

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)
Complainant,)
vs.) DOCKETS UE-151871 and UG-151872
PUGET SOUND ENERGY,)
Respondent.)

HEARING, VOLUME II
Pages 48 - 70
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

2:00 P.M.
JUNE 1, 2016

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OLYMPIA, WASHINGTON; JUNE 1, 2016
2:00 P.M.
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JUDGE KOPTA: Let's be on the record in Dockets UE-151871 and UG-151872 captioned Washington Utilities and Transportation Commission versus Puget Sound Energy. I am Gregory J. Kopta, the administrative law judge who is acting as the presiding officer in this proceeding. We are here today on the motion of Puget Sound Energy to compel data request responses from the Washington State Heating, Ventilation & Air Conditioning Contractors Association.

So we begin by taking appearances. Let's just go around the table, starting with Mr. Goltz.

MR. GOLTZ: My name is Jeffrey Goltz. I am with Cascadia Law Group, and I am here representing the Sheet Metal and Air Conditioning Contractors' National Association, Western Washington.

MR. KING: I am James King. I am the Government Affairs Director for the Washington State HVAC Contractors Association.

MR. STEELE: David Steele with Perkins 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.

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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

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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

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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

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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.

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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

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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

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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

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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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C E R T I F I C A T E

STATE OF WASHINGTON
 COUNTY OF KING

I, Sherrilyn Smith, a Certified
 Shorthand Reporter in and for the State of Washington,
 do hereby certify that the foregoing transcript is
 true and accurate to the best of my knowledge, skill
 and ability.

 SHERRILYN SMITH