

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of)	DOCKET U-072375
)	
PUGET HOLDINGS LLC AND)	
PUGET SOUND ENERGY, INC.,)	ORDER 06
)	
For an Order Authorizing Proposed)	
Transaction)	GRANTING MOTIONS TO STRIKE
)	
)	
.....)	

MEMORANDUM

1 On October 24, 2008, the Public Counsel Section of the Washington State Attorney General’s Office (Public Counsel) filed a Reply Brief in this proceeding. Public Counsel cited six items that are not part of the record and sought to introduce five of them under the Commission’s rule for taking official notice, WAC 480-07-495. Public Counsel relied on this material in support of its arguments in paragraphs 21-23, 25, 29 and 32 of its Reply Brief.

2 These six new items are:

1. An excerpt from Federal Reserve Chairman Bernanke’s testimony before Congress on October 20, 2008 (Public Counsel Reply Brief at 11, ¶ 22, including footnote 40);
2. A stock price quote for Macquarie Group Ltd as of October 23, 2008 (Public Counsel Reply Brief at 12, ¶ 25, including footnote 46);
3. A stock price quote for Macquarie Infrastructure Corporation as of October 22, 2008 (Public Counsel Reply Brief at 12, ¶ 25, including footnote 47);

4. A reference to a Moody's rating action dated October 16, 2008 (Public Counsel Reply Brief at 13, ¶ 26, including footnote 48);
5. A PSE SEC filing dated October 2, 2008 (Public Counsel Reply Brief at 14, ¶ 29, including footnote 51); and
6. An excerpt from an editorial in the October 2008 edition of Public Utilities Fortnightly (Public Counsel Reply Brief at 15, ¶ 32, including footnote 56).

3 For Items 1 – 5 above, Public Counsel provides a quote and a corresponding web site source, and asks the Commission to take official notice of the material, under the Commission's rule on official notice, WAC 480-07-495. Public Counsel does not request official notice for the editorial excerpt, Item 6 above.

4 On October 28, 2008, Commission Staff filed its Motion To Strike, asking that the Commission deny Public Counsel's request for official notice and strike Paragraphs 21-23, 25, 29 and 32 of Public Counsel's Reply Brief. Staff suggested in the alternative that the Commission could treat Public Counsel's requests for official notice as another motion to reopen the record. Staff stated that: "In any event, should the Commission decide either to take official notice or reopen the record, the Commission needs to provide the other parties an opportunity to respond."

5 Later on the same day, Puget Holdings LLC, and Puget Sound Energy, Inc. (Joint Applicants) filed their Motion To Strike, adopting Staff's motion and presenting argument. Joint Applicants also urge that if this material is allowed, then they should be given an opportunity to respond.

6 Public Counsel filed his response opposing the motions to strike on October 31, 2008.

7 The Commission already has reopened the record once at Public Counsel's request to allow him to introduce materials similar for the most part to what he seeks to introduce here. The material he introduced then was of marginal relevance and cumulative to evidence already in the record which illustrates that financial markets in

the U.S. and worldwide currently are volatile. Public Counsel proposes to again update the record by presenting a collection of information concerning recent developments in the financial markets—what he describes as “late-breaking news.”

8 There is a point at which due process requires that the record be closed so that the parties are not having to respond repeatedly to “new” evidence and so that the Commission can do its job. Having allowed the record to be supplemented once with similar information, there should be some compelling reason if we are to allow it again. There is nothing compelling about what Public Counsel seeks to introduce here.¹ Market conditions are different now than when our record closed the first time and if we were to reopen it today they may be different the day or the week after that. The basic point, that we live in uncertain times, is well established in the existing record and adding more of the same to the record adds very little indeed. Contrary to Public Counsel’s suggestion, the Commission is not “operating in a vacuum” in this regard, but is fully aware of current events.

9 One document Public Counsel seeks to include is not of the type discussed above, but is specific to an investment in Puget Energy already held by a member of the Investor Consortium. The fact that members of the Investor Consortium may transfer their existing shares of Puget Energy common stock among their affiliates does not warrant reopening the record. This is irrelevant to the issues in this case, which concern Puget Holdings’ proposed acquisition of all of Puget Energy’s outstanding shares of common stock.

10 Staff’s and Joint Applicants’ motions to strike should be granted.

ORDER

11 The Commission grants Staff’s and Joints Applicants’ respective motions to strike. The Commission will neither take notice of, nor otherwise receive, the new evidence that Public Counsel seeks to introduce. The Commission strikes from the record

¹ We note that the manner in which Public Counsel presented this material in his Reply Brief is poor practice that should be discouraged. It is more appropriate to file a separate motion specifically requesting permission to supplement the record.

passages in Public Counsel's Reply Brief that depend on this proposed, but rejected, evidence (*i.e.*, paragraphs 21-23, 25, 29 and 32).

Dated at Olympia, Washington, and effective November 5, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge