

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
DR 10/UE 88/UM 989**

In the Matters of  
The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement (DR 10)  
Revised Tariff Schedules for Electric Service in Oregon Filed by Portland General Electric Company (UE 88)  
Portland General Electric Company's Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction (UM 989).

**STAFF'S OPENING MEMORANDUM RE:  
SCOPE OF ISSUES**

In her May 5, 2004 Ruling, the administrative law judge (ALJ) instructed the parties to address whether the Commission should "determine how the courts' opinions in the appeals of these cases [DR 10, UE 88 and UM 989] affect the rate decisions made by the Commission, in their entirety, or whether the Commission's inquiry is more ministerial, and involves only determining the charges customers paid to PGE for interest on PGE's investment in Trojan?" After reviewing the parties' briefs on this issue, the ALJ will determine the scope of this proceeding and the evidence to be presented.

Staff of the Public Utility Commission of Oregon (Staff) believes it is within the Commission's authority to choose either of the options described above. Rather than recommend to the Commission how it should define this proceeding, Staff will briefly discuss each option to assist the Commission's review. Staff will also discuss how the burden of proof should be allocated under both options and discuss the procedural schedule.

Notwithstanding which approach the Commission chooses, Staff believes the Commission's review should begin with UE 88 rate order and/or rate period. It is only when the Commission decides whether PGE collected charges from customers under this rate order that

1 should be returned to customers, and if so, in what amount, can the Commission determine what  
2 reparations might be appropriate under the UM 989 order.<sup>1</sup>

3 The circuit court’s remand order in UE 88 is not prescriptive. The order remands Order  
4 No. 95-322 “for further proceedings consistent with the opinions and orders of the Court of  
5 Appeals.” While the circuit court’s remand order in UM 989 is more prescriptive, the  
6 Commission must consider its directive considered in light of the Commission’s re-examination  
7 of UE 88. In the circuit court’s opinion and order in Case No. 02-C14884, the appeal of the  
8 Commission’s UM 989 order, the court reversed and remanded Order No. 02-227 (the UM 989  
9 Order) to the Commission with directions to immediately,

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11 revise and reduce the existing rate structure so as to fully and promptly offset and  
12 recover all past improperly calculated and unlawfully collected rates, or alternatively, to  
13 order PGE to immediately issue refunds for the full amount of all excessive and unlawful  
charges collected by the utility for a return on its Trojan investment as previously  
determined to be improper by both this Court and the Court of Appeals.

14 The determination of what charges were excessive and unlawful under the Commission’s  
15 order in UM 989 depends in part on the Commission’s decision as to the amount customers are  
16 entitled for charges it paid to PGE for return on Trojan investment, beginning with the UE 88  
17 rate order.

18 Determining how the courts’ opinions in the remanded cases affect the rate decisions  
19 made by the Commission in their entirety appears to be consistent with the Commission’s  
20 ratemaking policies. As a general matter, the Commission does not determine the recoverability  
21 of a utility’s costs in a vacuum, but does so in its review of whether proposed utility rates are  
22 “just and reasonable.”

23 Similarly, the Commission, as a general matter, prohibits “single-issue rate cases.” For  
24 example, if a utility requests a rate increase because it projects that certain costs will increase,

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26 <sup>1</sup> DR 10 did not result in rates. Accordingly, it is not necessary to determine whether refunds are  
appropriate in that docket.

1 any person is free to intervene in the proceeding and argue that the utility's current rates are just  
2 and reasonable because some of the utility's other costs are projected to decrease. Limiting the  
3 scope of this proceeding so that the only issue is determining the amount PGE customers paid for  
4 carrying charges on PGE's investment in Trojan is akin to a single-issue rate case.

5 However, although giving this proceeding a broad scope may be consistent with this  
6 Commission's traditional ratemaking methods, there are reasons to depart from Commission  
7 policy. Re-litigating the remanded cases will be time-consuming and costly.

8 **Burden of Proof.**

9 If this Commission decides to determine how the courts' remand orders affect the  
10 Commission's decisions in UE 88 and UM 989 in their entirety, Staff recommends that the  
11 Commission allocate to PGE the burden of proof. In this circumstance, PGE will have the  
12 burden to show by a preponderance of the evidence what are just and reasonable rates in UE 88  
13 and UM 989 in light of the Court of Appeals' conclusion that the Commission may not allow  
14 recovery for return on undepreciated Trojan investment. Although there is merit to the  
15 argument that Utility Reform Project (URP) should bear the burden of proof in these proceedings  
16 as petitioner, Staff believes that allocating the burden to PGE is appropriate if this is proceeding  
17 allows for a re-examination of the UE 88 and UM 989 rate decisions.

18 If the scope of the proceeding is limited to determining the amount that customers paid to  
19 PGE for return on undepreciated Trojan investment, Staff believes it would be appropriate for all  
20 the parties to this proceeding to file simultaneous testimony. In this circumstance, this  
21 proceeding is not a re-examination of the UE 88 and UM 989 rate decisions, but an independent  
22 calculation based on the rates decided in those cases.

23 **Procedural schedule.**

24 Staff recommends a procedural schedule that differs depending on whether the  
25 Commission adopts a broad or narrow scope for this docket. If the Commission chooses to  
26 determine how the courts' orders affect the rate decisions in UE 88 and UM 989 in their entirety,

1 Staff recommends that the Commission set a due date for PGE’s opening testimony followed by  
2 a pre-hearing conference. Staff makes this recommendation because it is difficult to determine  
3 the appropriate discovery and response periods for PGE’s opening testimony until that testimony  
4 is available to the other parties. At a pre-hearing conference following PGE’s testimony, the  
5 parties can set the remainder of the procedural schedule, which should include dates for response  
6 and reply testimony, settlement conferences and a hearing.

7 If the Commission determines that this proceeding is more ministerial in nature, Staff  
8 believes the parties are prepared to estimate the time needed for discovery and to draft testimony.  
9 Accordingly, in this circumstance, Staff recommends that the Commission schedule a pre-  
10 hearing conference for the purpose of determining a procedural schedule. The procedural  
11 schedule should include simultaneous rounds of opening and response testimony, settlement  
12 conferences and a hearing.

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DATED this \_\_\_\_\_ day of June 2004.

Respectfully submitted,

HARDY MYERS  
Attorney General

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Stephanie S. Andrus, #92512  
Assistant Attorney General  
Of Attorneys for Staff of the  
Public Utility Commission of Oregon