

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

6-6

June 20, 1989

The Honorable John D. Dingell
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: Washington Public Power Supply System --
Official Statement Disclosure for Nos. 1 and 3 Bonds

Dear Chairman Dingell:

This responds to your letter of March 20, 1989, in which you cited recent press reports that the Washington Public Power Supply System (Supply System) expects to offer new bonds for its nuclear power plants Nos. 1 and 3. You asked the Commission to describe the steps that have been or will be taken in order to ensure that the Supply System provides full and fair disclosure as to the expected offering itself, as well as to the 1983 default on the Supply System's Nos. 4 and 5 bonds.

As you know, the securities laws contain no affirmative disclosure requirements pertaining to the issuance of municipal securities such as those issued by the Supply System. In fact, although the offer and sale of municipal securities are subject to the antifraud provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934, municipal securities are expressly exempt from many of the substantive provisions of both Acts. For example, municipal securities are not required to be registered under the Securities Act. Additionally, Securities Act Sections 11 and 12, which impose civil liability for false statements made in registration statements and for misleading statements in prospectuses and other communications, do not apply to municipal securities. Further, the periodic reporting requirements applicable to corporate issuers under Exchange Act Sections 12, 13(a), and 15(d) do not apply to municipal issuers. Thus, except in the context of fraud, the Acts themselves do not provide a framework for the regulation of the disclosure in the Supply System's official statement.

Partially as a result of the investor losses caused by the Supply System's default, the Commission has attempted to encourage full and fair disclosure in the municipal securities markets through regulation of the brokers, dealers, and municipal securities dealers that act as underwriters for the issuance of municipal securities. Among other things, the Commission has

published an interpretation of the legal standards applicable to municipal securities underwriters, emphasizing that the underwriters must have a reasonable basis for believing the key representations concerning any municipal securities that they underwrite. See Securities Exchange Act Release No. 26100 (Sept. 22, 1988). The interpretation addresses the duties of the underwriter in both negotiated and competitively-bid offerings. It notes that an underwriter's failure to live up to the responsibility implied by its participation in the offering of municipal securities may give rise to liability under the antifraud provisions of Securities Act Section 17(a) and Exchange Act Sections 10(b), 15(c)(1), and 15(c)(2). This interpretation should serve to encourage the underwriters of the Supply System's Nos. 1 and 3 bonds to conduct the level of review necessary to provide them with a reasonable basis for believing the key representations of the Supply System concerning the Nos. 1 and 3 bonds, as well as any impact the 1983 default may have on those bonds.

In addition, Commission interest in a matter can effect behavior and contribute to a climate that encourages responsible practices. Accordingly, I have directed the Division of Market Regulation, which prepared the Commission's interpretation, to meet with the issuer, underwriters, their counsel, and other key participants in the Supply System offering. The issuer has agreed to schedule such a meeting shortly before a preliminary official statement is finalized. This will give the Division of Market Regulation an opportunity to learn directly from the participants in the process about how they have handled their disclosure responsibilities. In this connection, I would like to emphasize that the staff will not review the disclosure documents or in any way take responsibility for the quality of the disclosure, which as set forth above, is the responsibility of the participants in the offering themselves.

Sincerely yours,

David S. Ruder
Chairman