BEFORE THE OREGON PUBLIC UTILITY COMMISSION

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)

Phase 3 Response Testimony

URP Exhibit 500

TESTIMONY OF JIM LAZAR

Phase 3

May 19, 2008

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Q. Please state your name, address, and occupation.

A. Jim Lazar, 1063 Capitol Way S. #202, Olympia, WA 98501. I am a consulting economist specializing in utility rate and resource issues.

Q. Please summarize your qualifications.

A. I have been engaged in utility rate and resource analysis since 1975, and have been working as a consultant in the field since 1979. I have appeared as an expert witness on more than 80 occasions before state regulatory commissions in Washington, Oregon, California, Arizona, Idaho, Montana, and Hawaii, including several appearances before the Oregon Public Utility Commission (OPUC) involving Portland General Electric Co. (PGE), including this case (UM 989) in 2001. In addition to my individual practice, I am a Senior Advisor with the Regulatory Assistance Project (RAP), based in Gardiner, Maine, which provides technical and policy assistance to regulatory commissions throughout the United States and around the world. My testimony in this proceeding is in my capacity as an independent consultant.

Q. What is the purpose of your testimony in this proceeding?

A. I have been asked to address certain elements of OPUC Order No. 02-227, which has been reversed and remanded to the Commission. The ultimate issue, of course, is what treatment the Commission should have accorded to the remaining Trojan investment, in light of the decision in ***Citizens' Utility Bd. of Oregon and Utility Reform Project v. Public Utility Com'n of Oregon***, 154 Or App 702, 962 P2d 744 (1998), *pet rev dis'd*, 355 Or 591, 158 P3d 822 (2002) ("***CUB/URP v. OPUC***"). I have also been asked to provide answers to 7 questions set forth by the hearings officer.

The Scoping Order for this Phase 3 (Ruling and Notice of Conference, February 22, 2008) limits all testimony to issues that were "raised in prior proceedings" but not "any issues that were not raised in prior proceedings before the Commission, the circuit court, or the Court of Appeals." Also excluded is "whether the portion of rates collected from customers from 1995 to 2000 that reflect a return on the Trojan investment should be used to reduce or eliminate the Trojan balance."

Counsel has advised me that the "prior proceedings" means the UM 989 proceeding and appeals of the Commission's decisions in that docket to the courts.

The Scoping Order also limits evidence in Phase 3 to "the facts existing at the time the rates went into effect. Any new evidence presented by any party must have existed on or before October 1, 2000, to be properly considered."

I previously submitted testimony in the UM 989 docket in 2001 and hereby incorporate that testimony by reference. It is possible that my 2001 testimony includes information that did not exist on October 1, 2000. But the testimony in UM 989 from all parties was submitted throughout 2001, and the Commission issued OPUC Order No. 02-227 in 2002. So I do not comprehend the basis for limiting testimony to evidence that existed before October 1, 2000. I also incorporate by reference my previous testimony filed in this DR 10 / UE 88 /UM 989 consolidated remand docket. It becomes directly relevant at various points below.

The remainder of my testimony will address the overall subject of this docket and the specific issues noted by the hearings officer. I note that PGE did not correctly state the issues in its testimony filed April 11, 2008.

Q. What rate treatment of the remaining Trojan investment should the Commission have adopted in response to *CUB/URP v. OPUC*?

The Scoping Order (p. 2) states that the rates adopted in OPUC Order No. 02-227 were to implement a settlement among Staff, PGE, and CUB in 2000.

> Phase III of these remand proceedings will address the Court of Appeal's [sic] remand of Order No. 02-227 in docket UM 989. The rates adopted

> in Order No. 02-227 implemented a settlement reached by Staff, PGE, and the Citizens' Utility Board of Oregon (CUB) in 2000. That settlement was intended to respond to the Court of Appeals' decision in Citizens' Utility Board v. Commission by prospectively removing both the return on and the return of PGE's remaining Trojan investment from rates.

Thus, the ultimate issue is what rate treatment of the remaining Trojan investment should the Commission have adopted in response to ***CUB/URP v. OPUC***? Another way to express this would be: What rate treatment of the remaining Trojan investment would have been just and reasonable? That then provides the baseline for deciding whether the rates adopted in OPUC Order No. 02-227 were just and reasonable, which is one of the subissues identified in the Scoping Order.

It seems strange that the Commission would wait for more than 2 years from the Court of Appeals decision. But, if responding to that decision was indeed the purpose of the UM 989 proceedings (and is the purpose of this remand), the answer is simple. It does not involve manipulating over a dozen other accounts of funds owed to ratepayers by PGE or diverting refunds on nuclear insurance premiums paid for by ratepayers or creating a "regulatory asset" and charging ratepayers $47 for having done so.

Instead, the clear and simple answer would have been to remove from PGE rates the charges for Trojan return <u>on</u> investment, as of October 1, 2000 (or any other date). This would have left open the issue of returning to ratepayers the unlawful Trojan return <u>on</u> investment charged pursuant to OPUC Order No. 95-322 prior to the effective date of the order in the UM 989 docket, and the Commission in the Scoping Order now demands exactly that.

We have previously identified and documented the charges in PGE rates, as of September 2000, for Trojan return <u>on</u> investment. Those charges were $35.202 million per year. URP Exhibit 202, p. 2 (May 19, 2005). My testimony then explained why $35.202 million is the correct number. URP Exhibit 200, pp. 3-4. The proper course for the Commission in September 2000 would have been to order PGE to reduce its rates, on an annualized basis, by $35.202 million. As the

courts concluded that PGE could lawfully charge ratepayers for its Trojan return of investment, the charges to ratepayers representing amortization of the Trojan investment balance itself would have continued, as set forth in OPUC Order No. 95-322. In sum, the Commission would have removed and corrected via UM 989 the only defect in OPUC Order No. 95-322, as decided by the courts--allowing PGE to charge ratepayers a return on investment on its Trojan investment.

In the next following general rate case (which happened to have an effective date of October 1, 2001), the Commission would have determined PGE rates, without having removed the $161.9 million (minimum) in return-bearing accounts, without having diverted NEIL insurance premium rebates to PGE shareholders, and without having created the $36.7 million (present value) "regulatory asset." There was also no need for the elaborate and flawed "net benefit analysis" addressed later in my testimony.

Since the rates in the next general rate case took effect on October 1, 2001, the UM 989 reduction of $35.202 million annually would have lasted for one year. OPUC Order No. 02-227 claims that, compared with OPUC Order No. 95-322, OPUC Order No. 00-601 and OPUC Order No. 02-227 reduced PGE rates in the first year by $10.2 million. Thus, PGE today still owes ratepayers the difference for that first year, which is $24.002 million with an average incidence date of April 1, 2001 (6 months after the effective date of OPUC Order No. 00-601). That amount must be scaled to the present, using PGE's authorized pre-tax rate of return on investment in the meantime, and then be credited back to ratepayers. I calculate this amount to be **$68.1 million** at 10/1/2008.

Instead of this simple and accurate response to ***CUB/URP v. OPUC***, the Commission approved a "stipulation" reached by only some of the parties that involved dozens of transactions that had nothing to do with Trojan. In essence, the Commission treated the UM 989 proceeding as if it were a remand of UE 88. But, instead of addressing only the remanded issue, the Commission went far afield and included a variety of unrelated matters. The Commission's decision in UM 989,

OPUC Order No. 02-227, would have transgressed its own Scoping Order for Phase 3 of this docket.

But the Commission in OPUC Order No. 02-227 took an approach that sought to preserve for PGE the right to charge ratepayers for a Trojan return on investment. The Commission took away from ratepayers:

1. interest bearing accounts containing at that time at least $161.9 million (and probably more), as indicated in my testimony in 2001;

2. the $15.4 million in NEIL insurance rebates diverted to shareholders.

And the Commission imposed upon ratepayers the $36.7 million (present value) "regulatory asset."

Each of these should be refunded, with interest, to ratepayers. These changes, as of October 1, 2000, cannot be disregarded now, because all of them significantly increased PGE's rates since that time. The Commission should now reinstate, as of October 1, 2000, all of the accounts owed to ratepayers that were diverted to shareholders. It should credit the $15.4 million in NEIL rebates to ratepayers, as of the date those rebates were received by PGE (late 2000, assumed to be October 1, 2000 for this purpose). And it should nullify the $36.7 million (present value) "regulatory asset." All of these amounts must be scaled to the present, using PGE's authorized pre-tax rates of return in the meantime, and then be credited back to ratepayers. I calculate the present value of these amounts to be $473.1 million, $45.0 million, and $103.7 million, respectively.

As part of the "stipulation," PGE stopped its amortization to ratepayers for its Trojan return <u>of</u> investment. Thus, the above amount due to ratepayers should be reduced by the present value of that halted amortization. For this calculation, I assume that the unamortized Trojan investment as of October 1, 2000, was the $180.5 million asserted by PGE, although I do not express agreement with that assertion. Based on an assumed straight-line amortization of this amount over the period starting with the fourth quarter of 2000 and ending at the close of 2011, this

would reduce the amount due to ratepayers by $253.4 million (present value as of October 1, 2008). I used straight-line amortization of the principal, as that is the technique (1) typically employed by regulators to amortize principal and (2) used by this Commission when amortizing the principle of the Trojan investment in these consolidated dockets.

For the time value of money in all of the above calculations, I used PGE's with-tax authorized return on investment (return on ratebase, or ROR) authorized for each period, assuming that PGE's current authorized with-tax ROR would continue through 2011. This approach most accurately reflects the revenue requirement consequences of each alternative.

The total of these calculations, as shown in my exhibit, is an amount due to electricity consumers as of October 1, 2008 of $436.4 million.

Having addressed what the Commission should have done in UM 989, and should do now to correct OPUC Order No. 02-227, I turn to the specific subissues in the Scoping Order.

1. Issue 1: What was PGE's remaining undepreciated investment in Trojan as of October 1, 2000?

Here, I am precluded by the scoping order from presenting any evidence on how the Commission should have calculated the PGE's remaining undepreciated investment in Trojan as of October 1, 2000. It prohibits the offering of any "*hypothetical* balance premised on rate adjustments in Phase I." Instead, the scoping order allows only "evidence regarding the actual Trojan balance as of October 1, 2000." Since the actual Trojan balance as of October 1, 2000, is a function of the books kept by PGE, I am precluded by the scoping order from presenting any contrary evidence on this subject.

I note, however, that PGE's testimony on this subject is beyond the scope of the issue allowed by the scoping order, which asks for the Trojan investment balance "as of October 1, 2007." The PGE testimony never addresses that

question but instead offers a balance of $180.5 million as of "9/30/2000," which is the wrong date.

Further, PGE's testimony here is inconsistent and self-contradictory and reflects a misunderstanding of utility ratemaking. PGE 7500 (p. 4) states:

> PGE received what was owed to it on 9/30/2000 for the remaining investment in Trojan and customers received what was owed to them for the balance of the customer credits.

If "PGE received what was owed to it on 9/30/2000 for the remaining investment in Trojan," then the remaining undepreciated investment in Trojan as of October 1, 2000" was zero.

2. Issue 2: Do the rates approved in Order No. 02-227 provide PGE with the functional equivalent of a "return on" the remaining undepreciated investment in Trojan?

Yes. This occurs because the "stipulation" approved by OPUC Order No. 02-227 caused ratepayers to trade interest-earning assets which are due them for a non-interest earning asset (Trojan) held by the Company.

PGE and Staff have agreed that the "offset" accounts shown in Staff-PGE Exhibits 203-205 (AR 269-71) (totalling at least $161.9 million) were interest- or return-bearing accounts. The majority of the credits to ratepayers cancelled under the "Stipulation" were those stemming from the Enron acquisition of PGE (M Credit) and from the power sale contract settlement with Southern California Edison Co. (SCE). These accounts and the others listed as "offsets" were credits to ratepayers which accrued interest for the benefit of ratepayers at the company's post-tax authorized return on investment.

The trading of a non-return bearing Trojan ratebase amount in exchange for the cancellation of return-bearing credits that PGE owes to ratepayers produces the functional equivalent of a "return on" the remaining undepreciated investment in Trojan.

The entire trade is, from a ratepayer perspective, absurd. Imagine that I offer to trade to you $300 million in zero-coupon U.S. Treasury bonds due in 2012. In exchange, I would receive from you $300 million in U.S. Treasury bonds, also due in 2012, which carry a 7% rate of interest. Would anyone consider this a reasonable exchange of value? Obviously not, because the zero-coupon bonds are worth far less than the bonds which carry the 7% rate of interest. This is the utility-industry equivalent of Wimpy's adage: "I will gladly pay you tomorrow for a hamburger today," except in this case Wimpy is offering to pay you that same hamburger more than 10 years from now.

This "offset" has exactly the same result as placing the remaining Trojan investment into ratebase which earns a return on investment. OPUC Order No. 02-227 removed from PGE's rate calculations credits of at least $161.9 million that PGE admittedly owed to ratepayers, all of which were carried on PGE's books in accounts which earned a return on investment for the ratepayers and credited to the ratepayers on an annual basis. Cancelling these accounts is exactly equivalent to placing a $161.9 million item into return-bearing ratebase, which (counsel advises) is what ORS 757.355 prohibits, whether such is accomplished directly or indirectly.

3. Issue 3: Was the FAS 109 liability properly considered part of PGE's return of its Trojan investment?

Here, the PGE testimony addresses something other than the question posed by the hearing officer.

No, the FAS 109 liability was not *properly* considered part of PGE's return of its Trojan investment. Instead, the creation of this liability by the Commission constituted a means for allowing PGE to charge ratepayers more than the depreciated investment balance of Trojan. Its creation merely allowed PGE to charge ratepayers an extra $47.4 million over approximately 6 years.

PGE claims that the "Trojan FAS 109 asset represents the value of accelerated tax benefits previously flowed through to customers that are expected to reverse over time through higher tax expense in future years." Missing from the evidence is any statement that PGE thereupon experienced the higher tax expense. The Circuit Court Opinion and Order (p. 6) reversing OPUC Order No. 02-227 highlighted this lack of evidence.

> Frankly, this Court would be inclined to agree with Plaintiffs as to some of these additional claims, particularly with respect to the handling of the FAS 109 amounts and the final NEIL distribution. Charging rate payers for purported increases in PGE taxes without requiring proof that those taxes were ever actually paid is certainly questionable. Similarly, no persuasive explanation was offered to justify the shift of much of the final NEIL insurance refunds from the rate payers to PGE.

4. Issue 4: Did the rates approved in Order No. 02-227 improperly transfer the proceeds and/or premium refunds from PGE's NEIL policy from ratepayers to PGE?

Yes. PGE agreed that the premiums paid to NEIL have previously been included in the test years upon which PGE rates have been based and that previous NEIL distributions back to PGE have been credited to ratepayers. Thus, PGE agreed that ratepayers have paid the NEIL insurance premiums and in the past have received any refunds of those premiums from NEIL to PGE. Consequently, the diversion of 45% of all future distributions by NEIL to PGE represents a new net cost to ratepayers, because it removes from them money that has been credited to ratepayers in the past. The record shows that this new OPUC Order No. 02-227 treatment of NEIL refunds has cost ratepayers at least $15.4 million in NEIL refunds diverted to PGE's shareholder (45% of the $34.3 million payment by NEIL to PGE that occurred in October 2000). Here again, the situation is quite simple: the ratepayers paid the underlying premium that gives rise to the refund, and are entitled to the refund.

Diverting NEIL distributions to PGE's shareholder contradicts the fundamental tenets of ratemaking. Ratepayers paid the premiums. Over the years, NEIL found

that it was not necessary to use all of the premium revenue to pay claims and administrative costs, so it has been returning the surplus funds to its members, including PGE. Since the premiums were counted as a cost charged to ratepayers, then return of surplus premiums should be credited to ratepayers.

Allowing shareholders to capture the premium rebates opens a hole through which the utility can funnel tens of millions of ratepayer dollars into the pockets of its shareholders. It is a "heads I win, tails you lose" system, where the costs are borne by ratepayers but subsequent refunds are diverted to the shareholder. I have said in many of the courses I teach in utility regulation: "***All regulation is incentive regulation***." The clear incentive of accepting PGE's position in this docket would be for the Company to intentionally acquire excessive insurance, the premiums for which could be included in test year operating expenses, knowing that there was a likelihood of receiving future refunds that could be flowed to shareholders.

In prior phases of this docket, PGE has argued that "PGE's shareholders were subject to a variety of risks for these payments. For example, PGE's shareholders bore the risk that premiums would increase between rate cases, that NEIL might experience a greater number of claims than anticipated, and that the NEIL investment strategies might fail." All this is true in the opposite direction. Ratepayers were also subject to a variety of risks. Under the Commission's approach, they would have continued to pay higher NEIL premiums between rate cases, even if the actual NEIL premiums were reduced. As for NEIL investment strategies failing, NEIL investment strategies could have been more successful, also. There is no evidence as to the astuteness or success of those investment strategies. All the record shows is that NEIL is distributing money back to the utilities from which they derived the premiums but that it was PGE ratepayers who paid the premiums, not PGE's stockholders.

The simpler solution to this concern is for the Commission (like nearby commissions in Washington and Idaho) to cease using forecasted test years in

setting rates and to instead use actual historical test years to set rates. In that manner, only actual payments made, not estimated payments that could change, would form the basis of rates.

Further, there can be no credible suggestion that the NEIL rebates to PGE would be considered unusual or non-recurring events that would be disregarded when setting rates. PGE paid premiums to NEIL every year, until 1994. PGE received NEIL "distributions" in every year between 1987 and 1999 (steadily increasing from $239,000 in 1987 to $4.97 million in 1999), before PGE received the $34.3 million "settlement" in 2000. Distributions from NEIL were not unusual and were not non-recurring. In addition, the $34.3 million "settlement" money from NEIL was not unexpected. PGE spent considerable time negotiating that settlement and examined numerous "scenarios." It is outrageous for a regulator to allow a utility to retain for shareholders a 45% share of a "settlement," when the fund at issue consists of money paid in by ratepayers. It is beyond outrageous to suggest that this can be fully planned by the utility and then disregarded as a non-recurring event.

The bottom line is that there is no dispute that the 100% of the NEIL premiums had been forecasted and fully included in rates and were paid for by ratepayers. In Phase 3 discovery, PGE has now refused to indicate which of its payments to NEIL it has ever excluded when presenting its test year cost of service in every general rate case since the beginning of transactions between PGE and NEIL. It has also refused to state which of the payments it has received from NEIL it has previously excluded when presenting its test year cost of service in general rate cases. Having refused to provide the requested information, PGE cannot later claim that maybe those premium payments were somehow not fully included in rates.

But OPUC Order No. 02-227 nevertheless diverted 45% of the premium refunds away from PGE ratepayers. This is contrary to the principles of ratemaking

and opens the door to future abuse. Such abuse was recognized as a real problem by the Circuit Court in its review of OPUC Order No. 02-227:

> Clearly at least a potential source of mischief, adoption of the filed rate doctrine in the form urged by PGE could well encourage increasingly aggressive and perhaps even deceitful utility rate proposals. Once approved by the OPUC, the full financial benefit of all rates collected, no matter how poorly warranted and justified, would be permanently locked in and would never become refundable even when finally determined to be unlawful after years of successive court appeals. In short, Defendants' version of the filed rate doctrine has more in keeping with the satiric scenarios of Joseph Heller's *Catch 22* and Lewis Carrol's *Through the Looking Glass* than with responsible utility rate regulation.

Allowing PGE shareholders to retain the NEIL distributions paid for by ratepayers would fit nicely with the writings of Heller and Carrol.

Finally, in discovery PGE has provided no additional NEIL transactions. Thus, I must assume that NEIL provided no further money to PGE. PGE is obligated to negate that assumption, if it is not true.

5. Issue 5: Were the rates approved in Order No. 02-227 just and reasonable?

Curiously, the PGE witnesses do not address this issue. In the original Commission proceeding and on appeal, PGE's justification for the massive shifts of costs onto ratepayers and massive shift of benefits to shareholders is that ratepayers were still better off, under the "net benefit analysis" in the stipulation.

PGE and Staff admitted that, as of the end of the first year after implementation of the OPUC Order No. 00-601 rates (also adopted by OPUC Order No 02-227 at the culmination of the contested case proceeding), the result of adopting the "Stipulation" was to **increase** rates by $25.7 million in Year 2, to **increase** rates by $15.7 million in Year 3, and to **increase** rates by $15.7 million in Year 4. Staff-PGE Exhibit 204 (AR 270), column 17; TR 115-18 (AR 429-32). And this is $25.7 million on top of and in addition to the level of rates that the Oregon

courts declared unlawful in ***CUB/URP v. OPUC***, because those rates included Trojan return on investment (profit).

OPUC Order No. 02-227 is seriously misleading on this subject, stating that the "Stipulation" results in a rate reduction of at least $10.2 million over first 12 months (October 1, 2000 - 2001) and an additional $2.5 million reduction in the future. These claimed "rate reductions" are in comparison to the assumed continuation of the OPUC Order No. 95-322 rates regarding Trojan investment, which the Oregon courts have found to have been unlawful due to inclusion of Trojan return on investment.

The amounts that PGE claims as a "benefit" for ratepayers in its net benefit analysis include an unspecified amount of Trojan return on investment. When specifically asked for the Trojan amortization amounts from past years, Staff and PGE did not provide them. TR 42-43 (AR 356-57).

PGE witness Hager admitted that none of their testimony identified the amounts of amortization, return on investment, or other elements of the Trojan investment-related revenue requirement. TR 45. The PGE witness guessed that the amount of amortization (return of investment) in the $59 million alleged first year benefit from removing the Trojan investment-related annual revenue requirement (shown in Staff-PGE Exhibits 203, 204, 205) was $24 million.

As shown above, it can easily be calculated that the Trojan profits authorized in OPUC Order No. 95-322 were $35.202 million per year. Thus, the net benefit calculations offered by PGE are based upon the assumption that removing the very charges found unlawful by the Court of Appeals is counted as a huge "benefit" for ratepayers. So, PGE's alleged "$16-18 million rate reductions," even if in any way accurate, would represent a reduction from a baseline that itself is unlawful by easily over $125 million.

The "net benefit analysis" adopted by OPUC Order No. 02-227 was conceptually and mathematically faulty for several reasons:

1. It counted as a benefit not charging ratepayers for CWIP on Trojan.

OPUC Order No. 02-227 contends that the $10.3 million in construction work in progress (CWIP) included in the Trojan balance as of September 30, 2000, was for contracts "that would have been transferred to a plant in service account," if indeed the fuel had been delivered and consumed. But it was not. "When Trojan closed prematurely, these contracts and other projects were cancelled and remained in accounts as CWIP." ER-15.

OPUC claimed that ORS 757.355 does not prohibit a utility from charging CWIP to ratepayers. But, throughout the last 12 years of litigation, the OPUC has consistently stated that CWIP is the only type of charge that ORS 757.355 does ban. This is discussed at length at ***CUB/URP v. OPUC***, 154 Or App at 708-11, 962 P2d at 747-49. For example:

> PUC and PGE agree that the language of the statute and the history of measure 9 demonstrate that the target of the measure and the concern of the statutes are with rates for "construction work in progress" (CWIP), i.e., uncompleted facilities or those planned for prospective use that are not yet in use. * * *
>
> In the present case, there are at least two aspects of the surrounding statutory language that are at odds with PUC's and PGE's understanding that the word "presently" and the statute relate only to CWIP and do not also apply to facilities and plant that are no longer in use.

Id., 154 Or App at 708, 962 P2d at 747.

> PUC argues further, however, that the "legislative history" of Measure 9 demonstrates that its concern, as communicated to the electorate, was exclusively with CWIP.

OPUC does not explain why "ORS 757.355 does not encompass CWIP attached to an operating plant." OPUC in its brief to the Court of Appeals in ***Utility Reform Project v. OPUC***, 215 Or App 360, 170 P3d 1074 (2007) [hereinafter "***URP v. OPUC*** (UM 989)"] (p. 28) further stated:

> Had Trojan not closed, those contracts would have been included as part of the Trojan investment base.

True, but Trojan ***did*** close. If Trojan had remained operating, there would not have been a violation of ORS 757.355, as recognized in ***CUB/URP v. OPUC***.

OPUC in that brief also stated that "the CWIP would have eventually become plant in service in the future under the 'no closure' scenario." Yes, but the "no closure" scenario did not come to pass. Whether or not including such costs in one or both sides of an equation would cause the outcome of the equation to be different is immaterial. Yes, it is true, as the OPUC brief (p. 28) stated, "The closure alternative would always have the benefit of excluding CWIP costs that would be included in the no closure alternative," because, in the "no closure alternative," there is no ban on charging CWIP to ratepayers.

OPUC (pp. 28-29) then claimed that the CWIP was added to the Trojan investment balance "at the time the closure decision was made in 1994," although the closure decision was made in January 1993. In any event, OPUC Order No. 02-227 applies to rates taking effect on October 1, 2000, and any failure to object to this CWIP in earlier rate cases is not relevant. This $10.3 million imposed upon ratepayers by OPUC Order No. 02-227 constitutes additional charges banned by ORS 757.355.

2. It inflated the asserted benefit by a faulty assumption about future rate changes.

The entire case for the "Stipulation" rests upon the assertion that it somehow produced a small net benefit for ratepayers, compared with the alternative scenario of continuing to charge ratepayers both return of investment and return on investment, regardless of the decision in ***CUB/URP v. OPUC***.

The Staff-PGE net benefit analysis assumed that the $59 million Trojan investment-related annual revenue requirement would have continued for the full calendar year of 2001, based on the mere assumption that there would be no general rate revision effective prior to January 1, 2002. Their net benefit analysis assumed that, as soon as a general rate revision became effective, the annual

Trojan investment-related charges would fall from $59 million to $33.3 million, which is $25.7 million less. Staff-PGE Exhibits 203-205 (AR 269-71).

The reason for this huge drop in annual charges under the "no settlement" scenario is that PGE had no general rate revision between 1995 and 2001, so the amount set for annual Trojan investment-related charges to ratepayers stayed at $59 million, even though on its books of account PGE was assuming that the charges were going down each year (being based on a declining investment balance as each year's depreciation was taken). With a new general rate case, the Trojan investment-related charges would be reset so that ratepayers would be paying both depreciation and return on investment on the new Trojan investment balance (although that balance would remain artificially high).

In any event, the Staff-PGE net benefit analysis was not an annualized analysis. It was an analysis that went at least 12 years into the future and then reduced the expected costs and revenues to present value. Part of the stream of "costs" that ratepayers were assumed to bear in the "no settlement" scenario was payment of full return of investment and return on investment for Trojan, according to the terms of OPUC Order No. 95-322 (despite its reversal by the courts) until January 1, 2002. After that, under the "no settlement" scenario, the cost of the Trojan investment to ratepayers would sharply decline, because of the situation described in the previous paragraph.

In reality, however, PGE did not want to wait until January 2002 to get new rates under a new general rate case. The general rate case order that actually took effect for PGE on October 1, 2001 (UE 115 docket) granted to PGE an overall rate increase of 38%. OPUC Order No. 01-777 (August 31, 1997). The percentage increase was noted in the order denying reconsideration, OPUC Order No. 01-988, p. 1. This amounted to an increase in revenue requirement of about $400 million per year. Getting this rate increase in place faster, however, had the effect of rendering the Staff-PGE net benefit analysis in UM 989 incorrect by a sum of one quarter of the difference between $59 million and $33.3 million. Thus, the

Staff-PGE net benefit analysis, simply by assuming that the $59 million Trojan investment-related annual revenue requirement would have continued for the entire calendar year of 2001, TR 30 (AR 344), overstated the alleged "benefit" to ratepayers by one-quarter of $25.7 million, which equals $6.425 million. All of the parties knew this, long before the OPUC issued OPUC Order No. 02-227 in 2002, since the order increasing PGE's rates on October 1, 2001, OPUC Order No. 01-177, issued on August 31, 2001.

This also illustrates the underlying illogic of the "net benefit analysis." Merely by assuming that the unlawful rate treatment, allowing Trojan return on investment, would continue for some future period, the OPUC could have inflated the alleged "net benefit" for ratepayers to any desired level. This inflation of alleged benefit would then have justified, according to the OPUC, PGE and Staff, any number of other highly irregular transactions and adjustments to as to move money owed to ratepayers out of their pockets and into the pockets of PGE shareholders.

3. It appears that, even with the erroneous inflation and faulty assumptions, the final calculation of the "net benefit" was only $1.5 million.

PGE provided in discovery a spreadsheet file named Net Benefit Analysis Corrected Original.xls. It shows a corrected "Net benefit before NEIL split" of $1.5 million. It then adds $13.1 million to that for "55% of NEIL Value to Customers." Thus, it counts as a "net benefit" to ratepayers the return to them of 55% of the known NEIL distribution. But the principles of ratemaking would require that 100% of the NEIL distributions be returned to ratepayers, because ratepayers paid 100% of the premiums that are being re-distributed to PGE. Merely following ratemaking principles does not confer a "net benefit" on ratepayers, merely because ratepayers could indeed be made worse off by disregarding ratemaking principles and simply allowing the utility any number of "heads-I-win--tails-you-lose" arrangements, with ratepayers paying in amounts that shareholders then withdraw. A "net benefit" to ratepayers from any scenario or proposed rate treatment must have a lawful and

principled rate treatment as the baseline for comparison. It is clear that the "net benefit analysis" in this docket has neither.

6. Issue 6: Was Order No. 02-227 supported by adequate findings of fact and conclusions of law?

This is a legal issue that counsel will address in briefing.

7. Issue 7: Did the Commission deny URP due process in docket UM 989?

This is a legal issue that counsel will address in briefing.

Refund Calculation for PGE
From Date of Improper Collection to 10/1/2008

URP Exhibit 501
Page 1
Corrected 5/21/08

UM 989 Overcharge				$ 68,130,924
68				$ 103,714,077
NEIL Rebate				$ 45,001,546
Interest Bearing Accounts				$ 473,100,669
Less Trojan Amortization PV				$ (253,455,291)
Total Due at 10/1/2008				**$ 436,491,924**

Revenue Requirement for UM 989 Overcharge

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Apr-01	**$ 24,002,000**	13.61%	$ 2,450,696	$ 26,452,696
1-Jan-02	$ 26,452,696	12.96%	$ 3,429,294	$ 29,881,990
1-Jan-03	$ 29,881,990	12.96%	$ 3,873,863	$ 33,755,853
1-Jan-04	$ 33,755,853	12.96%	$ 4,376,066	$ 38,131,920
1-Jan-05	$ 38,131,920	12.96%	$ 4,943,374	$ 43,075,294
1-Jan-06	$ 43,075,294	12.96%	$ 5,584,227	$ 48,659,520
1-Jan-07	$ 48,659,520	12.96%	$ 6,308,159	$ 54,967,679
1-Jan-08	$ 54,967,679	12.96%	$ 7,125,941	$ 62,093,620
1-Oct-08	$ 62,093,620	12.96%	$ 6,037,304	**$ 68,130,924**

Revenue Requirement for "Regulatory Asset"
Present Value from 10/1/2000

Amount of Regulatory Asset: $ 36,700,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	**$ 36,700,000**	13.61%	$ 1,249,070	$ 37,949,070
1-Apr-01	$ 36,700,000	12.96%	$ 3,568,306	$ 40,268,306
1-Jan-02	$ 40,268,306	12.96%	$ 5,220,332	$ 45,488,639
1-Jan-03	$ 45,488,639	12.96%	$ 5,897,090	$ 51,385,729
1-Jan-04	$ 51,385,729	12.96%	$ 6,661,581	$ 58,047,310
1-Jan-05	$ 58,047,310	12.96%	$ 7,525,180	$ 65,572,490
1-Jan-06	$ 65,572,490	12.96%	$ 8,500,735	$ 74,073,225
1-Jan-07	$ 74,073,225	12.96%	$ 9,602,759	$ 83,675,984
1-Jan-08	$ 83,675,984	12.96%	$ 10,847,649	$ 94,523,633
1-Oct-08	$ 94,523,633	12.96%	$ 9,190,443	**$ 103,714,077**

Revenue Requirement for NEIL Rebate

Amount of NEIL Rebate $ 15,400,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	**$ 15,400,000**	13.61%	$ 524,133	$ 15,924,133
1-Apr-01	$ 15,924,133	12.96%	$ 1,548,288	$ 17,472,421
1-Jan-02	$ 17,472,421	12.96%	$ 2,265,103	$ 19,737,524
1-Jan-03	$ 19,737,524	12.96%	$ 2,558,748	$ 22,296,272
1-Jan-04	$ 22,296,272	12.96%	$ 2,890,461	$ 25,186,732
1-Jan-05	$ 25,186,732	12.96%	$ 3,265,176	$ 28,451,908
1-Jan-06	$ 28,451,908	12.96%	$ 3,688,470	$ 32,140,378
1-Jan-07	$ 32,140,378	12.96%	$ 4,166,638	$ 36,307,016
1-Jan-08	$ 36,307,016	12.96%	$ 4,706,796	$ 41,013,812
1-Oct-08	$ 41,013,812	12.96%	$ 3,987,734	**$ 45,001,546**

Revenue Impact of Interest Bearing Accounts

Interest Bearing Accounts $ 161,900,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	**$ 161,900,000**	13.61%	$ 5,510,202	$ 167,410,202
1-Apr-01	$ 167,410,202	12.96%	$ 16,277,136	$ 183,687,338
1-Jan-02	$ 183,687,338	12.96%	$ 23,812,995	$ 207,500,333
1-Jan-03	$ 207,500,333	12.96%	$ 26,900,082	$ 234,400,415
1-Jan-04	$ 234,400,415	12.96%	$ 30,387,374	$ 264,787,789
1-Jan-05	$ 264,787,789	12.96%	$ 34,326,755	$ 299,114,544
1-Jan-06	$ 299,114,544	12.96%	$ 38,776,832	$ 337,891,376
1-Jan-07	$ 337,891,376	12.96%	$ 43,803,812	$ 381,695,189
1-Jan-08	$ 381,695,189	12.96%	$ 49,482,483	$ 431,177,672
1-Oct-08	$ 431,177,672	12.96%	$ 41,922,997	**$ 473,100,669**

Elimination of Trojan Amortization
Unamortized Balance at October 1, 2000 **$ 180,500,000**

Date	Amount of Amortization Otherwise Allowable	Interest Rate	PV To 2008
2000	$ 4,011,111	13.61%	$ 11,135,626
2001	$ 16,044,444	12.96%	$ 37,661,857
2002	$ 16,044,444	12.96%	$ 33,339,735
2003	$ 16,044,444	12.96%	$ 29,513,626
2004	$ 16,044,444	12.96%	$ 26,126,606
2005	$ 16,044,444	12.96%	$ 23,128,284
2006	$ 16,044,444	12.96%	$ 20,474,054
2007	$ 16,044,444	12.96%	$ 18,124,426
2008	$ 16,044,444	12.96%	$ 16,044,444
2009	$ 16,044,444	12.96%	$ 14,203,164
2010	$ 16,044,444	12.96%	$ 12,573,191
2011	$ 16,044,444	12.96%	$ 11,130,276
Total:	$ 180,500,000		$ 253,455,291

2000 Cost of Capital

Capital	Capital Structure	Return	Weighted Return	Tax Benefit of Interest	Net of Tax Cost of Capital
Common	46.48%	11.60%	5.39%	1.000	5.39%
Preferred	4.67%	8.27%	0.39%	1.000	0.39%
Debt	48.86%	7.82%	3.82%	0.650	2.48%
Total	100.00%		9.60%		8.26%
			Net to Gross:		1.648
			With Tax Cost of Capital		**13.61%**

2001 - 2008 Cost of Capital

Capital	Capital Structure	Return	Weighted Return	Tax Benefit of Interest	Net of Tax Cost of Capital
Common	52.16%	10.50%	5.48%	1.000	5.48%
Preferred	1.53%	8.43%	0.13%	1.000	0.13%
Debt	46.32%	7.51%	3.48%	0.650	2.26%
Total	100.00%		9.08%		7.87%
			Net to Gross:		1.648
			With Tax Cost of Capital		**12.96%**

CERTIFICATE OF SERVICE

I hereby certify that I filed by e-mail at the filing center (the original) and filed 8 copies of the foregoing TESTIMONY OF JIM LAZAR--CORRECTED, RELATED EXHIBITS AND CERTIFICATE OF SERVICE with the Filing Center by mail, postmarked this date, and that I served a true copy of the foregoing TESTIMONY OF JIM LAZAR--CORRECTED, RELATED EXHIBITS AND CERTIFICATE OF SERVICE by mail and email to the physical addresses and email addresses shown below, which comprise the service list on the Commission's web site as of this day (email service only to those who have waived physical service).

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