

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,

Respondent.

DOCKETS UE-151871 and  
UG-151872 (*Consolidated*)

ORDER 04

ORDER REJECTING WSHVACCA  
CONFIDENTIALITY  
AGREEMENTS

**BACKGROUND**

- 1 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.” The Commission entered Order 01, Complaint and Order Suspending Tariff Revisions, on November 13, 2015, and subsequently initiated an adjudicative proceeding to address the issues the filing raises.
- 2 On January 7, 2016, the Commission entered Order 02, Prehearing Conference Order, which granted the petition to intervene of the Washington State Heating, Ventilation, and Air Conditioning Contractors Association (WSHVACCA or Association), among other procedural rulings. The Commission also entered Order 03, Protective Order with Highly Confidential Provisions.
- 3 On February 11, 2016, WSHVACCA filed agreements to be bound by the confidentiality provisions of Order 03 (Confidentiality Agreements) signed by James L. King, Jr., as representative of the Association and Steven J. Kreckler and William E. Pinkey as experts on behalf of WSHVACCA.
- 4 On February 16, 2016, PSE filed objections to the designation of Mr. Kreckler and Mr. Pinkey as experts who may have access to confidential information, and to permitting

Mr. King to have such access. The Company states that Order 03 prohibits officers, directors, employees, major shareholders, or principals of any party from being designated as such experts, and all of these individuals are directors or officers of WSHVACCA. Accordingly, PSE requests that the Commission reject these Confidentiality Agreements.

- 5 On February 22, 2016, WSHVACCA filed its reply to PSE's objections. The Association concedes that Mr. King, Mr. Krecker, and Mr. Pinkey are all officers or directors of WSHVACCA, but it contends that denying them the ability to review confidential information would effectively nullify the Association's participation as a party in this proceeding. WSHVACCA, moreover, argues that Mr. King, while not an attorney, is a legitimate representative of the Association whose right to access confidential information was affirmed during the prehearing conference. If necessary, WSHVACCA seeks a modification or exception to Order 03 to permit Mr. King, Mr. Krecker, and Mr. Pinkey to have access to confidential information.

#### DISCUSSION

- 6 The Commission grants PSE's motion. Mr. Krecker and Mr. Pinkey are officers or directors of WSHVACCA. Order 03 prohibits a party from designating any of its officers or directors as experts having access to confidential information.<sup>1</sup> Accordingly, the Association cannot designate Mr. Krecker or Mr. Pinkey as such experts.
- 7 Mr. King also is not entitled to access confidential information. Other than properly designated experts, Order 03 limits persons permitted access to confidential information to Commission personnel, "counsel for the parties for this proceeding . . . and attorneys' administrative staff such as paralegals."<sup>2</sup> Mr. King has appeared as WSHVACCA's representative in these dockets, but he is not an attorney. Because he is neither counsel nor a properly designated expert for the Association, no confidential information may be made available to him.
- 8 The Commission did not previously rule to the contrary as WSHVACCA asserts. In the course of discussion during the prehearing conference, the Administrative Law Judge (ALJ) mentioned that Mr. King could sign the protective order, but the ALJ was unaware at that time that Mr. King is not an attorney. A person who is not an attorney may appear

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<sup>1</sup> Order 03 ¶ 7.

<sup>2</sup> *Id.*

before the Commission in a representative capacity only if the person is “an officer or employee of a party or person seeking party status [and is] granted permission by the presiding officer to represent the party.”<sup>3</sup> Mr. King is an officer of WSHVACCA, but he did not seek permission to represent the Association. The Commission grants such permission to Mr. King in this proceeding, subject to his compliance with Commission rules and applicable ethical standards,<sup>4</sup> but his representation of WSHVACCA does not entitle him to be considered as counsel for purposes of Order 03.

- 9 The Commission will not grant a modification or exception to Order 03 to allow Mr. King, Mr. Krecker, or Mr. Pinkey to access confidential information. The Commission permitted WSHVACCA to intervene in this proceeding for the limited purpose of contributing to the Commission’s consideration of “the market for HVAC equipment to the extent necessary to determine the effect of the tariffs on PSE’s customers.”<sup>5</sup> WSHVACCA claims, but has not demonstrated, that access to confidential information is necessary to enable the Association to make a meaningful contribution to that inquiry. Nor has WSHVACCA even attempted to prove that Mr. King, Mr. Krecker, or Mr. Pinkey could not use any confidential information they receive to the competitive harm of PSE. Absent such showings at a minimum, the Commission will not permit those persons to have access to confidential information provided in this proceeding.

## ORDER

### THE COMMISSION ORDERS That

- 10 (1) The Commission grants Puget Sound Energy’s Motion Objecting to the Expert Designations of the Washington State Heating, Ventilation & Air Conditioning Contractors Association and rejects the Confidentiality Agreements signed by James L. King, Jr., as representative, and Steven J. Krecker, and William E. Pinkey as experts, on behalf of that Association.
- 11 (2) The Commission denies, without prejudice, the request of the Washington State Heating, Ventilation, and Air Conditioning Contractors Association for modification or exception to Order 03.

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<sup>3</sup> WAC 480-07-345(1)(c).

<sup>4</sup> *E.g.*, WAC 480-07-345(3).

<sup>5</sup> Order 02 ¶ 13.

- 12 (3) James L. King, Jr., Steven J. Krecker, and William E. Pinkey may not have access to confidential or highly confidential information disclosed pursuant to Order 03 in this proceeding without further Commission action.

Dated at Olympia, Washington, and effective February 24, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA  
Administrative Law Judge