

**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)

**WASHINGTON STATE HEATING,  
VENTILATION AND AIR  
CONDITIONING CONTRACTORS  
ASSOCIATION'S RESPONSE TO PUGET  
SOUND ENERGY'S MOTIN TO  
COMPEL THE WASHINGTON  
STATE HEATING, VENTILATION &  
AIR CONDITIONING  
CONTRACTORS ASSOCIATION TO  
RESPOND TO DATA REQUESTS**

**I. INTRODUCTION AND RELIEF REQUESTED**

1 Washington State Heating, Ventilation and Air Conditioning Contractors Association (“WSHVACCA”) submits this motion requesting that the Commission deny Puget Sound Energy’s (“PSE”) motion to compel WSHVACCA to respond to PSE’s Data Requests Nos. 001 through 022, and instead:

- a. Disallow PSE’s “Definitions” and “Instructions” sections and require PSE to rely only upon the plain and generally accepted meaning of terms within the actual data requests.
- b. Prohibit PSE from seeking anything other than actual documents, in printed or electronic format, in the possession of WSHVACCA.
- c. Prohibit PSE from seeking information or documents from WSHVACCA members.
- d. Prohibit PSE from requiring research, compilations, or the creation of documents.

2 Prior to its filing of its motion to compel, PSE had refused to address the validity any objections in response to PSE’s data requests, or to explain its rationale in making its data requests.

## II. BACKGROUND

### A. WSHVACCA Is Granted Permission to Intervene

3 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. 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>1</sup>

4 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.

....

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>2</sup>

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<sup>1</sup> WSHVACCA Petition to Intervene., ¶ 2.

<sup>2</sup> Prehearing Conference Order (“Order 02”), at ¶¶ 11, 13.

**B. The Parties Engage in Discovery**

5 In the Prehearing Conference Order, Judge Kopta granted the parties permission to conduct discovery under WAC 480-07-400.<sup>3</sup> Since that time, the parties have engaged in considerable discovery attempts. To date, WSHVACCA notes that 141 data requests have been served by PSE upon the other parties, the overwhelming majority of which have yielded consistent objections but little real information.

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

6 On April 15, 2016, PSE served Data Requests Nos. 001 through 022 on WSHVACCA.<sup>4</sup> PSE misunderstands WSHVACCA's participation in this matter as being "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," and apparently takes that to mean that WSHVACCA should be an unlimited source of data-mining for PSE's purposes. While PSE claims that "PSE's data requests on WSHVACCA were aimed at obtaining from WSHVACCA information that would help inform this inquiry", PSE had consistently refused, until included in its motion to compel, to clarify or explain how these data requests could possibly yield information that would help inform this adjudicative proceeding, rather than yield information from the HVAC industry to inform possible future efforts to enter the HVAC market, information the HVAC industry has been unwilling to provide voluntarily to PSE for either its current proposal or for future proposals.

7 In making its particular requests, PSE demonstrated its fundamental misunderstanding of the nature of WSHVACCA as a trade association, the limits imposed upon the association's

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<sup>3</sup> *Id.*, ¶ 18.

<sup>4</sup> Declaration of James L. King, Jr. ("King Declaration"), at ¶ 3.

gathering, compilation, and preservation of information under state and federal antitrust law, the nature of the information, knowledge, and expertise possessed by the association and its members, and the means by which the association could bring this information, knowledge, and expertise to bear on the issues before the Commission in this proceeding.

8 Specifically, in part, PSE requested the following information from WSHVACCA:

- Information relating to WSHVACCA's *or its members* [emphasis added] analysis of PSE's Equipment Leasing Program (Data Request Nos. 001, 022);
- Information relating to efforts by WSHVACCA *or its members* [emphasis added] to provide energy efficient water heating and HVAC equipment to customers in Western Washington (Data Request No. 002); and
- Information relating to the scope of WSHVACCA's and its members' service territory and service practices (Data Request Nos. 011, 012, 014, 015)- WSHVACCA member's have no "service territories", unlike a regulated monopoly, and would not share information on areas customarily served as that could be construed to be dividing up territory in violation of antitrust law.

9 On April 29, 2016, WSHVACCA responded to each of PSE's data requests using a uniform set of objections for each data request, based upon the overreaching definitions and instructions.

10 Due to the inability to get beyond PSE's overreaching definitions and instructions, 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>5</sup>

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<sup>5</sup> *Id.*, ¶ 5.

**D. The PSE “Attempt” to Meet and Confer With WSHVACCA**

11 Twelve calendar days after WSHVACCA’s response to PSE’s First Set of Data Requests, on May 9, 2016, Mr. Steele contacted me to arrange a call to discuss with me PSE’s concerns with WSHVACCA’s discovery responses. To expedite matters, I agreed to be available at 2pm the next day.

12 On May 10, 2016, PSE counsel Sheree Strom Carson and Mr. Steele called me. During the call, at no time were Ms. Carson or Mr. Steele willing to consider the validity of any of WSHVACCA’s objections, but spent most of the twenty minutes on the phone lecturing me on WSHVACCA’s duty to PSE as an intervener to provide whatever market information PSE requested. I tried to explain to Ms. Carson and Mr. Steele how the over-arching preamble (they call them “definitions” and “instructions”, and I will accept that terminology) serve to modify each of their individual data requests and was a fundamental basis of objection that had to be dealt with. Unfortunately, Ms. Carson and Mr. Steele refused to discuss any of WSHVACCA’s objections. Instead, Ms. Carson would consistently return to lecture mode and demand that WSHVACCA provide any information that PSE requested. During the call, I repeatedly tried illuminate WSHVACCA’s concerns over PSE’s overreach in its definitions and instructions, and repeatedly requested that they drop those sections, but Ms. Carson and Mr. Steele expressed no interest in doing so. Ms. Carson and Mr. Steele refused any compromise on the definitions and instructions, only saying that, despite the plain (if expansive) language of the definitions and instructions, the language did not reach to things, such as attorney-client privilege, clearly implied within the plain meaning of the language of the definitions and instructions sections. I made clear that in WSHVACCA’s reading of the language of the definitions and instructions, PSE was reaching for such information as it was

not entitled to, such as information protected by attorney client privilege, etc.- points also made by both the Sheet Metal Contractors Association of North America- Western Washington Chapter, and Public Counsel, in their repeated objections to PSE's data requests.

13 There was no spirit of compromise, no offer to narrow the scope of WSHVACCA's responses to only information in the possession of WSHVACCA and not its members, and only an offer to provide WSHVACCA with a one week extension to respond, until May 18, 2016. That offer was rejected as meaningless, no agreement having even been considered regarding WSHVACCA's objections.

14 Following the call, counsel for PSE sent an inaccurate letter to me which did not accurately memorialize our call and again offered no reasonable compromise regarding WSHVACCA's objections, offering only "In the spirit of compromise, *for the time being*, PSE is willing to narrow the scope of its requests to only information held by WSHVACCA and not its individual members and will grant WSHVACCA a one-week extension to respond, until May 18, 2016. *However, PSE reserves the right to re-address the scope of its requests, if necessary in the future.* [emphases added]" WSHVACCA interpreted that "compromise" as meaningless, with PSE reserving the right to seek information from WSHVACCA members at any time.

15 On May 26, 2016, PSE filed its motion to compel.

### III. ARGUMENT

16 WSHVACCA respectfully requests that the Commission deny PSE's motion to compel and grant the relief that WSHVACCA has requested. Most of PSE's requests do not seek relevant information reasonably calculated to lead to the discovery of admissible evidence regarding issues central to the proceeding, and those that might are so buried under the

overreaching definitions and instructions as to be indiscernible, and WSHVACCA's objections are valid.

**A. The Claim That "PSE's Data Requests to WSHVACCA All Seek Relevant Information Central to the Issues in This Proceeding"**

17 Having just received in the motion to compel the first justifications provided by PSE for its request, and not having been provided sufficient time to analyze and respond to all of PSE's assertions in depth, WSHVACCA wishes to point out certain highly questionable points made by PSE.

18 PSE asserts "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 [related to discovery]." However, when one gets to PSE's point relating to Data Requests No. 11 through 15, it reads "Information relating to the scope of WSHVACCA's and its members' service territory (Data Request Nos. 011, 012, 014, 015)" Data Requests Nos. 011, 012, 014, and 015 all seek information relating to WSHVACCA's and its members' service territories, service practices, and pricing." As noted above, the association cannot without violating antitrust law, gather, compile, and preserve pricing information, nor information relating to customary service areas, nor can it allow its members be put in a situation where they can be accused of violating antitrust law by sharing such information with competitors.

19 In addition, in reviewing Data Request No. 15 specifically, WSHVACCA cannot understand why PSE would seek such information from its members as their business license number, L&I license number, and contractor license number (the latter two being incorrect terms- WSHVACCA assumes PSE might mean L&I account number and contractor

registration number)- this is information WSHVACCA has no need to gather and does not  
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gather. When presented with this request, the board members of WSHVACCA found it highly objectionable and believed the information was being sought for objectionable purposes.

**B. The Claim That “WSHVACCA Responses Do Not State Valid Objections to PSE’s Requests”**

20 WSHVACCA’s written responses raised blanket objections to all of PSE’s requests based primarily upon PSE’s definitions and instructions.. As discussed below, WSHVACCA’s categorical objections to all of PSE’s requests are valid and are a reasonable basis for not substantively responding to any of PSE’s requests while the definitions and instructions remain as modifiers of the data requests.

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

21 Bullies, etc., never recognize or acknowledge they are bullying, etc.- they usually do not comprehend how they are perceived by others. WSHVACCA board members have described PSE’s data requests as the equivalent of a Strategic Lawsuit Against Public Participation.

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

22 PSE’s data requests are all modified by its definitions and instructions so as to be overly broad and unduly burdensome. By using this objection to not respond to any of PSE’s requests, WSHVACCA is arguing that every data request that PSE has made is modified to be overly broad and burdensome by these definitions and instructions, and that WSHVACCA is not in a position to “read PSE’s mind” to determine what PSE truly considers relevant to this proceeding. WSHVACCA believes that the use of these definitions and instructions creates a “fishing expedition” rather than a request for particular fish. It is a reasonable position to desire to eliminate the expedition in order to determine which fish are appropriate.. PSE has rebuffed all requests to eliminate the expedition.



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

23 From the seeking of WSHVACCA members information to the seeking of information covered by attorney-client privilege, and beyond, WSHVACCA has tried to explain this objection to PSE but PSE continues to claim that PSE does not know what WSHVACCA means by this objection nor has WSHVACCA been willing to explain this objection to PSE.”

24 PSE has also claimed “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>6</sup> In response, WSHVACCA would note that the WUTC Staff’s data requests did not include overreaching definitions and instructions, and were much more limited in scope and information targeted than have been PSE’s data requests. In addition, WUTC Staff, after conferring with WSHVACCA, understood and agreed to the limitations under which WSHVACCA must work, and after explaining that they needed to receive the information from WSHVACCA as a response to the data request, and could not settle for voluntary responses directly from WSHVACCA members, WSHVACCA agreed to request WSHVACCA members voluntarily provide limited information regarding financing, which WSHVACCA would cut and paste into a response from WSHVACCA to the WUTC Staff Data Request No. 3, but WSHVACCA would keep no record so it could not be accused of possessing competitive information for the benefit of its members.

25 In addition, PSE complains that in WSHVACCA’s responses to WUTC Staff it designated as Confidential, that WSHVACCA also refused to share this information with PSE’s counsel, even though PSE’s counsel has signed the requisite confidentiality

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<sup>6</sup> “Steele Declaration”. at ¶ 10.

designations and directly requested this information from WSHVACCA.<sup>7</sup> PSE noticeably fails to disclose that at the time of WSHVACCA's response to WUTC Staff, PSE had failed to file any confidentiality agreements (they were not submitted until May 11<sup>th</sup>) and was not entitled to receive confidential information at the time of the response. PSE also fails to disclose that during the phone call on May 10<sup>th</sup>, when it raised this issue, WSHVACCA had pointed out that it had not filed confidentiality agreements and was not entitled to the information, and that in accordance with the process followed to meet the needs of WUTC Staff, WSHVACCA no longer possessed the information. As WSHVACCA is no longer in possession this information, and PSE was not entitled to receive the information at the time the response was made, WSHVACCA requests that the Commission deny the PSE request 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.**

26 At the time of the responses, the evidentiary hearing was set for late June. WSHVACCA was simply noting that, given the breadth of the PSE data requests, it would not be possible to fulfill them within any reasonable timeframe, nor in time for any possible use. If PSE does not wish to recognize the unreasonableness of its data requests, it simply confirms WSHVACCA's belief that the requests are not designed to elicit useful information, but instead to bully, intimidate, harass, and retaliate.

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

27 WSHVACCA and PSE clearly disagree about what the role, responsibilities, and abilities of the intervener is, and what type of information that WSHVACCA possesses.

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

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

28 PSE clearly does not comprehend the expansiveness of its request, the work necessary if WSHVACCA were to undertake an effort to respond to its data requests as presented. To take but one example, the PSE definition of "Communication" which is defined by PSE in its definitions as

"any exchange or transmission of words or ideas to another person or entity, whether accomplished person to person, by telephone, in writing, via electronic mail, via social media or through another medium, and shall include, without limitation, discussions, conversations, negotiations, conferences, meetings, speeches, memoranda, letters, correspondence, notes, blogs, postings, and statements or questions."

As applied to PSE's Data Request No. 22:

"Provide copies of all postings made on the WSHVACCA website, or any other electronic communication network (email, blog, text, website, twitter, Facebook), and any communications (electronic or otherwise), including communications between WSHVACCA and its individual members, relating in any way to PSE's Equipment Lease Program."

would clearly require substantial research and work, which PSE clearly fails to comprehend.

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

29 Since WSHVACCA supplied its written objections to all of PSE's requests, WSHVACCA has not levied a series of other objections to PSE's requests, but has tried- in an apparently futile attempt, both orally and in writing, to explain WSHVACCA's objections to PSE. All that effort yielded is PSE's misrepresentation of the effort to illuminate and explain WSHVACCA's objections as being the raising of new objections, and PSE characterizes WSHVACCA efforts to voice specific concerns over PSE's "Definitions" and "Instructions" sections, as having as "yet to provide a response."

In summary, WAC 480-07-400(3) reads in part

“A discovery request is inappropriate when ... the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding. Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause ... needless increase in the costs of litigation.”

#### IV. CONCLUSION

31 For the reasons set forth above, and because PSE clearly does not comprehend the breadth and overreach of its data requests, nor what all they include, WSHVACCA respectfully requests that the Commission deny PSE's request to compel WSHVACCA to provide information and documents in response to PSE's discovery requests and instead:

- a. Disallow PSE's "Definitions" and "Instructions" sections and require PSE to rely only upon the plain and generally accepted meaning of terms within the actual data requests.
- b. Prohibit PSE from seeking anything other than actual documents, in printed or electronic format, in the possession of WSHVACCA.
- c. Prohibit PSE from seeking information or documents from WSHVACCA members.
- d. Prohibit PSE from requiring research, compilations, or the creation of documents. .

Respectfully submitted this 31st day of May, 2016.

**WASHINGTON STATE HEATING,  
VENTILATION AND AIR  
CONDITIONING CONTRACTORS  
ASSOCIATION**

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