

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKETS UE-151871
TRANSPORTATION)	and UG-151872
COMMISSION,)	
)	REPLY OF WSHVACCA TO PSE
Complainant,)	MOTION OBJECTING TO EXPERT
)	DESIGNATIONS
v.)	
)	
PUGET SOUND ENERGY,)	
)	
Respondent.)	
.....)	

1 The Washington State Heating, Ventilation and Air Conditioning Contractors Association (WSHVACCA) filed Agreements Concerning Confidential Information for Steven J. Krecker and William E. Pinkey so that they could review any information designated as confidential by Puget Sound Energy (PSE) and assist WSHVACCA in this proceeding. PSE declined to waive any objection to their participation, filed an objection, and filed a motion asking the Commission to reject the designations. The basis for PSE’s objection is that Mr. Krecker and Mr. Pinkey are officers or directors of a party.

2 Though Mr. Krecker and Mr. Pinkey agreed to be bound by the terms of the protective order so that any confidential information would be protected, PSE is correct that Mr. Krecker and Mr. Pinkey are either officers or directors of WSHVACCA, and as an intervener WSHVACCA is a party. However, WSHVACCA is a trade association and is not a competitor of PSE.

WSHVACCA was granted intervener status specifically for the purpose of bring market

expertise to this proceeding. Such market expertise lies with the officers, directors, and members of the association, and to exclude their participation in the assessment of confidential information would effectively nullify the grant of intervener status.

3 In addition to objecting to the expert witness filings of WSHVACCA, PSE has objected to the representative of the WSHVACCA, Mr. James L. King, Jr., filing of a confidentiality agreement. Mr. King filed a version of appendix A as the representative of the WSHVACCA, striking the references to "counsel" as Mr. King is not an attorney. By law (RCW 34.05.428) and rule (WAC 480-07-345). Mr. King is qualified to represent WSHVACCA, and WSHVACCA is entitled to his representation. Further, Mr. King's status as a representative who would have the ability to access confidential information was affirmed by Judge Kopta during the prehearing conference on January 5, 2016 (see transcript, page 39, lines 8 to 11). The judge's response was directly in reply to questions about being able to assess the validity of PSE's assertions regarding the market if PSE was able to hide behind "confidentiality" of any market data upon which the details of its proposals are based.

4 In addition, the decision to grant intervener status to WSHVACRA has been made, specifically for WSHVACCA's market knowledge, and Mr. King has represented WSHVACCA throughout these proceedings. Any objection by PSE to Mr. King as the representative of WSHVACCA is without merit and untimely.

5 In requesting the confidentiality order, PSE specifically noted concerns that information PSE had acquired from market participants would be shared with other market participants if not kept confidential (see transcript, page 36, line 25 through page 37, line 10). WSHVACCA and its members are very aware of the antitrust consequences that could come from sharing such

information with market competitors. However, WSHVACCA and many of its members are concerned that at least some of the market data PSE has obtained has been done so deceptively, by requesting contractors to bid on non-existent jobs, then using that information to build the PSE business model. Keeping WSHVACCA, its representative, officers and directors, and members in the ark regarding confidential information relating to the market helps PSE hide its practices in acquiring this information.

6 Accordingly, WSHVACCA believes it is necessary, if PSE wishes to continue to effectively nullify WSHVACCA's participation as an intervener and preclude WSHVACCA's ability to bring its knowledge of the market into this proceeding, by unreasonably refusing to waive confidentiality in these circumstances and hold to its objections against WSHVACCA's filings, to request sufficient modification of the protective order as will allow the effective participation of the WSHVACCA as an intervener and party to this case.

7 We are unwilling to withdraw these filings and await developments because PSE's testimony and exhibits are due to be filed within days, and although it is difficult to assess how significant access to confidential information may be because PSE has not yet filed its testimony and exhibits, delays in being able to access pertinent confidential information and bring expert analysis to bear could either nullify WSHVACCA's involvement or create unnecessary delays. Finally, after PSE files its case, and WSHVACCA is able to access sufficient information to evaluate it, WSHVACCA will assess whether it may be necessary for WSHVACCA, in its responsive case, to file some confidential information. Continuing disputes over any party's access to confidential information seriously threatens to disrupt the schedule of the proceeding. Accordingly, if necessary, WSHVACCA would seek a modification or exception to the

Protective Order pursuant to paragraph 35 of Order 03 or pursuant to WAC 480-07-100(1), but would urge the resolution of these issues at the earliest possible date.

Dated February 22, 2016.

Respectfully submitted,

s/ James L. King, Jr.

James L. King, Jr.

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