

1 **BEFORE THE OREGON PUBLIC UTILITIES COMMISSION**

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3 **DR 10/UE 88/UM 989**
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5 **In the Matters of:**
6 **Various Applications regarding**
7 **Acquire Portland General Electric**
8 **Co.**
9

**URP RESPONSE TO PGE MOTION
TO STRIKE**

July 8, 2005

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11 The Utility Reform Project (URP) responds to PGE's Motion to Strike in the
12 order presented.

13 First, the question of PGE's earnings far in excess of its authorized return on
14 investment during the 1995-2000 period is clearly relevant in this case. In fact, one
15 of PGE's own arguments is that the Commission, had it "known" that allowing return
16 on Trojan was unlawful, would have granted to PGE a higher authorized return on
17 investment. We contend, to the contrary, that, if the Commission is allowed to
18 place itself into the temporal context of 1995 but also allowed to see into the future
19 (to see that its legal position would be rejected by the courts), then we must
20 assume that the Commission is also allowed to see into the future regarding the
21 actual effects of its orders on PGE's earnings. Thus, the OPUC would know that
22 authorizing PGE to earn 11.5% on equity would actually result in PGE earning far
23 more than 11.5% on equity (and Enron earning on PGE equity even more than that,
24 as Enron pocketed the "state and federal income taxes" charged to ratepayers and
25 never paid to either government).

26 Thus, PGE inconsistently argues that the OPUC should be allowed to see into
27 the future only for some issues that affect the return on investment that it "would

1 have" adopted. In short, if seeing into the future would have caused the OPUC to
2 grant a higher return on investment, then PGE finds that future fact relevant. But if
3 seeing into the future would have caused the OPUC to grant a lower return on
4 investment, then PGE finds that future fact not relevant.

5 Second, the OPUC is not bound to disregard hearsay testimony, as the
6 Oregon Rules of Evidence are not applicable to OPUC proceedings. PGE
7 complains that somehow Willamette Week and TPG are not subject to cross-
8 examination or discovery, but the crucial statement in the Willamette Week article is
9 the statement attributed to PGE Chief Financial Office Jim Piro, who is cited there
10 as admitting that PGE "over-earned by about \$150 million during the same period"
11 (9 year period ending in 2000).¹ Further, since the testimony makes clear that the
12 document involved was produced by TPG and is in the possession of PGE, nothing
13 precludes PGE from testifying about it. Nor does anything preclude PGE from
14 issuing a subpoena to Texas Pacific Group, should PGE wish to further examine
15 the bases of its analysis.

16 Third, the testimony used the evidence that was available. PGE had not
17 answered the URP Data Request No. 9, propounded on May 9, 2005, in its third set
18 of discovery requests to PGE.:

19 REQUEST NO. 9

20 Please state, separately for each of the years 1995, 1996, 1997, 1998,
21 1999, 2000, 2001, 2002, 2003, and 2004:
22

23 1. The statement attributed to Piro is also an admission against interest by the speaker and
24 thus exempt from the hearsay rule.

- 1 A. PGE's authorized rate of return on common equity;
2
3 B. PGE's authorized rate of return on ratebase (equity plus debt);
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5 C. The actual rate of return PGE earned on common equity;
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7 D. The actual rate of return PGE earned on ratebase.
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9 For items C and D above, please provide all calculations that produced the
10 result and show how the result compares with the figures reported in the
11 corresponding FERC-1 Annual Report and Oregon Supplement.
12

13 PGE then failed to provide even a minimally adequate response to this request.

14 The response entirely failed to state the actual rate of return PGE earned on common
15 equity or on ratebase for any of the years. URP on June 29 filed a motion to compel
16 a full response to this request immediately. PGE has not filed a response to that
17 motion.

18 To the extent that PGE fully answers the request, then the reference to press
19 reports will not be necessary on the subject of PGE's overearning during the relevant
20 period.

21 As for the statements in the Willamette Week article other than those referring to
22 PGE's overearnings, URP does not rely on those statements.

23 Fourth, as for the basis for requesting the extension of time to prepare this
24 response, the ALJ appears agitated by the fact that undersigned counsel appeared at
25 a legislative committee hearing in salem on June 30, 2005. Nothing about that fact is
26 in any way inconsistent with the motion for extension of time to file this response.

27 First, the motion for extension of time provided the reason that undersigned counsel
28 did not respond to the motion when such response would ordinarily have been due,

1 which was June 28 (assuming that OAR 860-013-0050(3)(d) is referring to calendar
2 days and not business days). The reason was a health problem that commenced on
3 June 11. Thus, the period being described in the motion was the period between
4 June 13 and June 28.

5 Nevertheless, the physical condition has persisted. The remarkable fact about
6 prescription narcotic painkillers is that they kill pain and therefore allow movement.
7 There is utterly nothing inconsistent about taking such painkillers and appearing at a
8 legislative hearing and speaking for about 3 minutes, in a manner that may or may not
9 have been entirely coherent, on an issue with which undersigned counsel is extremely
10 familiar. The side-effect of such painkillers is reduction in alertness and ability to
11 concentrate, which is why the original June 28 deadline was not met in the first place.

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13 Dated: July 8, 2005

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing URP RESPONSE TO PGE MOTION TO STRIKE BY UTILITY REFORM PROJECT by email to the email addresses shown below, which comprise the service list on the Commission's web site as of this day.

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Dated: July 8, 2005

Daniel W. Meek