

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 NO. U-072375

PUBLIC COUNSEL RESPONSE TO
STAFF AND JOINT APPLICANT
MOTIONS TO STRIKE PORTIONS
OF PUBLIC COUNSEL REPLY
BRIEF

I. INTRODUCTION

1. Public Counsel files this response to Motions to Strike filed by Staff and Joint Applicants on October 28, 2008. The motions generally request that items for which Public Counsel requested official notice be stricken from Public Counsel's Reply Brief. Public Counsel respectfully requests that the Motions be denied.

II. MEMORANDUM

2. The Motions to Strike are not well taken to the extent they imply that Public Counsel seeks to place new evidence in the record without providing an opportunity for response. In its Reply Brief, Public Counsel specifically noted it would be citing new information and would formally request official notice so that the Commission could exercise its discretion under the rule and other parties would be aware of the new material.¹ Public Counsel understands by making the request that, if the request is granted, parties will have an opportunity to contest any facts and material noticed. WAC 480-07-495(2)(c). Public Counsel fully supports allowing a

¹ Public Counsel Reply Brief, ¶ 20.
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response by Joint Applicants, Staff, and any other party, whether pursuant to the rule, or if treated as a motion to reopen.

3. Joint Applicants particularly respond to the request regarding the SEC filing. Public Counsel has no objection to Joint Applicants providing explanation and clarification with respect to this event if official notice is to be taken. Public Counsel's Reply Brief acknowledged uncertainty about how to interpret the transaction.² Public Counsel would observe that even if the transaction reported does relate to the \$300 million equity purchase, that stock sale is an integral part of this proposed transaction. All the equity investors are involved in this transaction. One of the Macquarie subsidiaries that was originally part of the sale appears now not to be involved and has been replaced, at least with respect to the ownership interest of the \$300 million in equity. This is information that the Commission did not have before. The official notice process is a reasonable mechanism for the Commission to be made aware of the stock sale and to learn whether the stock sale has a bearing on this transaction.
4. Staff argues that Public Counsel's request does not involve the type of information appropriate for official notice. Staff reads the rule too narrowly, however. WAC 480-07-495(2)(a) allows official notice of "any judicially cognizable fact" and the examples from the rule listed by Staff are non-exclusive. The items requested by Public Counsel (Moody's reports, stock values, government statements regarding the economy, press comments) are of the same character as evidence already in the record, either from the hearing, or from the motion to reopen, and essentially update that evidence.
5. Staff notes correctly that Public Counsel made no specific request for official notice of the *Public Utility Fortnightly* article quoted in ¶ 32 of its Reply Brief. Although this was an

oversight, the matter could be appropriately stricken on that basis. However, the article is new material of the type previewed in ¶ 20 of the Public Counsel Reply Brief. The Commission could take official notice of this article on its own motion if it wishes to.

III. CONCLUSION

6. As Public Counsel acknowledged in its Reply Brief, these requests for official notice have arisen due to the unusual fluidity of the economic situation.³ Citing late-breaking news in a brief is not ordinary procedure, for good reason. This is not an ordinary situation, however, and the rules provide the Commission the discretion and flexibility to address it.
7. Joint Applicants and Staff unreasonably ask the Commission to disregard developments that have occurred since the filing of the initial briefs, as they initially sought to do with events between the hearing and the initial briefs. Their position has been that the record should remain as it was at the end of August. Public Counsel does not agree that the Commission should operate in such a vacuum.
8. DATED this 31st day of October, 2008.

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Public Counsel

² Public Counsel Reply Brief, ¶ 29.

³ Public Counsel Reply Brief, ¶ 20.
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