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May 15, 2002

Honorable David Burgers,
Federal Energy Regulatory Commission
Dockets Room, Room 1A, East
888 First Street, N.E.
Washington, D.C. 20426

Via Electronic Mail

Re: Puget Sound Energy Inc. v. All Jurisdictional Sellers; Docket No. EL01-10 et al.

Dear Secretary Boergers:

Transmitted for filing with the Commission is the Answer of the California Parties in Support of Motion to Reopen the Evidentiary Record in the above-captioned matter. The document refers to two attachments which, in PDF format, would cause the document to exceed the Commission's 5 mb limit. Accordingly, the attachments have been omitted from this electronic filing. Please acknowledge receipt and acceptance of this filing via electronic medium.

We are also providing the Commission, by overnight mail, with an original and 14 copies of the pleading, which contains the attachments.

Please direct any questions you may have regarding this matter to me.

Very truly yours,

Kevin J. McKeon

Kevin J. McKeon

KJM:tlj

cc: Official Service List

IN THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Puget Sound Energy, Inc.,)	
Complainant,)	
)	
)	Docket Nos. EL01-10-000 and EL01-10-001
All Jurisdictional Sellers of Energy and/or)	
Capacity at Wholesale Into Electric Energy)	
and/or Capacity Markets in the Pacific)	
Northwest, Including Parties to the Western)	
Systems Power Pool Agreement,)	
Respondents.)	

**ANSWER OF THE CALIFORNIA PARTIES IN SUPPORT
OF MOTION TO REOPEN THE EVIDENTIARY RECORD**

Pursuant to Rules 213 and 716 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.213, 385.716, the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, and the California Electricity Oversight Board (the "California Parties") file this Answer in support of the Motion of the City of Tacoma, Washington ("Tacoma") to reopen the evidentiary record in this proceeding (the "*Puget Docket*") to permit the opportunity to develop an evidentiary record that takes into consideration recent disclosures (including new documents attached to this Answer) with regard to the need for refunds contemplated by the Commission in the *Puget Docket*.

I. TACOMA'S REASONS FOR REOPENING ARE COMPELLING

The purpose of this proceeding is to develop a factual record on "whether there may have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest for the period beginning December 25, 2000 through June 20, 2001" in order to help the Commission to determine "the extent to which the dysfunctions in the California markets may have affected

decisions in the Pacific Northwest.”¹ After assembling an evidentiary record on a highly expedited basis, the Commission has taken no action on this case since receiving comments to the presiding officer’s recommendations and proposed findings on October 31, 2001. Developments that have occurred since that time, including the May 6, 2002 disclosure of internal Enron memos by the Commission’s Office of Markets, Tariffs and Rates, provide the factual, legal and public interest grounds required by Rule 716 to reopen the evidentiary record in this case, as set forth by Tacoma in its Motion.

Tacoma’s reasons for reopening the record are compelling. The Enron memos reveal that Enron withheld relevant, material evidence of purposeful (and apparently successful) efforts to exercise market power and manipulate the electricity market in California and throughout the WSCC region, including the Pacific Northwest. Moreover, statements contained in the Enron memos about other market participants imply that Enron’s behavior was typical of the behavior of other sellers, and that the disclosures to date are merely the “tip of the iceberg.” The memos demonstrate clear connections between activity in the California markets and power prices in the Pacific Northwest, and indicate that the precise issue before the Commission in this case -- “the extent to which the dysfunctions in the California markets may have affected decisions in the Pacific Northwest”² -- cannot be decided without reference to Enron’s (and perhaps many other marketers’) market manipulation strategies. Accordingly, the California Parties support the relief requested by Tacoma -- the reopening of the evidentiary record in this case.

¹ *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange* (Respondents), Docket Nos. EL00-95-004, EL00-95-005, EL00-95-019 and EL00-95-031, *et al.*, 96 FERC ¶ 61,120 at 61,520 (2001) (the “July 25 Order”).

² *Id.*

II. NEW ENRON DOCUMENTS PROVIDE ADDITIONAL REASONS FOR REOPENING THE RECORD

The Enron memos disclosed by the Commission on May 6, 2002 recount market manipulation strategies employed by Enron (and perhaps other sellers) as of December 2000. Additional documents obtained by the California Attorney General from Enron through an investigatory subpoena, attached hereto as Appendices “A” and “B,” provide further insight into the details, scope and timing of market manipulation by sellers in California and the Pacific Northwest.³ The Attachment “A” documents were created by Enron in response to the California Public Utilities Commission’s (“CPUC”) September 2000 subpoena to Enron Power Marketing Inc. relating to its investigation into skyrocketing wholesale power prices in California beginning in June 2000. The Attachment “B” documents involve Enron’s market manipulation activities throughout calendar year 2000. Together, the two attachments reveal the following facts pertinent to the investigation in this docket into unjust and unreasonable prices in the Pacific Northwest:

- The California and Pacific Northwest electricity markets are inextricably intertwined, as evidenced by the fact that numerous market manipulation strategies involved Pacific Northwest generators and sellers and the import and export of power between the Pacific Northwest and California. (Attachment A at 2, 3, 10, 11, 14, 17, 31); Attachment B at 21-39 [numerous references to Pacific Northwest market hubs].
- Although the refund period in the *Puget* Docket commences December 25, 2000, Enron and possibly other marketers were actively manipulating both the California and the Pacific Northwest markets at a far earlier time -- as early as January 2000, and possibly before. (Attachment B at 59, 112 [“Fat Boy” strategy

³ These documents were provided to the Commission by the California Attorney General’s office on May 15, 2002, and also were provided to the United States Senate Energy & Natural Resources Committee, which is investigating issues related to market manipulation in western electricity markets. Enron has waived any confidentiality claims associated with these documents.

employed as early as January 2002], 60-101[Enron's own designation of particular transactions representing "Death Star," "Wheels Cut," "Load Shift" and "Exports" during the period July-August 2000]; Attachment A at 13 [description of Enron's strategies, including "Death Star," "Get Shorty," "Ricochet" and others detailed in the Enron memos released May 6, 2002], 31 [reference to data to be produced for the year 2000], 44-47 [draft letter to CPUC providing transaction data for the year 2000]).

- Numerous sellers active in the Pacific Northwest are noted by Enron as having engaged in similar strategies, including Powerex, Williams, Portland General, Coral, and BPA. (Attachment A at 2 [Powerex gamed target price], 8 [Powerex and Williams were "hogs at trough"], 11 [notes that show involvement of Portland General removed from data produced by Enron to CPUC], 14 [Coral and Powerex engaged in "Death Star strategy" also], 25 [Duke, Southern, Reliant, Dynegy engage in various strategies in the rest of the WSCC]).
- Enron planned from the outset to withhold data from investigators who sought information concerning potential market manipulation. (Attachment A at 10, 11, 28 [Enron planned to withhold information concerning transaction "tags" so that it would make it more difficult to trace transactions and thereby uncover market manipulation strategies]).
- Enron's witness in this case, Seabron Adamson, who offered testimony in support of the proposition that Enron did not manipulate the markets or possess market power,⁴ participated from the beginning (almost a year before his testimony in this case) in Enron's own internal review and investigation of Enron's market

⁴ Exh. ENR-10 at 13 ("It would be difficult for [marketers] to exert any market power even if they wanted to do so -- they do not have the 'levers' to influence market volumes.")

manipulation strategies. (Attachment A at 8 [reflecting Seabron Adamson's attendance at a 10/3/00 meeting to discuss CPUC subpoena]). The ALJ, finding no evidence of market power, apparently relied on the representations of Mr. Adamson, among others. *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy*, 96 FERC ¶ 63,044 at 65,369 (2001) ("there is no evidence of the exercise of market power in this case. . . . I feel that the evidence in this case does not show the exercise of market power by any one company.")

These new Enron documents, taken together with the Enron memos released by the Commission on May 6, 2002, further indicate that Enron (and perhaps numerous other suppliers) engaged in attempts to manipulate the electricity markets in the western United States, including in the Pacific Northwest and in California, beginning at least in June 2000. This evidence was not available during the expedited and abbreviated hearing in this docket. The Commission should reopen the evidentiary record in this case in order to provide the opportunity to the parties to explore these issues and demonstrate that manipulation occurred, that it occurred at a date far earlier than December 25, 2000, and that it occurred not only in California but in the Pacific Northwest as well. In light of what has been revealed in the Enron memos and the documents attached hereto, reopening the *Puget* Docket to allow for a full and complete disclosure of all evidence will further promote the Commission's primary purpose -- protecting the public interest.

WHEREFORE, the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board respectfully request that the Commission grant Tacoma's motion to reopen the evidentiary record in this proceeding to allow the parties the opportunity to develop a full, fair and complete evidentiary record.

Respectfully submitted,

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Dated: May 15, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon each person designated on the official service lists compiled by the Secretary for these proceedings.

Dated at Harrisburg, Pennsylvania, this 15th day of May, 2002.

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