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**VIA E-FILING & FIRST CLASS MAIL**

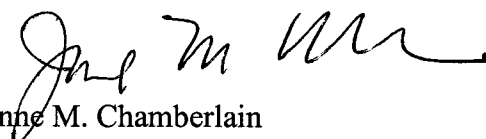
Oregon Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE, Suite 215  
P. O. Box 2148  
Salem, Oregon 97308-2148

Re: *UE 88/DR 10/UM 989*

Attention Filing Center:

Enclosed for filing in the above-referenced docket are the original and five copies of Portland General Electric Company's Motion in Limine. This document is being filed electronically per the Commission's eFiling policy to the electronic address [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us), with copies being served on all parties on the service list via U.S. Mail. A photocopy of the PUC tracking information will be forwarded with the hard copy filing.

Very truly yours,

  
Jeanne M. Chamberlain

JMC/ldh  
Enclosures  
cc: Service List  
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**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)

**PORTLAND GENERAL ELECTRIC  
COMPANY'S MOTION IN LIMINE**

Pursuant to OAR 860-012-0035 and 860-013-0031, Portland General Electric Company ("PGE") hereby moves for a ruling concerning the cross examination of PGE's witnesses and the scope of cross examination permitted. Establishing ground rules at the start will expedite the hearing and avoid confusion and uncertainty regarding the conduct of cross examination and its scope. To that end, PGE requests the following rulings:

1. Cross examination should be limited to the scope of each witness' written testimony.
2. Cross examination should be limited to the issues in Phase I of this proceeding. Factual allegations such as PGE's earnings after UE 88, tax payments after UE 88, and Enron's acquisition of PGE in 1997 should be beyond the scope of cross examination because these alleged facts were unknown and unknowable in early 1995 when the Commission set UE 88 rates.

As further grounds, PGE submits the following:

**I. THE SCOPE OF CROSS EXAMINATION SHOULD BE LIMITED TO ISSUES IDENTIFIED IN DIRECT TESTIMONY**

This instruction simply tracks Rule 611 of the Oregon Rules of Evidence: "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." ORS 40.370. In this regard, Oregon has adopted the majority view that, other than issues of credibility, cross examination must be limited to the matters to which the witness testified on direct. *See McCormick on Evidence*, § 21, at 93 (5th ed. 1999).

PGE's concern about the scope of cross examination is not speculative. Several of the topics identified in URP's Additional Cross Examination Statement clearly fall outside the scope of the witness' direct testimony. To give just two examples, Ms. Lesh did not testify regarding "the history of Trojan" or the "effect of UE 88 decision on PGE stock," both of which URP lists as subjects for cross examination. URP Additional Cross Examination Statement at 1.

**II. THE SCOPE OF CROSS EXAMINATION SHOULD BE LIMITED TO FACTS RELEVANT TO PHASE I OF THIS PROCEEDING**

The Commission reopened these dockets to comply with the remand from the Court of Appeals in DR 10 and UE 88 and the remand order from the Marion County Circuit Court in UM 989. Based on its analysis of those remand orders, the Commission determined that "this proceeding requires a retrospective examination of what rates would have been approved in UE 88 had it interpreted ORS 757.355 to not allow a return on investment in retired plant." July 25 Ruling at 3, citing Order Nos. 04-597 and 05-091. As a result, Chief Administrative Law Judge Grant ruled that factual allegations such as PGE's actual earnings in the late 1990s are outside the scope of this proceeding:

This proceeding does not allow any party to present factual evidence that could not have been presented in the original proceeding. While the Commission must now apply a different legal interpretation of ORS 757.355, the factual evidence to which that statute is applied must encompass the same

timeframe, that is, information that could have been presented during UE 88.

*Id.*

We ask that this same limitation apply at the hearing. Cross examination should not be permitted regarding facts that were unknown and unknowable at the time the Commission established UE 88 rates.

Again, the basis for this instruction is not hypothetical. A number of the topics listed in URP's Additional Cross-Examination Statement violate the July 25 Ruling and the Commission Orders regarding the scope of this docket. To give just a few examples, URP lists as subjects of cross examination (a) nonpayment of assumed income taxes; and (b) effect of Enron purchase and ownership. UPR Additional Cross-Examination Statement at 2, 4-5.

### CONCLUSION

For the reasons stated above, PGE respectfully requests the following rulings:

1. Cross Examination will be limited to the scope of each witness' written testimony.

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2. Cross examination will be limited to the issues in Phase I of this proceeding and shall not include facts that were unknown and unknowable when the Commission set UE 88 rates.

DATED this 25th day of August, 2005.

PORTLAND GENERAL ELECTRIC  
COMPANY

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S MOTION IN LIMINE** by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the U.S. mail at Portland, Oregon.

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DATED this 25th day of August, 2005.

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