

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 Tariffs 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 REPLY BRIEF

Many if not most of the issues presented in this phase of these consolidated dockets have been briefed and re-briefed. Accordingly, staff of the Public Utility Commission of Oregon ("staff") will not respond to all arguments and points raised by other parties in their opening briefs. However, staff does respond below to some of the points and arguments.

I. The Commission should not replace its original rate orders in UM 989 with the rate treatment recommended by the Utility Reform Project witness Jim Lazar.

The Utility Reform Project ("URP") asserts that in response to the Court of Appeals' remand of OPUC Order No. 95-322 (*Citizens' Utility Board/Utility Reform Project v. OPUC*, 154 Or App 702, 962 P2d 744 (1998), *pet rev dis'd*, 355 Or 591 (2002)), the Commission simply should have ordered Portland General Electric ("PGE") to reduce its rates on an annual basis by \$35.202 million.¹ URP asserts that this "straightforward response" to the Court's remand was "the proper course" for the Commission and that the Commission should conclude that ratepayers were overcharged by the hypothetical difference that results from imposing URP's "straightforward approach" instead of the adopting the stipulations entered into by PGE and staff

¹ Opening Brief of URP at 3.

1 and PGE and the Citizens' Utility Board ("CUB") (hereinafter referred to as "the Stipulation").
2 URP's recommendation is flawed for several reasons.

3 First, contrary to URP's assertion, there is no single "proper course" that the Commission
4 was required to take in 2000 in response to the Court of Appeals' remand. Contrarily, the
5 Commission's broad legislative authority authorized the Commission to address the remand in
6 more than one way. Second, the method the Commission used to address the flaw in the
7 Commission's UE 88 rate order, the allowance of a return on undepreciated Trojan investment,
8 was appropriate. In Docket No. UM 989, the Commission completely and finally removed the
9 undepreciated Trojan investment from PGE's rate base and from its rates.

10 Third, URP's recommended rate treatment goes far beyond simply addressing the flaw in
11 the UE 88 rate order and would actually have penalized PGE by requiring PGE to recover its
12 unamortized Trojan investment over a considerable period of time without any compensation for
13 the time value of money. As PGE points out in its opening brief, there is no basis for assuming
14 that an extended recovery period for the unamortized portion of the Trojan investment is
15 appropriate.² And, in fact, the Commission's decision in Order No. 02-227 was good policy
16 because it allowed PGE to recover the full remaining investment in Trojan, which was consistent
17 with the Commission's previous decisions regarding PGE's prudence and also, regarding least-
18 cost planning.

19 Fourth, contrary to URP's assertion, the rates that the Commission adopted in Docket No.
20 UM 989 did not allow PGE to indirectly earn a return on its undepreciated Trojan investment.
21 Both PGE and staff have refuted URP's argument that authorizing PGE to offset interest-bearing
22 credits against the remaining undepreciated Trojan investment somehow enabled PGE to
23 "indirectly" earn a return on the unamortized investment. In its brief, URP asserts that the
24 "diversion of \$15.4 million in NEIL insurance rebates" and the imposition of the FAS 109
25 regulatory asset "were all designed to provide PGE with a continued and unimpaired return on

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² See PGE Opening Brief – Phase III at 4.

1 Trojan investment[,] and that “the charges to ratepayers resulting from those ratemaking
2 manipulations constitute unlawful charges under ORS 757.355.”³ URP’s assertion regarding the
3 NEIL proceeds and FAS 109 asset is unexplained and without merit.

4 Presumably URP is arguing that the Commission’s decisions regarding the NEIL
5 proceeds and FAS 109 asset allowed PGE to earn a return on the undepreciated Trojan balance
6 because these amounts were offset against the undepreciated Trojan balance. However, how
7 URP makes the leap from this fact to the conclusion that the amounts are unlawful charges under
8 ORS 757.355 is unclear. In any event, both staff and PGE have refuted any assertion that the
9 Commission’s treatment of the NEIL proceeds and FAS 109 asset was inappropriate.

10 Finally, contrary to URP’s assertion, staff **does oppose** URP’s recommendation to
11 reverse the rate treatment in Order No. 02-227, as was made clear during the re-direct
12 examination of staff witness Judy Johnson at the July 11, 2008 hearing in this matter:

13 Q. And to the extent you -- is your -- are you suggesting that you agree with Mr.
14 Lazar's analysis, or are you suggesting that it only goes so far as --
15 I'm going to try to clarify my question, because I think the questions are a bit
ambiguous that Mr. Meek asked you.

16 A. I struggled with them.

17 Q. But are you agreeing with Mr. Lazar's analysis? Is it the intent of line 13
18 through 22 of your testimony on -- in Exhibit 600, is the intent of that
to agree with Mr. Lazar's analysis?

19 A. Not at all.⁴

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21 **II. Response to points made regarding seven sub-issues.**

22 **Issue No. 1:** URP argues that if the actual remaining undepreciated investment is used, as
23 opposed to the amount assumed for purposes of ratemaking, the balance was less than \$180.5
24 million on September 30, 2000. URP is mistaken. In fact, as PGE will explain in greater detail

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26 ³ Opening Brief of URP at 5.

⁴ Transcript at 90.

1 in its response brief, the \$180.5 million was the amount in a balancing account (TIRA) as of
2 September 30, 2000.

3 **Issue No. 2:** This issue, whether the rates approved in Order No. 02-227
4 provided PGE with the functional equivalent of a “return on” the remaining
5 undepreciated investment in Trojan has been addressed in testimony and brief, and staff
6 will not address it further in this brief other than to note that URP’s reliance on staff
7 witness Judy Johnson’s testimony regarding what she would do with \$200 million of
8 interest-bearing bonds is misplaced.

9 At the hearing, Ms. Johnson testified that she would not “swap” a \$200 million
10 interest bearing bond with a term of 12 years for a non-interest bearing bond of \$200
11 million with a term of 10 years.⁵ URP argues that this testimony supports its contention
12 that the offset authorized by the Commission in Order No. 02-227 is “absurd” from a
13 ratepayer’s perspective.⁶ It does not.

14 Whereas the bonds in the hypothetical constructed by URP’s counsel for Ms.
15 Johnson during cross-examination might have “terms,” neither the undepreciated Trojan
16 balance nor the customer credits used to offset that balance had terms. As PGE explained
17 in its opening brief, URP’s argument that the offset was “absurd” is predicated on an
18 assumption that customers had a right to make PGE wait for the return of its investment
19 until 2011. However, ratepayers had no such right. Further, customers were also not
20 entitled to “hold” the interest bearing credits that were offset against the undepreciated
21 Trojan balance for any particular term.

22 **Issue No. 3:** Staff has refuted URP’s contention that the FAS 109 is a phantom
23 asset. In its brief, URP argues that the FAS 109 liability should not be charged to
24 customers because PGE had no expectation that it would incur high tax expense in future

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26 ⁵ Transcript at 73-74.

⁶ Opening Brief of URP at 14-15.

1 years and “there were effectively no federal and state income taxes paid by or on behalf
2 of PGE during the first 5.5 years after October 1, 2000, the effective date of the rate
3 orders in UM 989.”⁷ URP is mistaken.

4 PGE’s tax liability for ratemaking purposes, at least until the effective date of
5 Senate Bill 408, was calculated on a stand alone basis, and all else equal, the reversal of
6 the previous accelerated tax benefits increases PGE’s tax liability.⁸ Further, the amount
7 of taxes paid subsequent to October 1, 2000, is beyond the scope of this proceeding
8 because this amount is a fact not existing at the time of the UM 989.

9 **Issue Nos. 4, 5, 6 and 7.** These issues have been addressed in testimony and or in
10 briefs and staff will not re-address them in its reply brief.

11 **III. URP’s “additional legal issues.”**

12 URP asserts that several procedural decisions that the Commission has issued in
13 Phase III of this docket are in error. URP provides little argument in support of its claims
14 of error. In any event, these matters have been briefed previously and staff does not re-
15 brief them now.

16 DATED this 4th day of August 2008.

17 Respectfully submitted,

18 HARDY MYERS
19 Attorney General

20 s/Stephanie S. Andrus
21 Stephanie S. Andrus, #92512
22 Assistant Attorney General
23 Of Attorneys for staff of the Public Utility
24 Commission of Oregon

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26 ⁷ Opening Brief of URP at 20.

⁸ See PGE Opening Brief—Phase III at 7.

1 **CERTIFICATE OF SERVICE**

2 I certify that on August 4, 2008, I served the foregoing upon all parties of record in this
3 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
4 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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