

**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 TO THE EXPERT  
DESIGNATIONS OF THE  
WASHINGTON STATE HEATING,  
VENTILATION & AIR  
CONDITIONING CONTRACTORS  
ASSOCIATION**

**I. INTRODUCTION AND RELIEF REQUESTED**

1 In accordance with the Protective Order entered by the Commission on January 7, 2016, Puget Sound Energy (“PSE”) objects to the designations by the Washington State Heating, Ventilation & Air Conditioning Contractors Association (“WSHVACCA”), of Steven J. Krecker and William E. Pinkey as expert witnesses authorized to view information designated by any party as “Confidential Information” under the Protective Order. PSE also objects to the request by James L. King as a “representative” of WSHVACCA to obtain access to such Confidential Information. 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 Mr. Krecker and Mr. Pinkey are directors and officers of WSHVACCA, they cannot be designated as expert witnesses authorized to view Confidential Information, and the Commission should reject their designations. In addition,

because Mr. King is a director of WSHVACCA, he should also not be granted access to Confidential Information.

## 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. WSHVACCA Files Non-Disclosure Agreements**

6 On February 11, 2016, WSHVACCA filed Confidential Information non-disclosure  
agreements for two individuals it designated as an “expert”: Steven J. Kreckler and William E.  
Pinkey. Mr. Kreckler is the President of WSHVACCA and Mr. Pinkey is the Treasurer. Both  
are members of the WSHVACCA Board of Directors. In addition, James L. King filed a non-  
disclosure agreement as a “representative” of WSHVACCA. Mr. King is the WSHVACCA  
Government Affairs Director and is also a member of the WSHVACCA Board of Directors.<sup>1</sup>

**III. ARGUMENT**

7 PSE objects to WSHVACCA’s designations of Mr. Kreckler and Mr. Pinkey 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, Mr. Kreckler and Mr. Pinkey are both  
directors and officers of WSHVACCA. Mr. Kreckler is the President of WSHVACCA and  
Mr. Pinkey is the Treasurer, and both are members of the WSHVACCA Board of Directors.  
Accordingly, under the express restrictions provided by Judge Kopta under the Protective

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<sup>1</sup> See Washington State HVACCA, HVACCA Board of Directors, <http://www.hvacca.org/board.html>.

Order, neither Mr. Kreckler nor Mr. Pinkey can be designated as experts authorized to view Confidential Information, and the Commission should reject their designations.

10 Finally, it unclear whether under the terms of the Protective Order, Mr. King should be authorized to access Confidential Information. While Mr. King executed a non-disclosure agreement requesting access as a “representative” of WSHVACCA, Mr. King is not counsel for WSHVACCA, is the WSHVACCA Government Affairs Director, and is a member of the WSHVACCA Board of Directors. To the extent Mr. King does not qualify under the terms of the Protective Order, the Commission should also deny him access to information designated as Confidential Information.

#### IV. CONCLUSION

11 In accordance with the Protective Order, PSE respectfully requests that the Commission reject WSHVACCA’s designations of Mr. Kreckler and Mr. Pinkey as expert witnesses authorized to view information designated as Confidential Information. In addition, to the extent Mr. King is unauthorized to view Confidential Information, the Commission should also deny him access.

Respectfully submitted this 16th day of February, 2016.

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