0048

1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND )

TRANSPORTATION COMMISSION, )

5 )

Complainant, )

6 ) DOCKETS UE-151871 and

vs. ) UG-151872

7 )

PUGET SOUND ENERGY, )

8 )

Respondent. )

9 )

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HEARING, VOLUME II

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ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

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2:00 P.M.

15 JUNE 1, 2016

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Washington Utilities and Transportation Commission

17 1300 South Evergreen Park Drive Southwest

Olympia, Washington 98504-7250

18

19

20 REPORTED BY: SHERRILYN SMITH, CCR# 2097

21 Buell Realtime Reporting, LLC

1325 Fourth Avenue

22 Suite 1840

Seattle, Washington 98101

23 206.287.9066 | Seattle

360.534.9066 | Olympia

24 800.846.6989 | National

25 www.buellrealtime.com

0049

1 A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 GREGORY J. KOPTA

Washington Utilities and

4 Transportation Commission

1300 South Evergreen Park Drive SW

5 P.O. Box 47250

Olympia, Washington 98504

6 360.664.1136

7

8 FOR COMMISSION STAFF:

9 BRETT P. SHEARER

Attorney General's Office of Washington

10 PO Box 40128

Olympia, Washington 98504

11 360.664.1187

bshearer@utc.wa.gov

12

13 FOR PUGET SOUND ENERGY:

14 DAVID S. STEELE

Perkins Coie LLP

15 10885 Northeast Fourth Street

Suite 700

16 Bellevue, Washington 98004

425.635.1422

17 dsteele@perkinscoie.com

18

19 FOR SHEET METAL AND AIR CONDITIONING CONTRACTORS'

NATIONAL ASSOCIATION:

20

JEFFREY D. GOLTZ

21 Cascadia Law Group

606 Columbia Street Northwest

22 Suite 212

Olympia, Washington 98501

23 360.786.5057

jgoltz@cascadialaw.com

24

25

0050

1 A P P E A R A N C E S (Continued)

2

FOR WASHINGTON STATE HVAC CONTRACTORS ASSOCIATION:

3

JAMES L. KING, JR.

4 Public Affairs Consulting

120 State Avenue Northeast

5 Suite 199

Olympia, Washington 98501

6 360.480.0038

jimkingjr@yahoo.com

7

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1 OLYMPIA, WASHINGTON; JUNE 1, 2016

2 2:00 P.M.

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5 JUDGE KOPTA: Let's be on the record in

6 Dockets UE-151871 and UG-151872 captioned Washington

7 Utilities and Transportation Commission versus Puget

8 Sound Energy. I am Gregory J. Kopta, the

9 administrative law judge who is acting as the

10 presiding officer in this proceeding. We are here

11 today on the motion of Puget Sound Energy to compel

12 data request responses from the Washington State

13 Heating, Ventilation & Air Conditioning Contractors

14 Association.

15 So we begin by taking appearances. Let's just

16 go around the table, starting with Mr. Goltz.

17 MR. GOLTZ: My name is Jeffrey Goltz. I

18 am with Cascadia Law Group, and I am here representing

19 the Sheet Metal and Air Conditioning Contractors'

20 National Association, Western Washington.

21 MR. KING: I am James King. I am the

22 Government Affairs Director for the Washington State

23 HVAC Contractors Association.

24 MR. STEELE: David Steele with Perkins

25 Coie, here on behalf of Puget Sound Energy.

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1 MR. SHEARER: My name is Brett Shearer,

2 Assistant Attorney General. I am filling in for my

3 colleague, Mr. Christopher Casey, in today's

4 proceeding. I am representing Commission Staff.

5 JUDGE KOPTA: All right. Thank you.

6 I have reviewed the pleadings in this matter.

7 I propose to go through each of the data requests and

8 to provide you with at least my preliminary take on

9 whether or not to grant PSE's motion with respect to

10 that particular request.

11 I don't really see the need for a great deal

12 of additional argument. I think I understand the

13 positions. I don't really want to go into a he

14 said/she said of what was discussed, rather, I think

15 at this point it makes the most sense to simply talk

16 about what kind of information WSHVACCA, for lack of a

17 better way of saying their name, needs to provide to

18 PSE in response to their data requests.

19 We will start with Request No. 1. I will tell

20 you that I don't plan to enter a written order. I

21 will just tell you orally what I intend so take good

22 notes. There will also be a transcript available if

23 you need that. At this point I think it is sufficient

24 for me to just tell you.

25 As a general matter I will say that I think

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1 that the data requests should be limited, or the

2 responses should be limited to the Association itself.

3 I don't think that simply by intervening as an

4 Association that the individual members are subject to

5 discovery. I may not mention it with respect to each

6 of these data requests, most of which include the

7 Association or its individual members. I will not

8 require any responses from the individual members, but

9 instead information that's only within the possession

10 and control of the Association.

11 So with respect to the first data request

12 asking for documents relating to PSE's proposed

13 equipment lease program, I believe that's within the

14 scope of this docket and within the scope the

15 Association's intervention and require that the

16 Association provide whatever documents or analysis

17 that it has in its possession to PSE.

18 With respect to the second, documents or

19 analyses relating to efforts to provide energy

20 efficient water heating and HVAC equipment options to

21 customers in Western Washington. Again, the same

22 ruling. That information is within the scope of this

23 proceeding. To the extent that the Association has

24 responsive information, they need to provide that to

25 PSE.

0054

1 The third data request. This is relating to

2 the market for water heating and HVAC equipment and

3 services in Washington. The same ruling. That is

4 within the scope of this docket, and to the extent

5 that the Association has responsive information, that

6 needs to be provided to PSE.

7 Request No. 4. This has to do with documents

8 or analyses relating to the market for water heating

9 or HVAC equipment and services. The same ruling.

10 That's information within the scope, and to the extent

11 that the Association has responsive information, they

12 need to provide it.

13 Request No. 5, documents and analyses relating

14 to efforts to provide financing options to customers

15 for water heating and HVAC equipment since January 1,

16 2013. With respect to each subpart, the total number

17 and percentage of the Association's individual

18 members' customers who finance their water heating and

19 HVAC equipment, and any demographic information about

20 such customers. This is within the scope.

21 I am concerned that it is a bit broad or could

22 be interpreted that way. I would not -- I will not

23 require that there be a breakdown by individual

24 members, but instead collectively, to the extent that

25 the Association has that information, of the number

0055

1 and I guess the percentage of the membership that

2 provides financing for this type of equipment.

3 I am concerned about getting into demographic

4 information about customers, but I think something

5 that is more general, such as only industrial

6 customers or only large industrial customers,

7 something like that. But anything more specific I

8 think is getting a little bit too far afield.

9 Does that make sense, Mr. King? Do you

10 understand?

11 MR. KING: If it makes your job easier,

12 the Association has no such information. We would

13 have to gather that from the members.

14 JUDGE KOPTA: And I am not saying that

15 you have to do that.

16 MR. KING: We are comfortable with it.

17 Our answer is going to have to be we have no such

18 information in our position.

19 JUDGE KOPTA: And if that's the answer,

20 that's the answer.

21 MR. KING: Yeah.

22 JUDGE KOPTA: A breakdown of the types

23 of financing options available and selected by

24 customers. I think certainly to the extent that the

25 Association has information on the types of financing

0056

1 options that are available, then that's something that

2 they would need to provide.

3 Contracts between members of the Association

4 and third-party financing source. I think that's too

5 far afield and I won't require that that be provided.

6 Documents referring to financing option

7 financed, funded, promoted by the Association,

8 including any marketing or promotional materials.

9 Again that seems to be sort of the same sort of thing.

10 To the extent that you have information about

11 financing options that your members provide for this

12 type of equipment, then that's something that you

13 would need to provide.

14 A listing of all members who offer financing

15 options and the type of financing. I think that level

16 of granularity is more than is called for, so instead

17 it would be collective type of information as opposed

18 to each member's financing.

19 No. 6. This includes terms of financing

20 options, including copies of agreements. I think

21 certainly terms of any financing options is

22 legitimate. I don't want to get into customer

23 contracts. I don't think that that's something that

24 needs to be disclosed. So again, if there are

25 financing terms that the Association has information

0057

1 about, then that needs to be provided, but I won't

2 require that you provide actual agreements with

3 customers.

4 Then No. 7 seems to be a bit duplicative.

5 Documents relating to financing options available for

6 water heating and HVAC equipment in

7 Western Washington. Yes. I think I have already said

8 that that needs to be provided, to the extent the

9 Association has them.

10 No. 8, all documents relating to the

11 Association's efforts to provide leasing or rental

12 options for water heating and HVAC equipment since

13 January 1, 2013. That's within the scope. To the

14 extent the Association has such information, they need

15 to provide it.

16 No. 9, documents and analysis, the terms of

17 leasing or rental programs, how many customers lease

18 or rent, the percentage of customers, and demographic

19 information. I think this is, as I have said before,

20 with the exception of the demographic information,

21 which again I would limit to something very high

22 level, the other information just seems to be a more

23 granular version of No. 8. To the extent that the

24 Association has that information, they need to provide

25 it to PSE.

0058

1 No. 10 seems like it is almost identical to

2 No. 8, but it says documents "relating to the leasing

3 or rental of water heating and HVAC equipment in

4 western Washington." Yes. To the extent that that

5 information -- that the Association has that

6 information, they need to provide that to PSE.

7 No. 11, total number of water heating and HVAC

8 equipment sales and installations performed and a

9 breakdown of such sales by county. To the extent that

10 the Association has that information collectively,

11 then I think that is something that is germane. I

12 think sales volumes need to be provided. I am not

13 exactly sure a county-by-county option is necessary.

14 Do you even have this information? Do we need

15 to go into it?

16 MR. KING: No.

17 JUDGE KOPTA: All right. Then I won't

18 worry about it.

19 And No. 12, provide the total number of water

20 heating and HVAC equipment maintained, serviced or

21 repaired, and a breakdown by county since January 1,

22 2013. The same ruling. To the extent that you have a

23 collective number of those types of arrangements, then

24 that's information that needs to be provided.

25 No. 13, all documents or analyses supporting

0059

1 various propositions in the Association's petition to

2 intervene. That's something that you put on the

3 table, so I would say that to the extent that you have

4 that information, that needs to be provided to PSE.

5 No. 14, documents or analyses sufficient to

6 show the average rates or the prices for services,

7 including the sale or lease, installation,

8 maintenance, and servicing. To the extent that you

9 have that information collectively, then again I think

10 that that is something that is within the scope of

11 this proceeding. That is information that you need to

12 be providing to PSE.

13 No. 15, a list of Association members and

14 various other information about them. I am not sure

15 that that level of granularity is necessary. A list

16 of members I think is a legitimate request. To the

17 extent that you have a list of members that you can

18 provide to PSE, then you need to do that.

19 No. 16, all documents and analyses relating to

20 the relative age of water heating and HVAC equipment

21 currently in use in Western Washington, including the

22 number and percentage of such equipment that is 15

23 years old or more. That is within the scope and is

24 something that, to the extent that the Association has

25 responsive information, that they need to provide to

0060

1 PSE.

2 No. 17, documents or analyses relating to the

3 Association's efforts to replace water heating and

4 HVAC equipment in Washington that is 15 years old or

5 more since January 1, 2013. The same ruling. To the

6 extent that the Association has that information, they

7 need to provide that to PSE.

8 For all sales of water heating and HVAC

9 equipment in Western Washington -- this is No. 18 --

10 list the total number, percentage, and breakdown by

11 equipment type, of equipment sales that are equipped

12 with Demand Response technology. Again, from a

13 collective basis, if the Association has that kind of

14 information, they need to provide it to PSE.

15 No. 19, documents or analyses relating to the

16 Association's efforts and capability to provide Demand

17 Response services to customers since January 1, 2013.

18 The same ruling. To the extent that the Association

19 has that information, they need to provide it to PSE.

20 No. 20, provide all documents or analyses

21 relating to the regional maturity of Demand Response

22 services and related issues. Once again, to the

23 extent that the Association has that information on a

24 collective basis, they need to provide it to PSE.

25 No. 21, all documents or analyses relating to

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1 any existing comprehensive lease options in

2 Western Washington for water heating and HVAC

3 equipment. That's very similar to a prior request and

4 the ruling is the same. To the extent that the

5 Association has that kind of information on a

6 collective basis, they need to provide that to PSE.

7 And No. 22, copies of all postings made on the

8 Association website or electronic communications

9 network, all communications between the Association

10 and its individual members relating to PSE's equipment

11 lease program. That I find is vastly overbroad. I

12 think PSE is just as capable as the Association of

13 looking on the Association's website, and I don't see

14 that communications between the Association and its

15 members in any way will really lead to anything that's

16 going to be germane, so I will deny the motion as to

17 that request.

18 And that takes us to the end. Anyone have any

19 questions or concerns about the rulings that I have

20 made?

21 MR. KING: Just clarification. Can we

22 rely on the plain meaning of the words within the

23 actual data request? Because in their preambles they

24 very broadly define documents, analysis, things that

25 we have in our possession, versus, well, we have an

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1 analysis because it's in somebody's head? Their

2 definitions cover what's in our heads, not actual

3 documents in printed or electronic format.

4 JUDGE KOPTA: I understand that. If you

5 have it written down somewhere or in a voicemail

6 somewhere, somewhere that is in a tangible format,

7 then you need to provide it.

8 MR. KING: Right.

9 JUDGE KOPTA: If it just happens to be

10 lodging in your head because you were in the shower

11 and happened to be thinking about it...

12 MR. KING: Well, because we have had

13 discussions, but we don't have minutes or anything

14 that --

15 JUDGE KOPTA: Well, if you don't have

16 minutes, you don't have some documentation, then no.

17 I would cut it off at having something actually

18 tangible.

19 I will say if you later provide testimony that

20 says we had this discussion in our board meeting and

21 this is what we decided, and you didn't provide that

22 to PSE, then they will have a basis for asking to

23 strike that.

24 MR. KING: I understand. You know, most

25 of the knowledge we carry around is from decades of

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1 experience and expertise of our individual members.

2 JUDGE KOPTA: Well, again --

3 MR. KING: We don't have -- I appreciate

4 your ruling. We don't have stacks of studies on sales

5 gathering.

6 JUDGE KOPTA: It's perfectly reasonable

7 for PSE to ask for whatever you have on these things.

8 If you don't have them, fine. Just keep in mind that

9 if you come in and give testimony based on --

10 MR. KING: Something that --

11 JUDGE KOPTA: -- individual members' --

12 MR. KING: Yeah.

13 JUDGE KOPTA: Let's not talk over each

14 other.

15 MR. KING: Oh, sorry.

16 JUDGE KOPTA: -- individual members'

17 experience or terms or conditions or what they offer,

18 then all bets are off. Certainly, PSE would be able

19 to then come in and say, hey, wait a minute, we asked

20 you for that information, you didn't provide it,

21 therefore, we have a basis for striking your

22 testimony.

23 They are trying to get at what you know about

24 the market and the types of services that they are --

25 well, offer through their tariff. They are entitled

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1 to that information. If you don't provide it now and

2 you want to provide it later, that's too late. I'm

3 just giving you fair warning now.

4 MR. KING: Understood. We always have

5 understood.

6 JUDGE KOPTA: Okay.

7 MR. KING: I also understand they are

8 looking for impeachment evidence.

9 JUDGE KOPTA: Everybody is entitled to

10 get whatever information they can about the subject

11 matter of this proceeding. That's what discovery is

12 all about.

13 MR. STEELE: Your Honor, for Request 6

14 you mentioned customer contracts. Would that include

15 unexecuted ones, just a copy of the terms of the

16 agreement, but not signed with an actual customer? I

17 just mean kind of a blank, you know, before signed,

18 that kind of thing.

19 JUDGE KOPTA: If they had a form

20 contract, then yes, that is something that I would

21 expect them to provide to you. I am just concerned

22 about getting into customer data.

23 MR. STEELE: And what kind of timing

24 would you like the Association to respond?

25 JUDGE KOPTA: Well, that's the next

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1 question. Mr. King, do you have a sense of when you

2 will be able to provide that to PSE, the information

3 that I have required?

4 MR. KING: As quickly as possible. To

5 be more specific, we are under a deadline for response

6 testimony next Tuesday.

7 JUDGE KOPTA: Right.

8 MR. KING: To be frank, next Wednesday I

9 am with my retinal specialist all day. Basically, to

10 be honest, it will be a week from Thursday I can get

11 started. If I could have until the following Monday,

12 so I can work through the weekend, if necessary --

13 although I think I can get done by that Friday.

14 JUDGE KOPTA: So this would be either

15 the 10th or the 13th of June?

16 MR. KING: Yeah.

17 JUDGE KOPTA: That acceptable,

18 Mr. Steele?

19 MR. STEELE: Yes.

20 Which day?

21 JUDGE KOPTA: Well, let's say the 13th.

22 MR. KING: If I need the weekend.

23 JUDGE KOPTA: Just to be safe.

24 MR. STEELE: That's fine.

25 JUDGE KOPTA: All right. That's when

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1 you need to provide the responses, either responsive

2 information or "we don't have it," by June 13th.

3 All right. Anything further?

4 MR. KING: There is one other issue that

5 PSE raised. I would just like to clarify. They were

6 concerned about confidential -- documents that were

7 confidential and they were not entitled to at the

8 time, and for antitrust reasons we did not keep

9 records of. I assume they can get that from one of

10 the other parties. I mean it's legit. I do not have

11 that record, we did not keep it. We do not want to be

12 accused of violating antitrust law. It is the kind of

13 information we do not normally compile.

14 JUDGE KOPTA: Is this your information

15 that was designated as --

16 MR. KING: This was members'

17 information. They were asked to provide information

18 to help educate. Staff was wanting to know about

19 finance options out there. And we reluctantly --

20 because -- saying, you know, we need this responded to

21 as a data request response. We said, We will ask our

22 members, who is willing to provide information about

23 what kind of financing they offer. We will take their

24 emails, cut it and paste it into a response, send it

25 to you, but we are not going to keep the record.

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1 Quite frankly, we feel like we are in a bit of a grey

2 area on antitrust even doing that.

3 At the time we made the response, PSE had not

4 filed confidentiality agreements, so they received

5 redacted information. They have since filed

6 confidentiality agreements.

7 I don't have it. I honestly do not have it.

8 I do not have a record of that. I assume the other

9 parties do. They don't have antitrust concerns like I

10 do about my members.

11 MR. SHEARER: Your Honor, in speaking

12 with Staff, they have provided that information to PSE

13 through Staff's discovery. That might make it a

14 little easier for everybody here.

15 MR. STEELE: We have received it, but I

16 didn't know it was that.

17 MR. KING: There was information you

18 were given last fall provided through discovery. This

19 was a more recent compilation we provided to staff

20 under the discovery. We gave you stuff informally

21 last fall before the public meeting.

22 JUDGE KOPTA: Let me cut this short by

23 saying what I have before me are these 20-some-odd

24 data requests. Not one of them has provided me with

25 the information that you provided to somebody else.

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1 If they asked that question, I don't know whether they

2 have, but if they do, then I would expect you to

3 provide them with the same thing that you provided to

4 Staff.

5 MR. KING: I don't have it, but other

6 parties do.

7 JUDGE KOPTA: Well --

8 MR. KING: And we have all cross-filed

9 that we will provide anything we receive. I am just

10 asking on a practical level can that -- can they get

11 it from another party? Does that resolve the issue?

12 JUDGE KOPTA: Well, we will see, if it's

13 not satisfactory to PSE, if they want to come back and

14 argue that.

15 MR. KING: Okay.

16 JUDGE KOPTA: If you gave this response

17 to Staff and Staff provided it to PSE then PSE has it.

18 If they are satisfied with that, I am satisfied with

19 that. If there is some other issue, then we can deal

20 with that when it arises. I don't want to anticipate

21 disputes. I think it's enough to deal with the ones

22 that come before me.

23 MR. STEELE: I just know that all we

24 have received is the redacted version of it. I don't

25 know if we approach -- I am not sure if we approach

0069

1 Staff. It feels awkward, so that's what I'm

2 wondering.

3 JUDGE KOPTA: Ordinarily you should be

4 able to ask other parties for whatever responses that

5 they give in response to data requests that they

6 receive from anybody else. That's a standard request.

7 It's a little unusual that the Association would no

8 longer have the response that they have.

9 I hope, I will not order, Staff would, under

10 those circumstances, provide you with what the

11 Association provided them, because that seems like a

12 practical solution to an unusual problem.

13 MR. STEELE: Great.

14 JUDGE KOPTA: Let's hope that you all

15 are cooperative and are able to work that out among

16 yourselves. If not, then I am here and will take it

17 up at another time.

18 MR. STEELE: Thank you.

19 JUDGE KOPTA: All right. Anything

20 further?

21 We are adjourned. Thank you.

22 (Hearing adjourned 2:27 p.m.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript is

9 true and accurate to the best of my knowledge, skill

10 and ability.

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17 SHERRILYN SMITH

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