

**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)

**RESPONSE OF SMACNA-WW TO
PSE'S MOTION TO COMPEL
WSHVACCA TO RESPOND TO PSE'S
DATA REQUESTS**

1. Though the pending motion to compel responses to data requests by PSE involves a dispute between PSE and WSHVACCA, SMACNA-WW urges the Commission to proceed with caution in ruling on PSE's motion.

2. PSE served on SMACNA-WW a series of data requests that are similar, if not identical, to many of the requests served on WSHVACCA. PSE did seek an extraordinary amount of information, and, in the view of SMACNA-WW, many of the requests were objectionable.

3. Though SMACNA-WW provided responses to many of PSE's requests, SMACNA-WW made a number of general objections as follows:

1. Intervenor Sheet Metal and Air Conditioning Contractors National Association, Western Washington (SMACNA-WW) objects to all instructions and requests to the extent they enlarge upon, supersede, or modify the rules of discovery set forth in WAC 480-07-400 – 425.
2. SMACNA-WW objects to any request to the extent it asks, or could be interpreted to ask, for information not in the possession, custody, or control of SMACNA-WW. Many of the data requests

request information or responses from SMACNA-WW's members directly. Those individual members are not parties to this proceeding, and PSE has no authority under applicable rules to obtain discovery from the members through the association's intervention in this matter. Moreover, SMACNA-WW has no authority to compel the production of such information from its members, and in some instances, may be prohibited from surveying pricing and other information based on federal antitrust laws pertaining to the activities of trade associations.

3. SMACNA-WW objects to any request asking for "analysis" or "analyses" to the extent the term "analysis" or "analyses" means anything more than is normally understood and present within relevant documents. In the definition of "analysis or analyses," PSE states that the terms include "inquiries undertaken by a person," including the term "inquiries" twice in the laundry list of terms. That posited definition would include simple questions like, "have you seen this?" within the term "analysis" or "analyses." Such requests would be overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. SMACNA-WW interprets the terms "analysis" and "analyses" in these data requests to mean the regular dictionary definition of a detailed examination of the elements or structure of something, typically as a basis for discussion or interpretation, and answers these requests accordingly.
4. SMACNA-WW objects to any request asking for communications between SMACNA-WW and its attorneys and attorney work product documents. PSE's definitions of "you" and "your" includes attorneys. By the terms of these broad definitions, PSE appears to be asking not only for attorney-client privileged information, but also seeking to impose a substantial burden on SMACNA-WW (and its attorneys) by requiring a privilege log for the most mundane of attorney-client emails. Referring back to the definition of "analysis" and "analyses," which includes "inquiries," PSE may be asking for any emails from SMACNA-WW's attorneys that ask a question. Such a request is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further, such requests would constitute an improper intrusion into attorney-client communications and confidential attorney work product. SMACNA-WW asserts that the way the above definitions are incorporated into the data requests necessarily would require answers that invade the attorney-client relationship and attorney

work product protections. SMACNA-WW hereby claims such privileges and protections and objects to these data requests on that basis. Based on the foregoing, SMACNA-WW interprets these requests as not to be seeking attorney-client privileged communication or attorney work product documents, and answers accordingly. Subject to claims of privilege and work product, SMACNA-WW will respond to appropriately narrowed data requests that seek non-privileged and non-protected documents reasonably calculated to lead to the discovery of admissible evidence and consistent with WAC 480-07-400 – 425, and that do not impose an undue burden, taking into account the relevance, needs of the case, limitations on the parties' resources, and the importance of the issues at stake.

5. SMACNA-WW objects to any data request to the extent it calls for the production of documents "relating to" or that "relat[e] to" certain matters on the grounds that it does not describe the requested documents to be produced with sufficient particularity to allow SMACNA-WW to provide a meaningful response.
6. To the extent that any data request may be construed as calling for documents or information subject to a claim of privilege, including, without limitation, the attorney-client or attorney work product privilege, SMACNA-WW hereby claims such privilege and objects to such data request on that basis.
7. SMACNA-WW objects to the data requests to the extent they seek to obtain a version of SMACNA-WW's proposed testimony before the filing date of such testimony. After that testimony is filed, PSE may submit appropriate data requests in response to that testimony.
8. SMACNA-WW objects to the data requests to the extent they seek documents that are already in the position of PSE, or are otherwise publicly available through the website of the Washington Utilities and Transportation Commission (WUTC) in this docket.
9. The answers and responses set forth below represent SMACNA-WW's present knowledge, information, and belief based on discovery, investigation, and hearing preparation to date. Discovery, investigation, and hearing preparation are continuing. SMACNA-WW expressly reserves the right to rely, at the hearing, upon any further information adduced upon completion of

discovery, investigation, and hearing preparation. Discovery in this matter is continuing and the SMACNA-WW reserves the right to change or supplement these answers and responses as new information is discovered.

10. To the extent that any data requests calls for the production of confidential information, production of such documents shall be subject to the terms and conditions of the Protective Order in this consolidated Docket, incorporated herein by this reference.
11. These General Objections are incorporated into each of the responses set forth below, which answers and responses are made without waiver of any of these General Objections.

We urge the Commission to consider at least several of these when ruling on PSE's motion regarding its data requests to WSHVACCA.

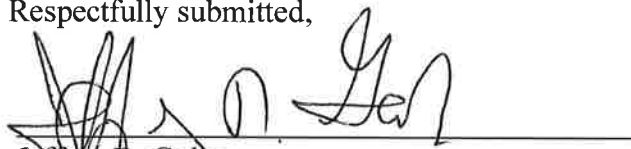
4. First, as stated in general objection 2 above, PSE seeks in many data requests information from members of the two contractor associations. Individual members of those associations are not parties to this proceeding, and the associations should not be required to survey their members at the request of PSE. The Commission is used to having associations as parties before it, and no one expects the associations to be conduits for discovery of their members. Certainly, a utility could not obtain discovery of individual members of the Industrial Customers of Northwest Utilities (ICNU) when that association has intervened as a party. Likewise, if the Edison Electric Institute (EEI) were to participate in a proceeding, either at the state or federal level, no one would expect to be able to get information from EEI's individual member utilities. However, SMACNA-WW would agree that if one of its members had provided the association with documents that are relevant and subject to discovery, then SMACNA-WW would provide those.

5. Second, as indicated in general objections 3, 4, and 5 above, the definitions used by PSE expand the scope of what is requested to cover documents that are clearly not relevant nor that could lead to relevant evidence. For example, to define “analysis” to include “inquiries” unduly, and perhaps unintentionally, expands the scope of requested documents. And to include communications between attorneys and their clients, as noted in objection 4 above, simply asks for documents that clearly are not discoverable.

6. This Response is not intended to anticipatorily respond to a hypothetical (and presumably unlikely) PSE motion to compel further responses to its data requests to SMACNA-WW. There is no discovery dispute between PSE and SMACNA-WW. *See* Exh. D to Decl. of David Steele (“PSE notes that SMACNA, who received a similar set of data requests from PSE, both responded to and provided documents in response to PSE’s requests”). SMACNA-WW responded appropriately to PSE’s requests, given the scope of intervention and the status of SMACNA-WW as an association. Rather, this Response is only intended to provide the Commission with a context for evaluating PSE’s motion regarding WSHVACCA.

Dated May 31, 2016.

Respectfully submitted,



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