

**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  
TO COMPEL THE WASHINGTON  
STATE HEATING, VENTILATION &  
AIR CONDITIONING  
CONTRACTORS ASSOCIATION TO  
RESPOND TO DATA REQUESTS**

**I. INTRODUCTION AND RELIEF REQUESTED**

1 Puget Sound Energy (“PSE”) submits this motion requesting that the Commission compel the Washington State Heating, Ventilation & Air Conditioning Contractors Association (“WSHVACCA”) to respond to PSE’s Data Requests Nos. 001 through 022. To date, WSHVACCA has refused to produce any documents in response to PSE’s data requests.

**II. BACKGROUND**

**A. WSHVACCA Is Granted Permission to Intervene**

2 On September 18, 2015, PSE filed tariff revisions to WN U-60 Schedule 75 and WN U-2 Schedule 175 to offer electric and natural gas equipment lease services to customers. On November 13, 2015, the Commission suspended the tariff. On December 21, 2015, WSHVACCA filed a petition to intervene in the matter. In its petition, WSHVACCA stated that “a robust and competitive free market . . . has, in recent decades, been the primary conduit of the growing presence of increased energy efficient appliances”; that PSE’s proposed Equipment Leasing Program will “hinder further improvements in getting energy efficient appliances into homes”; and that PSE’s proposal “would negatively impact the pecuniary

interests of the members of WSHVACCA and have a chilling effect on the competitive market in Washington, harming consumers and ratepayers, as well as harming existing efforts that have actually increased the use of energy efficient appliances.”<sup>1</sup> Concerned about these and other issues, WSHVACCA sought intervention because it believed that “WSHVACCA’s admittance as a party will ensure that a full, robust, and accurate record is developed with regards to utility leasing of appliances, and other issues presented by the proposals.”<sup>2</sup>

3           Following the prehearing conference conducted on January 5, 2016, Judge Gregory J. Kopta issued a Prehearing Conference Order granting WSHVACCA limited intervention in the matter. As stated by Judge Kopta:

Consistent with the public interest, the associations can provide the Commission with useful information on how the market functions and the extent to which PSE’s proposed expansion into the market would accomplish the Company’s stated goals.

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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.<sup>3</sup>

## **B. The Parties Engage in Discovery**

4           In the Prehearing Conference Order, Judge Kopta granted the parties permission to conduct discovery under WAC 480-07-400.<sup>4</sup> Since that time, the parties have engaged in considerable discovery. To date, PSE calculates that approximately 180 data requests have

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<sup>1</sup> WSHVACCA Petition to Intervene, at ¶¶ 1, 5

<sup>2</sup> *Id.*, ¶ 2.

<sup>3</sup> Prehearing Conference Order (“Order 02”), at ¶¶ 11, 13.

<sup>4</sup> *Id.*, ¶ 18.

been served on PSE, to which it has responded or is in the process of responding. On April 18, 2016, WSHVACCA served data requests on PSE, to which PSE timely responded.<sup>5</sup>

**C. PSE Serves Data Requests on WSHVACCA**

5 On April 15, 2016, PSE served Data Requests Nos. 001 through 022 on WSHVACCA.<sup>6</sup> Attached as Exhibit A to the Declaration of David S. Steele is a true and accurate copy of the data requests served on WSHVACCA. Because, as PSE understands it, WSHVACCA's participation in this matter is to contribute to the consideration of the market for water heating and HVAC equipment and to determine the effect of the proposed tariff on PSE customers, PSE's data requests on WSHVACCA were aimed at eliciting from WSHVACCA information that would help inform this inquiry. PSE also sought information relating to affirmative statements made by WSHVACCA in its petition to intervene.<sup>7</sup> Specifically, PSE requested the following information from WSHVACCA:

- Information relating to WSHVACCA's or its members' analysis of PSE's Equipment Leasing Program (Data Request Nos. 001, 022);
- Information relating to efforts by WSHVACCA or its members to provide energy efficient water heating and HVAC equipment to customers in Western Washington (Data Request No. 002);
- Information relating to the market for water heating and HVAC equipment and services in Western Washington (Data Request No. 003);

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<sup>5</sup> Declaration of David S. Steele ("Steele Declaration"), at ¶ 9.

<sup>6</sup> *Id.*, ¶ 3.

<sup>7</sup> *Id.*

- Information relating to the market for financing, leasing or renting water heating and HVAC equipment and services in Western Washington (Data Request Nos. 004, 005, 006, 007, 008, 009, 010, 021);
- Information relating to the scope of WSHVACCA's and its members' service territory and service practices (Data Request Nos. 011, 012, 014, 015);
- Information relating to the basis of specific, affirmative statements made by WSHVACCA in its petition to intervene (Data Request No. 013);
- Information relating to the relative age of water heating and HVAC equipment currently in use in Western Washington, and efforts to replace such equipment (Data Request Nos. 016, 017); and
- Information relating to the use of demand response technology in water heating and HVAC equipment (Data Request Nos. 018, 019, 020).<sup>8</sup>

6 On April 29, 2016, WSHVACCA responded to each of PSE's data requests using a uniform set of objections for each data request as follows:

WSHVACCA objects to the PSE data request as designed to bully, intimidate, harass, and retaliate.

WSHVACCA also further objects as PSE's request is overly broad, seeks information to which PSE is not entitled, would be unduly burdensome, and could not be complied with prior to the evidentiary hearing.

WSHVACCA also further objects as PSE's request is outside the scope of the duties of the limited intervention granted to WSHVACCA as an intervener.

WSHVACCA further objects to the PSE data request to the extent that the PSE data request requests WSHVACCA to perform research for the benefit of PSE.<sup>9</sup>

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<sup>8</sup> *Id.*, Exhibit A (PSE's Data Request Nos. 001-022 on WSHVACCA).

<sup>9</sup> *Id.*, ¶ 4; Exhibit B (WSHVACCA's Response to PSE's Data Request Nos. 001-022 on WSHVACCA).

7 WSHVACCA's responses did not include any substantive responses to any of PSE's  
requests, nor has WSHVACCA provided any documents in response to PSE's requests.<sup>10 11</sup>

**D. PSE Attempts to Meet and Confer With WSHVACCA**

8 Pursuant to WAC 480-07-425(1), counsel for PSE contacted WSHVACCA  
representative Mr. James King and arranged a call to discuss with Mr. King WSHVACCA's  
discovery responses.<sup>12</sup> During the call, counsel for PSE expressed a willingness to work  
through PSE's discovery requests with Mr. King to better understand WSHVACCA's  
objections with the hope that the parties could reach a resolution.<sup>13</sup> Unfortunately, Mr. King  
refused to discuss PSE's specific requests or how WSHVACCA's objections related to each  
request.<sup>14</sup> Instead, Mr. King levied unfounded accusations at PSE alleging abuse of the  
discovery process and other criticisms of PSE and Perkins Coie.<sup>15</sup> During the call, counsel for  
PSE repeatedly offered to work with Mr. King to attempt to resolve WSHVACCA's concerns  
and Mr. King expressed no interest in doing so.<sup>16</sup> In the spirit of compromise, PSE  
unilaterally agreed to narrow the scope of WSHVACCA's responses to only information in  
the possession of WSHVACCA and not its members and provided WSHVACCA with a one  
week extension to respond, until May 18, 2016.<sup>17</sup> Following the call, counsel for PSE sent a  
letter to Mr. King memorializing our call and again offering to discuss WSHVACCA's  
specific objections.<sup>18</sup>

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<sup>10</sup> *Id.*, ¶ 5; Exhibit B (WSHVACCA's Response to PSE's Data Request Nos. 001-022 on WSHVACCA).

<sup>11</sup> On May 6, 2016, PSE served additional discovery requests on WSHVACCA. WSHVACCA has also refused to produce documents in response to those requests.

<sup>12</sup> *Id.*, ¶ 6.

<sup>13</sup> *Id.*, ¶ 7.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; Exhibit C (2016-5-12 Steele Letter to King).

9 On May 18, 2016, Mr. King sent a letter reiterating WSHVACCA’s refusal to produce documents in response to PSE’s requests, even as to the narrowed scope proposed by PSE.<sup>19</sup> On May 19, 2016, counsel for PSE sent an email to Mr. King reiterating its positions but offering again to meet to discuss WSHVACCA’s responses with the hope that the parties could reach a resolution.<sup>20</sup> On May 19, 2016, Mr. King responded by email effectively rejecting PSE’s offers to discuss further.<sup>21</sup>

10 On May 26, 2016, PSE filed this motion to compel.

### III. ARGUMENT

11 PSE respectfully requests that the Commission compel WSHVACCA to respond to its discovery requests. PSE’s requests all seek relevant information reasonably calculated to lead to the discovery of admissible evidence regarding issues central to the proceeding and none of WSHVACCA’s objections are valid.

#### A. PSE’s Data Requests to WSHVACCA All Seek Relevant Information Central to the Issues in This Proceeding

12 Under the Commission rules, data requests may be used to “seek documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or the admission of a fact asserted by the requesting party.”<sup>22</sup> “Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to a data request on grounds that the information sought will be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to

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<sup>19</sup> *Id.*, ¶ 8; Exhibit D (2016-5-18 King Letter to Steele).

<sup>20</sup> *Id.*; Exhibit E (2016-5-19 Steele Email to King).

<sup>21</sup> *Id.*; Exhibit F (2016-5-19 King Email to Steele).

<sup>22</sup> WAC 480-07-400(1)(c)(iii).

discovery of admissible evidence.”<sup>23</sup> As explained below, PSE’s data requests on WSHVACCA all seek relevant information reasonably calculated to lead to the discovery of admissible evidence and fully comply with the parameters above.

**1. Data requests seeking information relating to WSHVACCA’s or its members’ analysis of PSE’s Equipment Leasing Program (Data Request Nos. 001, 022).**

<sup>13</sup> Data Request Nos. 001 and 022 seek information relating to WSHVACCA’s analysis of PSE’s Equipment Leasing Program. Given that WSHVACCA’s role in the matter is to “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,”<sup>24</sup> there is a high probability that any analysis of PSE’s Equipment Leasing Program prepared by WSHVACCA or its members will relate to the impact of the Program on the market and WSHVACCA’s or its members’ perception of the Program. Moreover, WSHVACCA has stated in its petition to intervene that PSE’s leasing program would harm consumers and ratepayers as well as harming existing efforts that have actually increased the use of energy efficient appliances.<sup>25</sup> Based on these assertions by WSHVACCA, any analysis of PSE’s proposed leasing service that WSHVACCA has undertaken is reasonably calculated to lead to the discovery of admissible evidence and should be produced.

**2. Data requests seeking information relating to efforts by WSHVACCA’s and its members’ efforts to provide energy efficient water heating and HVAC equipment to customers in Western Washington (Data Request No. 002).**

<sup>14</sup> Data Request No. 002 seeks information relating to efforts by WSHVACCA and its members to provide energy efficient water heating and HVAC equipment to customers in

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<sup>23</sup> WAC 480-07-400(3).

<sup>24</sup> Order 02, at ¶ 11.

<sup>25</sup> WSHVACCA Petition to Intervene, at ¶ 5.

Western Washington. One of the core issues in this case is whether the market is sufficiently addressing the need to replace aging HVAC equipment with energy efficient equipment. WSHVACCA has stated its members “are committed to a robust and competitive free market in the belief that such a market has, in recent decades, been the primary conduit of the growing presence of energy efficient appliances.”<sup>26</sup> Indeed, WSHVACCA has also stated that the existing market is already sufficiently addressing the need for more energy efficient HVAC equipment and that “private companies can and do provide the same or similar service at a lower cost than what PSE would likely be able to provide” and that PSE’s proposal will have a “chilling effect on the competitive market in Washington, harming consumers and ratepayers, as well as harming existing efforts that have actually increased the use of energy efficient appliances.”<sup>27</sup> PSE is entitled to seek discovery from WSHVACCA to test the veracity of positions affirmatively taken by WSHVACCA, particularly to the extent they differ from PSE’s market analysis. This information will also likely lead to the discovery of relevant information, is reasonably calculated to lead to admissible evidence, and should be produced.

**3. Data requests seeking information relating to the market for water heating and HVAC equipment and services in Western Washington (Data Request No. 003)**

15 Data Request No. 003 seeks information generally relating to the market for water heating and HVAC equipment and services in Western Washington. It is beyond dispute that the market for water heating and HVAC equipment and related services is central to this case. Indeed, the very purpose of WSHVACCA’s intervention is to provide information on how the market functions and the extent to which PSE’s proposed leasing service would accomplish

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<sup>26</sup> *Id.*, ¶ 1.

<sup>27</sup> *Id.*, ¶ 5.



the PSE's stated goals.<sup>28</sup> Accordingly, documents in the possession of WSHVACCA or its members relating to the market are central to the issues in this case, are reasonably calculated to lead to the discovery of admissible evidence, and should be produced.

**4. Data requests seeking information relating to the market for financing, leasing or renting water heating and HVAC equipment and services in Western Washington (Data Request Nos. 004, 005, 006, 007, 008, 009, 010, 021)**

16 Data Requests Nos. 004-010 and 021 all seek information relating to the market for financing, leasing or renting water heating and HVAC equipment and services in Western Washington. Like the market for water heating and HVAC equipment generally, the market for financing, leasing or renting water heating and HVAC equipment is central to the issues in this case. Indeed, the very purpose of WSHVACCA's intervention is to contribute to the inquiry of how the market functions, including as it relates to financing, leasing or renting water heating or HVAC equipment. PSE is entitled to be able to test positions and statements taken by WSHVACCA, particularly to the extent they contradict market research or findings different than what PSE has identified. PSE does not currently know what, if any financing, leasing or rental services WSHVACCA or its members provide. Accordingly, documents in the possession of WSHVACCA or its members relating to the financing, leasing or rental market are central to the issues in this case, are reasonably calculated to lead to the discovery of admissible evidence, and should be produced. PSE notes that WSHVACCA responded to data requests issued by WUTC Staff that requested similar information from WSHVACCA.<sup>29</sup>

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<sup>28</sup> Order 02, at ¶ 11.

<sup>29</sup> Steele Declaration, at ¶ 10.

**5. Information relating to the scope of WSHVACCA's and its members' service territory (Data Request Nos. 011, 012, 014, 015)**

17 Data Requests Nos. 011, 012, 014, and 015 all seek information relating to WSHVACCA's and its members' service territories, service practices, and pricing. There are several intended purposes for these requests. First, WSHVACCA has argued that PSE's Equipment Leasing Program is unnecessary because the market is already adequately addressing the various market needs and that PSE's program will actually have a detrimental effect on the market. Given that WSHVACCA has made various market-based assertions against PSE, PSE is entitled to be able to test WSHVACCA's and its members' foundational authority for making such statements based on their own HVAC equipment and service practices, including the geographic scope of their services. PSE is not required to accept WSHVACCA's word that it has sufficient industry knowledge and authority to take positions on the legitimacy of PSE's proposal, particularly as it relates to offering leasing or rental services of water heating or HVAC equipment, or for all geographic areas of PSE's service territory.

18 Second, WSHVACCA has stated that it "believes that the Equipment Lease Program would not result in cost effective service to PSE customers because private companies can and do provide the same or similar service at a lower cost than what PSE would likely be able to provide."<sup>30</sup> WSHVACCA has placed the pricing of PSE's program at issue in the case and WSHVACCA should be required to provide market information relating to a comparable turn-key service, as proposed by PSE, to the extent it helps inform the analysis for how PSE's program could impact the market.

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<sup>30</sup> *Id.*, ¶ 5.

**6. Data requests seeking information relating to the basis of specific, affirmative statements made by WSHVACCA in its petition to intervene (Data Request No. 013)**

19 Data Request No. 013 seeks documentation or authority supporting the various factual statements asserted by WSHVACCA in its petition to intervene, including that “PSE’s proposal would”:

- “have a chilling effect on the competitive market in Washington,”
- “harm[] consumers and ratepayers,”
- “harm[] existing efforts that have actually increased the use of energy efficient appliances.”<sup>31</sup>

WSHVACCA cannot expect to make bold assertions about the supposed effects of PSE’s Equipment Lease Program without being required to provide supporting documentation or authority for its positions. In addition, information relating to these issues are central to the case, are reasonably calculated to lead to the discovery of admissible evidence, and should be produced.

**7. Data requests seeking information relating to the relative age of water heating and HVAC equipment currently in use in Western Washington, and efforts to replace such equipment (Data Request Nos. 016, 017)**

20 Data Requests Nos. 016 and 017 seek information relating to the relative age of water heating and HVAC equipment currently in use in Western Washington, and efforts to replace such equipment. PSE has stated that one of the primary market-based reasons why it proposed its Equipment Lease Program was to address a significant market need to replace aging water heating and HVAC equipment. Not only has WSHVACCA stated that the market is already

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<sup>31</sup> *Id.*

adequately addressing this issue, but that PSE's program will actually harm such efforts.<sup>32</sup> As stated above, PSE is entitled to test the veracity of WSHVACCA's assertions against PSE's program. Documents relating to these issues are central to the case, are reasonably calculated to lead to the discovery of admissible evidence, and should be produced.

**8. Data requests seeking information relating to the use of demand response technology in water heating and HVAC equipment (Data Request Nos. 018, 019, 020)**

21 Data Requests Nos. 018, 019, and 020 all seek information relating to demand response technology and the use of such technology in water heating and HVAC equipment. One of the issues in this case is the use of demand response technology in water heating and HVAC equipment and the current state of the market for such services. In order to help inform this market analysis and how it relates to PSE's proposed program and customers, PSE requested market-based information from WSHVACCA on these issues. Documents relating to these issues are central to the case, are reasonably calculated to lead to the discovery of admissible evidence, and should be produced.

**B. WSHVACCA Responses Do Not State Valid Objections to PSE's Requests**

22 WSHVACCA's written responses raise the following, blanket objections to all of PSE's requests: (1) designed to bully, intimidate, harass, and retaliate; (2) overly broad and unduly burdensome; (3) seeks information to which PSE is not entitled; (4) production could not be completed prior to the evidentiary hearing; (5) outside the scope of WSHVACCA's limited intervention; (6) requests WSHVACCA to perform research for the benefit of PSE. As discussed below, WSHVACCA's categorical objections to all of PSE's requests are invalid and are not reasonable basis for not substantively responding to any of PSE's requests.

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<sup>32</sup> *Id.*, ¶¶ 1, 5.

**1. PSE’s data requests are not designed to bully, intimidate, harass or retaliate.**

23 PSE strongly objects to WSHVACCA’s written assertion that PSE is attempting to bully, intimidate, harass, or retaliate against WSHVACCA, or comments made by Mr. King during the parties’ meet and confer that PSE or Perkins Coie is acting with any impropriety. To the contrary, since the inception of this matter, PSE has cooperated willingly with every party and has been fully forthcoming with information about its Equipment Lease Program to the extent required by the Commission rules, including WSHVACCA as PSE provided timely responses to WSHVACCA’s data requests. WSHVACCA does not have any factual basis for this assertion whatsoever and this is not a valid objection to PSE’s data requests.

**2. PSE’s data requests are not overly broad or unduly burdensome.**

24 As described above, PSE’s data requests all seek information directly relevant to the issues in this proceeding. By using this objection to not respond to any of PSE’s requests, WSHVACCA is effectively arguing that *everything* PSE has asking for is overly broad and unduly burdensome and that nothing PSE asked for is within the proper scope of discovery. This is not a reasonable position. PSE has also repeatedly offered to discuss with WSHVACCA what it can produce and WSHVACCA has rebuffed such requests. Instead, WSHVACCA has only insisted that PSE “narrow [its] data requests to only that information to which is relevant to this adjudication and in the possession of the WSHVACCA.”<sup>33</sup> PSE is not required or able to guess what WSHVACCA believes is the reasonable scope of discovery. As stated above, PSE’s requests seek relevant information reasonably calculated to lead to admissible evidence and PSE only requests documentation in the control of WSHVACCA.

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<sup>33</sup> Steele Declaration, Exhibit D (2016-5-18 King Letter to Steele).

PSE remains willing to discuss with WSHVACCA the scope of each request so as to limit the burden, where possible, on WSHVACCA.

**3. PSE's data requests seek information to which PSE is entitled.**

25 PSE does not know what WSHVACCA means by this objection nor has WSHVACCA been willing to explain this objection to PSE. If WSHVACCA is referring to competitive information that WSHVACCA or its members believe could provide PSE with a competitive advantage, then, as PSE's counsel has explained to Mr. King, the proper course of action is to designate its responses or any documents produced as either Confidential or Highly Confidential using the mechanisms provided by the Protective Order.<sup>34</sup>

26 PSE's notes that WSHVACCA has responded to WUTC Staff's data requests which seek very similar information to PSE's requests and WSHVACCA has provided information in response to those requests.<sup>35</sup> In addition, in WSHVACCA's responses to WUTC Staff designated as Confidential, WSHVACCA has also refused to share this information with PSE's counsel, even though PSE's counsel has signed the requisite confidentiality designations and directly requested this information from WSHVACCA.<sup>36</sup> PSE requests that the Commission order WSHVACCA to immediately produce such information to PSE.

**4. Responding to PSE's data requests can be completed prior to the evidentiary hearing.**

27 This is not a valid objection to PSE's requests. If WSHVACCA wants to affirmatively seek intervention into a matter involving other parties, participate in settlement meetings, and serve discovery on other parties then it, like all parties, needs to comply with the requisite rules. All parties are bound by the discovery rules which require production of documents

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<sup>34</sup> *Id.*, ¶ 7.

<sup>35</sup> *Id.*, ¶ 10.

<sup>36</sup> *Id.*

within ten (10) business days after service.<sup>37</sup> If WSHVACCA is indicating that it cannot produce all of its responsive documents to PSE in time, PSE is willing to work with WSHVACCA on a reasonable schedule for producing responsive documents. But refusing to not produce any documents because WSHVACCA believes it cannot do so before the evidentiary hearing (which is in August) is not a valid objection or a reasonable position. PSE notes that since it issued its requests on April 15, 2016, it has been almost six weeks and WSHVACCA has still not produced a single document or provided any substantive responses to PSE.

**5. PSE's requests do not seek information outside the scope of WSHVACCA's limited intervention.**

28 PSE's is confused by WSHVACCA's unexplained narrowing of its perceived role in the case, and WSHVACCA has not articulated to PSE what it believes the proper scope of its role is. As provided in the Prehearing Conference Order, the role of the intervenors is to contribute to the inquiry of the market for water heating and HVAC equipment to the extent necessary to determine the effects of the tariffs on PSE's customers, and to provide useful information on how that market functions and the extent to which PSE's proposed expansion into the market would accomplish the PSE's stated goals.<sup>38</sup> Indeed, WSHVACCA itself has stated that it believes that its participation "will ensure that a full, robust, and accurate record is developed with regards to utility leasing of appliances, and other issues presented by the proposals."<sup>39</sup> To the extent WSHVACCA has information in its possession, custody or control relating to the issues in this case, then WSHVACCA should be required to produce that information when requested. If PSE has incorrectly characterized the scope of the Intervenors' role in this

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<sup>37</sup> WAC 480-07-405(7)(b).

<sup>38</sup> Order 02, at ¶ 11.

<sup>39</sup> WSHVACCA Petition to Intervene, at ¶ 2.

case, then PSE requests that the Commission clarify the scope of their role so the parties in this case can properly request discovery on the Intervenors within those parameters. If the documents and information requested by PSE are within the proper scope of WSHVACCA's role in this case, then WSHVACCA should be required to respond to PSE's data requests.

**6. PSE's requests do not require WSHVACCA to perform research for the benefit of PSE.**

29 PSE is also confused by this objection by WSHVACCA. None of PSE's requests ask that WSHVACCA perform research for PSE. PSE's requests simply ask for information or documents, to the extent they are in WSHVACCA's possession, custody or control. To the extent WSHVACCA is required to provide a narrative response to a request by PSE, then WSHVACCA may need to explain "a policy, position, or a document,"<sup>40</sup> which could require a reasonable inquiry and some discussion within the organization. But this is not research.

30 To the extent WSHVACCA believes that its responses to PSE's data requests include documents that contain proprietary information that might impose a business risk if disseminated or that otherwise fall within the scope of the Protective Order issued in this case, as explained to Mr. King, the proper mechanism is to designate such documents as Confidential or Highly Confidential, where appropriate, under the Protective Order.

**C. Other Objections Raised By WSHVACCA Are Untimely and Are Otherwise Invalid**

31 Since WSHVACCA supplied its written objections to all of PSE's requests, WSHVACCA has levied a series of other objections to PSE's requests both orally and in writing, including: (1) privilege; (2) sensitive market information that could harm

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<sup>40</sup> WAC 480-07-400(1)(a)(iii).



competition; (3) PSE did not wait until after WSHVACCA filed testimony; and (4) general objections to PSE's Definitions and Instructions sections of its requests.<sup>41</sup>

32 To the extent WSHVACCA seeks to raise objections to PSE's data requests after the time period for response was due, "A party who fails to interpose a timely objection to provide a full response to a data request waives any right to object for purposes of discovery and must provide a full response."<sup>42</sup> Accordingly, any objections levied by WSHVACCA after the time period for responses were due, which was April 29, 2016, are waived. Nowhere do WSHVACCA's written objections mention privilege, specific concerns over competitive information, that PSE was required to wait to serve discovery until after WSHVACCA filed testimony, or any specific objections to PSE's "Definitions" or "Instructions" section. WSHVACCA is also not permitted to raise general, boilerplate objections to shoehorn in every specific objection it identifies later, nor is PSE required to guess what specific objections WSHVACCA has with PSE's requests or what WSHVACCA believes is the reasonable scope of discovery. As provided by the rules, "A party objecting to a data request must state the objection and explain the basis for the objection."<sup>43</sup>

33 Even if WSHVACCA's additional objections were not waived, none are valid objections. First, as PSE reiterated to Mr. King during the parties meet and confer appointment, PSE is not seeking any privileged materials, to the extent they exist.<sup>44</sup> Second, as also explained to Mr. King and discussed above, if WSHVACCA has competitive information, it should utilize

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<sup>41</sup> See Steele Declaration, Exhibit D (2016-5-18 King Letter to Steele) and Exhibit F (2016-5-19 King Email to Steele).

<sup>42</sup> WAC 480-07-405(6)(a).

<sup>43</sup> *Id.*

<sup>44</sup> Steele Declaration, ¶ 7.

the protections in the Protective Order.<sup>45</sup> Third, PSE is not required to wait until after WSHVACCA files its testimony before serving discovery. Fourth, while WSHVACCA has raised concerns over PSE's "Definitions" or "Instructions" sections, when pressed for what specific concerns it had, Mr. King has yet to provide a response.

#### IV. CONCLUSION

34 For the reasons set forth above, PSE respectfully requests that the Commission compel WSHVACCA to provide information and documents in response to PSE's discovery requests.

Respectfully submitted this 26th day of May, 2016.

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<sup>45</sup> *Id.*