

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application  
of

PUGET HOLDINGS LLC

and

PUGET SOUND ENERGY, INC.

For an Order Authorizing Proposed  
Transaction.

DOCKET U-072375

RESPONSE BY COMMISSION  
STAFF TO PUBLIC COUNSEL'S  
MOTION TO REOPEN THE  
RECORD

**I. SUMMARY**

1 The record in this docket closed on September 10, 2008, when Public Counsel filed Exhibit No. 400. On September 16, 2008, Public Counsel moved the Commission for an order reopening the record to include certain additional news articles into evidence.

2 As relevant here, under WAC 480-07-830,<sup>1</sup> the Commission has discretion to reopen the record when the new information is “essential to a decision” and it “was unavailable and not reasonably discoverable with due diligence at the time of the hearing.” That rule also provides that “[t]he commission will give all parties an opportunity to respond to any evidence received after the record is closed.”

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<sup>1</sup> WAC 480-07-830 provides:

Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order. The commission may reopen the record in a proceeding on its own motion. In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings, the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. The commission will give all parties an opportunity to respond to any evidence received after the record is closed. The commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

3           The specific information now offered by Public Counsel appears to have been  
“unavailable ... at the time of hearing.” However, Public Counsel has not established that  
this evidence is “essential” to the Commission’s decision.<sup>2</sup> Nonetheless, no significant  
harm is created by including this information, so Staff will not oppose the motion.

## II. ANALYSIS

4           Commission hearings cannot last indefinitely. The Commission provided each party  
to this docket a fair opportunity to litigate the issues. In particular, the Commission  
provided Public Counsel every procedural courtesy in its challenge to the Settlement  
Stipulation. The record finally closed when Public Counsel filed Exhibit No. 400, on  
September 10, 2008. It is entirely fitting that under WAC 480-07-830, the Commission  
discourages requests to reopen a docket to take more evidence unless that evidence is  
“essential” to the Commission’s decision.

5           Public Counsel rightly concedes that no new issue is raised by the new information it  
is now offering. *Motion at 2, second new ¶*.<sup>3</sup> Indeed, the new information is cumulative of  
other, similar information already admitted into the record.<sup>4</sup> Perhaps that explains why  
Public Counsel makes no attempt to show that the record is deficient in any material respect.

6           Instead, Public Counsel makes only the most general of assertions to support its  
claim that this new information is “essential:” “The health and stability of financial markets  
[which] impacts the level of risk which this transaction poses for Puget and its customers,  
and, accordingly, affects whether or not the transaction should be approved as proposed.”  
*Motion at 2, first new ¶*. In fact, the record is sufficient on this issue.

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<sup>2</sup> Note that WAC 480-07-830 also states that the Commission may reopen a hearing for additional evidence  
“for any other good and sufficient cause.” However, Public Counsel’s motion relies only on the “essential”  
standard contained in that rule.

7 For example, if Public Counsel's new information is relevant to PSE's risk under the *status quo* to raise equity capital in current financial markets, the record contains ample evidence on that subject.<sup>5</sup> In any event, Public Counsel's new information firmly supports the proposed transaction, which provides for PSE's equity capital needs, thus protecting PSE from that risk.

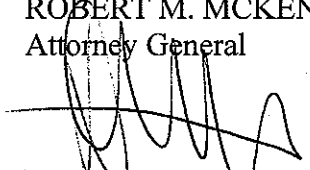
8 Or, if this new information is relevant to the risks at the new ownership level under the proposed transaction, the record contains ample evidence regarding how the ring fencing provisions in the Settlement Stipulation protect against such risk.<sup>6</sup>

9 In other words, because the record is sufficient, Public Counsel's new information does not merit reopening the record because it is not "essential" for the Commission to make a decision. By the same token, Staff sees no substantial harm to the process if the motion is granted. Consequently, Staff will not oppose the motion.

DATED this 19th day of September, 2008.

Respectfully submitted,

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Attorney General



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<sup>3</sup> Public Counsel's motion does not contain numbered paragraphs.

<sup>4</sup> *E.g.*, Exh. Nos. 195 - 200 and 235-238.

<sup>5</sup> *E.g.*, Markell, Exh. Nos. 75CT at 3:2 -15:10 and exhibits cited therein; Reynolds, Exh. No. 133T at 10 - 15; and Pettit, Exh. No. 111CT at 10:11 - 19:13.

<sup>6</sup> *E.g.*, Exh. Nos. 301, 302T, 304CT, 305C, 306 and 307.