

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

No. UE-151871 and UG-151872
(Consolidated)

**PUGET SOUND ENERGY'S MOTION
OBJECTING THE EXPERT
DESIGNATIONS OF THE SHEET
METAL AND AIR CONDITIONING
CONTRACTORS NATIONAL
ASSOCIATION, WESTERN
WASHINGTON**

I. INTRODUCTION AND RELIEF REQUESTED

In accordance with the Protective Order entered by the Commission on January 7, 2016, Puget Sound Energy ("PSE") objects to the designations by the Sheet Metal and Air Conditioning Contractors National Association, Western Washington ("SMACNA-WW"), of Julie Muller-Neff and Brian Fluetsch as expert witnesses authorized to view information designated by any party as "Confidential Information" under the Protective Order. The Protective Order authorizes only the Commission, Commission Staff, counsel, and expert witnesses for the parties to view information designated as Confidential Information. The Order prohibits officers, directors, employees, major shareholders, or principals of any party from being designated as an expert witness authorized to view Confidential Information. Because Ms. Muller-Neff and Mr. Fluetsch are directors and officers of SMACNA-WW, they cannot be designated as expert witnesses authorized to view Confidential Information, and the Commission should reject their designations.

II. BACKGROUND

A. Commission Protective Order

2 On January 7, 2016, the Honorable Gregory J. Kopta entered a Protective Order in this proceeding “to govern the disclosure of proprietary and confidential information.” Protective Order ¶ 1. Judge Kopta found that “[i]t is likely that proprietary and confidential information will be required to resolve the issues in this proceeding” and that “[a]bsent a protective order, a significant risk exists that confidential information might become available to persons who have no legitimate need for such information and that injury to the information provider or third parties could result.” *Id.*

3 In accordance with WAC 480-07-420(2), the Protective Order contains a two-tiered designation; one for “Confidential Information” and “a separate designation and a higher degree of protection for certain documents asserted by the parties to be highly confidential.” *Id.* ¶ 1(c).

4 For information designated by a party as “Confidential Information,” the Protective Order contains the following restrictions:

Persons Permitted Access. No Confidential Information will be made available to anyone other than Commissioners, the Washington Utilities and Transportation Commission Staff (Commission Staff), the presiding officer(s), and counsel for the parties for this proceeding, including counsel for Commission Staff, and attorneys’ administrative staff such as paralegals. However, counsel may authorize those persons designated as their party’s experts in this matter to access any Confidential Information solely for the purposes of this proceeding. Except for the Commission Staff, no such expert may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party (unless this restriction is waived by the party asserting confidentiality). Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer(s) for resolution. *Id.* ¶ 7.

5 Before viewing any information designated by any party as “Confidential Information,” all parties authorized above must execute a non-disclosure agreement. *Id.* ¶ 9.

B. SMACNA-WW Files Expert Non-Disclosure Agreements

6 On February 5, 2016, SMACNA-WW filed Confidential Information non-disclosure
agreements for two individuals it designated as an “expert”: Julie Muller-Neff and Brian
Fluetsch. Ms. Muller-Neff is an employee of SMACNA-WW and is its Executive Vice-
President. Mr. Fluetsch is a member of the SMACNA-WW Board of Directors and is also its
Vice-President.¹

III. ARGUMENT

7 PSE objects to SMACNA-WW’s designations of Ms. Muller-Neff and Mr. Fluetsch as
expert witnesses authorized to view Confidential Information in this proceeding.

8 As set forth above, the Protective Order authorizes Confidential Information to be
disclosed to only the Commission, the Commission Staff, the presiding officer(s), counsel for
the parties in this proceeding, and experts designated by the parties. *Id.* ¶ 7. Experts,
however, cannot be “an officer, director, direct employee, major shareholder, or principal of
any party or any competitor of any party.” *Id.*

9 Here, as stated in their non-disclosure agreements, Ms. Muller-Neff and Mr. Fluetsch are
both officers of SMACNA-WW. Ms. Muller-Neff is the Executive Vice-President of
SMACNA-WW and Mr. Fluetsch is on the SMACNA-WW Board of Directors and is its Vice-
President. Ms. Muller-Neff is also an employee of SMACNA-WW. Accordingly, under the
express restrictions provided by Judge Kopta under the Protective Order, neither Ms. Muller-
Neff nor Mr. Fluetsch can be designated as experts authorized to view Confidential
Information, and the Commission should reject their designations.

¹ See Sheet Metal and Air Conditioning Contractors’ National Association – Western Washington Chapter, About, <http://www.smacnaww.org/about/history>.

IV. CONCLUSION

10 In accordance with the Protective Order, PSE respectfully requests that the Commission reject SMACNA-WW's designations of Ms. Muller-Neff and Mr. Fluetsch as expert witnesses authorized to view information designated as Confidential Information.

Respectfully submitted this 16th day of February, 2016.

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