

**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)

**DECLARATION OF JAMES L. KING,
JR., IN SUPPORT OF THE
WASHINGTON STATE HEATING,
VENTILATION & AIR
CONDITIONING CONTRACTORS
ASSOCIATION'S RESPONSE TO
PUGET SOUND ENERGY'S MOTION
TO COMPEL THE WASHINGTON
STATE HEATING, VENTILATION &
AIR CONDITIONING
CONTRACTORS ASSOCIATION TO
RESPOND TO DATA REQUESTS**

I, James L. King, Jr., declare as follows.

1 I am over the age of 21 and am competent to testify herein.

2 I am the government affairs director of the Washington State Heating, Ventilation and
Air Conditioning Contractors Association (WSHVACCA) and am representing that
association in the above-captioned action. Unless otherwise indicated, I have personal
knowledge of the matters described herein, and if called to testify, I could testify competently
thereto.

3 At 5pm on Friday, April 15, 2016, PSE served Data Requests Nos. 001 through 022 on
WSHVACCA. WSHVACCA officers and board members were immediately notified of
PSE's very broad discovery attempt, including trying to reach to WSHVACCA's members.
One WSHVACCA board member described the PSE effort as comparable to a Strategic
Lawsuit Against Public Participation. Many expressed the opinion that this PSE effort would

add to the perception by many in the HVAC industry that PSE would bully, intimidate, harass, and retaliate to get what it wanted. I was instructed to protect the association members.

4 Apparently 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, prior to the filing of its motion to compel, consistently refused 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. PSE also sought information relating to affirmative statements made by WSHVACCA in its petition to intervene, which may or may not be formally introduced in response testimony on June 7, 2016.

5 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. 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.

6 On May 4, 2016, PSE served its third set of data requests upon WSHVACCA, again with its overly broad definitions and instructions, confirming WSHVACCA’s belief that PSE

intended throughout discovery to ignore WSHVACCA's legitimate objections. Attached as Exhibit A is a true and accurate copy of PSE's third set of data requests to WSHVACCA.

7 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.

8 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(SMACNA-WW), and Public Counsel, in their repeated objections to PSE's data request. Attached as Exhibit B is a true and accurate copy of PSE's first set of data requests to SMACNA-WW. Attached as Exhibit C is a true and accurate copy of SMACNA-WW's responses to PSE's first set of data requests. Attached as Exhibit D is a true and accurate copy of PSE's first set of data requests to Public Counsel. Attached as Exhibit E is a true and accurate copy of Public Counsel's responses to PSE's first set of data requests.

9 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.

10 During the phone call, in its motion to compel and in Mr. Steele's accompanying declaration PSE complained that "on April 26, 2016, WSHVACCA responded to data requests served by WUTC Staff, many of which were similar to PSE's requests, and sought information relating to WSHVACCA and its members, to which WSHVACCA responded." PSE further charged that "WSHVACCA did not raise any objection to WUTC Staff's request for information relating to its members."

11 Contrary to PSE's complaints, neither WUTC Staff's Cover Letter or actual data requests include any language similar to PSE's definitions or instructions, nor are the actual data requests at all as broad and expansive as those of PSE. Attached as Exhibit F is a true and accurate copy of WUTC Staff's Cover Letter conveying WUTC Staff's Data Requests to

WSHVACCA. Attached as Exhibit G is a true and accurate copy of WUTC Staff's data requests to WSHVACCA.

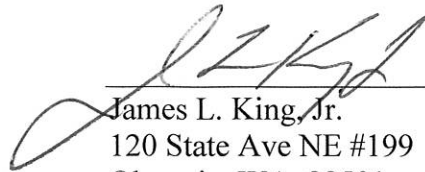
12 Contrary to PSE's complaints that "WSHVACCA did not raise any objection to WUTC Staff's request for information relating to its members," WSHVACCA did object to WUTC Staff's data requests, but was able to work out a compromise with which WSHVACCA was able to accommodate. That was explained to Ms. Carson and Mr. Steele during the phone call thusly: 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. Attached as Exhibit H is a true and accurate copy of WSHVACCA's original responses to Public Counsel's data requests.

13 PSE further complained that "As to information WSHVACCA produced to WUTC Staff, it redacted the copy of the response that was provided to counsel for PSE. We requested this information be provided and to date, WSHVACCA has not disclosed this information to me or Ms. Carson, even though we executed the required confidentiality agreements under the Protective Order." Neither agreement had been signed or filed at the time WSHVACCA provided confidential information to WUTC Staff, and thus PSE counsel had not been entitled to receive such information at that time. PSE counsel filed its confidentiality agreements on

May 11th, after their failure to do so had been pointed out by me during the May 10th phone call, as well as after I had explained that WSHVACCA had not kept the confidential information in its possession. Attached as Exhibit I is a true and accurate copy of Ms. Carson's confidentiality agreement. Attached as Exhibit J is a true and accurate copy of Mr. Steele's confidentiality agreement.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 31st day of May, 2016, at Olympia, Washington.



James L. King, Jr.
120 State Ave NE #199
Olympia, WA 98501
Telephone: 360-480-0038
Email: jimkingjr@yahoo.com

*Representative for Washington State Heating,
Ventilation and Air Conditioning Contractors
Association*