PSE, “Customers need help navigating the highly technical and costly retrofit process which often discourages the early replacement of energy-

⁵ 79 Wn.2d 302, 485 P.2d 71 (1971).

⁶ WAC 480-07-355(3).

⁷ Advice No. 2015-23, Cover letter at 2 (Sept. 18, 2015).

⁸ PSE Response in Opposition to SMACNA-WW Petition ¶ 18.

⁹ Advice No. 2015-23, Cover letter at 2.

intensive systems. Even when replacement is necessary, the customer is often unequipped to make an informed decision to install more efficient products.”¹⁰

11 PSE has placed the HVAC equipment market at issue in this proceeding. SMACNA-WW and WSHVACCA have a substantial interest in that market as current participants. Consistent with the public interest, the associations can provide the Commission with useful information on how that market functions and the extent to which PSE’s proposed expansion into the market would accomplish the Company’s stated goals.

12 The Commission and Supreme Court decisions in *Cole* are not to the contrary. In that case, the Oil Heat Institute (Institute) “attempted to intervene in the proceedings in order to show the adverse impact of the gas company’s promotional practices on local fuel oil dealers.”¹¹ The court affirmed the Commission’s denial of the Institute’s petition to intervene because “[u]nder the facts before us, it is doubtful whether the institute can prove a ‘substantial interest’ in rates charged to customers of a competitor who is regulated by different laws and who provides an entirely different type of fuel service.”¹² In addition, the court found that the issue the Institute attempted to raise was “beyond the concern of the commission under a reasonable interpretation of the term ‘public interest.’”¹³ The court concluded “that the commission correctly determined that it had no authority to consider the effect of a regulated utility upon a nonregulated business.”¹⁴

13 Unlike the utility in *Cole*, PSE proposes to lease the same type of equipment that SMACNA-WW and WSHVACCA members provide. The Commission also does not intend “to consider the effect of a regulated utility upon a nonregulated business” or otherwise to expand the issues to be addressed in this proceeding. The Commission will consider the market for HVAC equipment to the extent necessary to determine the effect of the tariffs on PSE’s customers, not the impact on other market participants. The Commission is allowing SMACNA-WW and WSHVACCA to contribute to that inquiry, and the scope of those associations’ intervention is limited accordingly.

¹⁰ *Id.* at 2-3.

¹¹ 79 Wn.2d at 304.

¹² *Id.* at 305.

¹³ *Id.* at 306.

¹⁴ *Id.*

- 14 The Commission denies the petition of Sunrun to intervene. That company does not operate in the market for water heaters, furnaces, or heat pumps, and the tariff filings at issue in this proceeding do not include solar rooftop panels that Sunrun provides or any other distributed energy resources. Sunrun, therefore, does not have a substantial interest in this proceeding, and its participation would not be in the public interest.
- 15 **CONSENT TO ELECTRONIC SERVICE.** All parties have agreed to service electronically. The Commission, therefore, may serve only electronic copies of notices and orders in this docket to the party and representative email addresses on file with the Commission.
- 16 **CONSOLIDATION.** The two dockets appear to be legally or factually related. The parties voiced no objection to consolidation. This order consolidates the dockets for hearing and order, subject to the Commission's authority to sever the dockets and to enter individual orders as appropriate.
- 17 **PROTECTIVE ORDER.** The parties ask that the Commission enter a protective order with highly confidential provisions in this docket under RCW 34.05.446, RCW 80.04.095, WAC 480-07-420, and WAC 480-07-423 to protect the confidentiality of proprietary information. The Commission granted the request and will enter a protective order in this docket.
- 18 **DISCOVERY.** The parties asked that the Commission make its discovery rules available in these dockets under WAC 480-07-400. The matter is one that qualifies for discovery, and the discovery rules, WAC 480-07-400 – 425, are available. Response times to data requests will be adjusted as set forth in Appendix B.
- 19 **SUSPENSION DATE.** The tariff filings have a stated effective date of November 17, 2015. Pursuant to RCW 80.04.130, the Commission suspended those filings for 10 months, or until September 17, 2016. PSE agreed to waive that deadline for one month, until October 17, 2016, and filed letters confirming that extension on January 6, 2016.
- 20 **PROCEDURAL SCHEDULE.** The parties agreed on a procedural schedule during the conference. The Commission adopts this procedural schedule, which is attached to this Order as Appendix B.

21 **DOCUMENT FILING REQUIREMENTS.** Parties must file all pleadings, motions, briefs, and other prefiled materials in compliance with all of the following requirements:

- (a) Parties must submit electronic copies in native Microsoft format (Word, Excel, etc.) and searchable Adobe Acrobat (.pdf) of all documents by 5:00 p.m. on the filing deadline established in the procedural schedule (or other deadline as applicable) unless the Commission orders otherwise. If any of the documents contain information that is designated as confidential or highly confidential, the party must also file an electronic copy (in Adobe Acrobat (.pdf)) of the redacted version of each such document. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files. Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/efiling) or by e-mail to records@utc.wa.gov.
- (b) Parties must file the one paper copy (with original signatures, if applicable) of the documents with the Commission by 5:00 p.m. on the first business day following the filing deadline as provided in WAC 480-07-145(6). The documents must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. All hard copy filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250.
- (c) Parties must electronically serve the other parties and provide courtesy electronic copies of filings to the presiding administrative law judge (gkopta@utc.wa.gov) by 5:00 p.m. on the filing deadline unless the Commission orders otherwise. If parties are unable to email copies, they may furnish the electronic copies by delivering them on a flash drive, DVD, or CD.

22 **EXHIBITS FOR CROSS-EXAMINATION.** Parties are required to file with the Commission and serve all proposed cross-examination exhibits by **5:00 p.m. on June 16, 2016**. The Commission requires electronic copies (in native format, if available, and searchable Adobe Acrobat (.pdf)) and one paper copy of the exhibits. If any of the exhibits contain information that is designated as confidential or highly confidential, the party must also file one electronic copy (in Adobe Acrobat (.pdf)) and one paper copy of the redacted version of each such exhibit. The exhibits must be grouped according to the witness the party intends to cross examine with the exhibits. The paper copies of the exhibits also must be organized into sets that are tabbed and labeled.

- 23 **EXHIBIT LISTS.** Each party must file a list of all exhibits the party intends to introduce into the evidentiary record, including all prefiled testimony and exhibits, as well as cross-examination exhibits. The parties must file and serve their exhibit lists by **5:00 p.m., June 16, 2016.**
- 24 **CROSS-EXAMINATION TIME ESTIMATES.** Each party must provide a list of witnesses the party intends to cross-examine at the evidentiary hearing and an estimate of the time that party anticipates the cross-examination of that witness will take. Parties should not file witness lists or cross-examination time estimates but must provide them to the administrative law judge and the other parties by **5:00 p.m., June 16, 2016.**
- 25 **NOTICE OF HEARING.** The Commission will hold an evidentiary hearing in this matter on **Wednesday, June 22, 2016, at 9:30 a.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The hearing will continue, as necessary, on Thursday, June 23, 2016, in the Commission's Hearing Room.**
- 26 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The Commission has limited ability to provide dispute resolution services. If you wish to explore those services, please contact Gregory J. Kopta, Director, Administrative Law Division (gkopta@utc.wa.gov or 360-664-1355).
- 27 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears below. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective January 7, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA
Administrative Law Judge

APPENDIX A
PARTIES' REPRESENTATIVES
DOCKETS UE-151871 AND UG-151872 (Consolidated)

PARTY	REPRESENTATIVE	PHONE	E-MAIL
Puget Sound Energy	Kenneth Johnson Director, Regulatory Affairs P.O. Box 97034 Bellevue, WA 98009-9734	425-456-2110	Ken.s.johnson@pse.com
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Sheet Metal and Air Conditioning Contractors National Association, Western Washington	Julie Muller-Neff, Esq. Executive Vice-President 13810 SE Eastgate Way, Suite 445 Bellevue, WA 98005		jmullerneff@smacnaww.org
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	Jessie Turner		jturner@cascadialaw.com
Washington State Heating, Ventilation, and Air Conditioning Contractors Association	James L. King, Jr. Government Affairs Director 120 State Avenue NE #199 Olympia, WA 98501	360-480-0038	jimkingjr@yahoo.com
Commission Staff	Christopher M. Casey Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Drive S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1189	ccasey@utc.wa.gov
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APPENDIX B
PROCEDURAL SCHEDULE
DOCKETS UE-151871 & UG-151872 (Consolidated)

EVENT	DATE
Settlement Conference (parties only)	Week of January 19, 2016 Week of February 1, 2016
PSE File Revised Tariff	February 17, 2016
Company Direct Testimony	February 25, 2016
Staff, Public Counsel and Intervenor Response Testimony and Exhibits	May 20, 2016 ¹⁵
Company Rebuttal Testimony and Exhibits; Cross-Answering Testimony and Exhibits	June 3, 2016 ¹⁶
Discovery Cut-off	June 15, 2016
Cross-Examination Exhibits, Witness Lists, and Time Estimates	June 16, 2016
Evidentiary Hearing	June 22 – 23, 2016
Initial Briefs	July 12, 2016
Reply Briefs	July 19, 2016
Suspension Date	October 17, 2016

¹⁵ Response time to data requests will be 7 business days after this date.

¹⁶ Response time to data requests will be 5 business days after this date.