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 OPENING BRIEF - PHASE III**

Portland General Electric Company ("PGE") submits this opening brief in Phase III of these consolidated Trojan remand proceedings. We have organized this opening brief to address the issues set forth in the Scoping Order for this phase (Ruling, dated February 22, 2008). In sum, we respectfully request that the Commission enter a comprehensive order resolving all aspects of this consolidated proceeding, including resolution of the issues in this Phase III as follows:

- Issue #1 – PGE's remaining undepreciated investment in Trojan as of September 30, 2000 was $180.5 million.
- Issue #2 – The rates approved in Order No. 02-227 do not provide PGE with an indirect "return on" the remaining undepreciated investment in Trojan.
- Issue #3 – The FAS 109 liability and its replacement regulatory asset are consistent with standard accounting and ratemaking principles.
- Issue #4 – The settlement did not inappropriately transfer the proceeds from the NEIL policy.
- Issue #5 – The rates adopted in Order No. 02-227 were just and reasonable.

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- Issue #6 – Order No. 02-227 was supported by substantial evidence.
- Issue #7 – URP has been afforded a full opportunity to present its evidence and arguments in UM 989.

We respectfully request that the Commission affirm its determinations in UM 989 (Order Nos. 00-601 and 02-227) that approval of PGE's accounting application implementing the settlement agreements between PGE, Commission Staff and CUB (the "settlement") provided benefits to PGE's customers, was in the public interest, and resulted in fair and reasonable rates.

I. ISSUE #1 – PGE'S REMAINING UNDEPRECIATED INVESTMENT IN TROJAN AS OF SEPTEMBER 30, 2000, WAS $180.5 MILLION

The record evidence is clear that the undepreciated Trojan balance as of September 30, 2000, was $180.5 million. PGE/7500, Tinker-Schue-Hager/3; Staff/500, Johnson/2. As Commission Order No. 00-601 required, PGE submitted final journal entries reflecting its implementation of the settlement. Those journal entries show an actual undepreciated Trojan balance of $180.5 million as of September 30, 2000. *See* Staff-PGE Exhibit 201; PGE/7500, Tinker-Schue-Hager/3. Joint Staff and PGE testimony submitted in the initial UM 989 proceeding set forth the actual Trojan balances from April 2000 through September 30, 2000, resulting in the final unamortized balance on the effective date of the settlement. Staff-PGE/200, Busch-Hager-Tinker/20; PGE/7500, Tinker-Schue-Hager/3.

The scoping order in this Phase III permitted URP and the Class Action Plaintiffs to submit evidence on any issue regarding the undepreciated Trojan balance as of September 30, 2000, except for claims that the Trojan balance should have been reduced by that portion of rates collected from customers from 1995 to 2000 that reflects a return on the Trojan investment. Scoping Order at 4-5. URP's witness declined to raise any substantive issues. His testimony was limited to correcting the Scoping Order's reference to the remaining balance as of October 1, 2000 (the day after the effective date of the settlement). URP/500, Lazar/6. The pertinent date of the remaining Trojan balance has now been

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corrected. Hearing Trans. at 133 (July 10, 2008). Accordingly, there is no factual dispute regarding the appropriate Trojan balance that is the subject of the settlement.

II. ISSUE #2 – THE RATES APPROVED IN ORDER NO. 02-227 DO NOT PROVIDE PGE WITH AN INDIRECT "RETURN ON" THE REMAINING UNDEPRECIATED INVESTMENT IN TROJAN

The rates approved in Order No. 02-227 did not provide PGE with an indirect return on the remaining undepreciated Trojan balance. Indeed, the settlement that Order No. 02-227 approved accomplished the exact opposite. Instead of having the Trojan balance remain in PGE's rate base, where it would have continued to accrue interest, the settlement amortized the remaining Trojan balance on a single day. PGE/7500, Tinker-Schue-Hager/4. By their very nature, interest and "return on" require a payment for the time value of money when full payment is delayed. PGE earned no interest or return on the Trojan balance as part of the settlement. It recovered the remaining investment balance without any delay or interest. *See* Order No. 02-227 at 12 ("Because the Trojan balance was collected in a day, there was no 'interest' or 'profit' allowed on that balance. Interest is associated with the time value of money paid over time."). As Staff's testimony put it:

> The relevant point is that both the Trojan liability and the customer credits were available for amortization on September 30, 2000. As PGE pointed out in PGE/7500/4, interest is applied when there is a delay in payment. In UM 989, the Commission in its discretion approved amortization of both the Trojan liability and the regulatory credits on a single day. There was no further delay in payment to either PGE or customers, so the question of whether these amounts could earn interest was no longer germane.

Staff/500, Johnson/3.

Nor does the use of customer credits in the settlement suggest an indirect "return on" the undepreciated Trojan balance. The applicable customer credits could have earned interest if they had been returned to customers over time. However, the Commission has broad authority to determine the amortization period of regulatory assets and liabilities

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alike. *See* ORS 757.105 to ORS 757.140. Customers have no legal right to delayed amortization of customer credits with interest. In this case, not only do customers have no such right to delayed amortization, but delayed amortization of those credits was not in customers' interest either. Immediate amortization of the customer credits accomplished three important benefits for customers: (1) removal of the remaining Trojan balance; (2) an overall substantial net benefit; and (3) immediately reduced rates by $10.2 million. Customers would not have received those benefits absent immediate amortization of the customer credits. Instead, customers would have continued to pay UE 100 rates, foregoing the $10.2 million rate decrease, with the looming prospect of a rate increase associated with a shortened recovery period for the remaining Trojan investment balance.

The real source of URP's complaint on this subject is its belief that what customers owed PGE for the undepreciated Trojan balance was actually worth much less than $180.5 million because they believe the balance must be paid in the future without interest. Thus, while the undepreciated balance was $180.5 million, the actual value was much lower, according to URP's theory, because PGE was required recover the investment over time without any interest. This is why Mr. Lazar claims "the entire trade is, from a ratepayer perspective, absurd." URP/500, Lazar/7. PGE's undepreciated investment in Trojan of $180.5 million is really worth only "$106 million [in present value terms] (at PGE's post-tax authorized ROI) or $87 million (at PGE's pre-tax authorized ROI)," according to Mr. Lazar. URP/200, Lazar/11.

The flaw in this argument is the assumption that customers had a right to make PGE wait for the return of its investment until 2011. What is the basis for this assumption? Mr. Lazar admitted he knows of no legal basis for requiring such an extended recovery period. Hearing Trans. at 99 ("I'm not aware of anything under Oregon law that would regulate the Oregon commission as to what term of amortization it would approve.").

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Rather, Mr. Lazar seems only to suggest that write-downs of nuclear plants are the norm based on his knowledge of recovery periods allowed by other state Commissions for abandoned (never in service) plant. Hearing Trans. at 114. The law of other states and their respective public utility commissions is not binding on the Commission. Oregon law expressly provides for recovery of amounts "the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service." ORS 757.140(2). The Court of Appeals relied upon that statute in finding that PGE was entitled to recovery of the undepreciated Trojan balance. *Citizens' Utility Board v. OPUC*, 154 Or App 702, 713, 716, 962 P2d 744 (1998).

Further, shortening the recovery period of Trojan reflects good policy because it recognizes that full remaining investment in Trojan was owed to PGE (PGE/7600, Tinker-Schue-Hager/7) and it recognizes that the Commission already determined the amount of prudently incurred investment allowed for recovery in UE 88 (Order No. 95-322). That order required PGE to write-off portions of its Trojan investment to reflect decisions regarding prudence and the net benefit of closure relative to continued operation.

Back in 1995, nothing prevented the Commission from ordering the immediate recovery of PGE's remaining Trojan investment (after the write-offs required in Order No. 95-322) or otherwise shortening the recovery period. Likewise in 2000, the immediate amortization of the undepreciated Trojan balance could be accomplished at the same time as other customer credits were amortized, resulting in the removal of the Trojan balance with a rate decrease, instead of a rate increase. No statute required the Commission to deprive PGE of the value of its remaining investment to give customers a windfall. On the contrary, the law requires the Commission to fairly balance the interests on both sides. ORS 756.040(1).

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III. ISSUE #3 – THE FAS 109 LIABILITY AND ITS REPLACEMENT REGULATORY ASSET ARE CONSISTENT WITH STANDARD ACCOUNTING AND RATEMAKING PRINCIPLES

Contrary to URP's argument, the FAS 109 asset is not a "phantom" bookkeeping asset that should be disregarded for purposes of the settlement. Rather, it represents deferred taxes that were required to be carried on PGE's books as a result of accelerated depreciation of Trojan. This FAS 109 liability was required to be recorded under Generally Accepted Accounting Principles, was subject to independent annual audit, and is memorialized in journal entries in Staff-PGE Exhibit 201. PGE/7500, Tinker-Schue-Hager/6.

The FAS 109 asset reflects an actual economic benefit received by customers. FAS 109 requires an entity that takes accelerated depreciation of an asset, and thereby lowers its taxes during the period of accelerated depreciation, to create a balance-sheet entry for deferred taxes to reflect the fact that the entity will have a reduced remaining depreciable tax basis in later years, and therefore will pay higher taxes in those years. PGE/7600, Tinker-Schue-Hager/10. Because PGE used flow-through accounting in the early years of Trojan's operation, the benefit of PGE's lower taxes resulting from accelerated depreciation of Trojan flowed directly through to customers. (*See* URP Exhibit 603 at 2, and attached PGE 1979 Annual Report at 25-26.)

But having taken accelerated depreciation in the early years of Trojan, PGE was facing the tax consequences of that decision in the form of higher overall tax expenses in later years. That is what the FAS 109 balance represents. PGE/7700, Tinker-Schue-Hager/2-3. This is not a "phantom" bookkeeping entry; it is a required accounting practice reflecting that an entity that takes accelerated depreciation will have a reduced tax basis for use as tax depreciation later. *Id.*

URP's primary objection to inclusion of the FAS 109 asset in the settlement appears to be that PGE was a wholly-owned subsidiary of PGC or Enron during part of the

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useful life of Trojan. URP/510, Lazar/4-5. Because of its status as a subsidiary, PGE calculated its tax expense for ratemaking purposes on a stand-alone basis, but remitted its tax expenses to its parent corporation rather than directly to state or federal taxing agencies. From this, URP argues that PGE was not actually faced with greater tax liabilities in the later years of the Trojan asset because it did not pay taxes directly to the government. *Id.*

The fact that PGE was a subsidiary does not mean that for ratemaking purposes PGE avoided paying a tax expense under the Commission's practice. PGE/7700, Tinker-Schue-Hager/2. At the time of the settlement, PGE's tax expense included in rates was calculated on a stand-alone basis, pursuant to established Commission procedure. Calculated on a stand-alone basis, PGE's tax liabilities reflected the effects of accelerated depreciation taken in prior years. *Id.* The fact that this stand-alone treatment of a utility's tax expense might have changed after the 2005 enactment of SB 408 is not material to this docket, which is concerned with conditions at the time of the settlement in 2000. At that time, it is undisputed that PGE's tax expenses were calculated on a stand-alone basis. *Id.* Accordingly, URP's arguments about Enron's tax payments are not relevant to this docket.

In sum, the FAS 109 asset is not a "phantom" bookkeeping entry, but represents an actual benefit conferred on customers and an actual liability faced by PGE in the form of higher tax expenses. Accordingly, it should not be disregarded for purposes of this settlement.

IV. ISSUE #4 – THE SETTLEMENT DID NOT INAPPROPRIATELY TRANSFER THE PROCEEDS FROM THE NEIL POLICY

As part of the settlement customers received 100% of the value of the NEIL benefit while permitting customers to transfer 45% of the refunded NEIL insurance premiums to PGE in order to receive the benefits of the settlement. In its net benefit analyses, PGE assumed that 100% of those refunded premiums were owing to customers and, accordingly, treated the 45% transfer to PGE as a credit that customers gave up in the

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settlement. PGE/7500, Tinker-Schue-Hager/7. This was a conservative assumption; as noted in PGE's and Staff's written testimony; it is possible the customers did not, in fact, pay 100% of the NEIL premiums and, therefore, might not, in fact, be entitled to 100% of the refunds. PGE/7600, Tinker-Schue-Hager/11-12; Staff/500, Johnson/4. But for purposes of the settlement, PGE made that conservative assumption in favor of customers. Even with that assumption, the net benefit analyses reveal that the settlement generates a benefit for customers of between $16.4 and $18.5 million. PGE/7500, Tinker-Schue-Hager/7.

URP has argued that the settlement is improper because it transfers some of the NEIL credits, which belong to customers, to PGE. URP/500, Lazar/8-11. It is difficult to know what to make of this argument. The settlement does not treat NEIL any differently than it treats other credits given up by customers in the settlement (*e.g.*, the merger credit) or, for that matter, than it treats assets given up by PGE in the settlement (*e.g.*, the Trojan balance). This is a settlement in which both customers and PGE gave up assets as a compromise to resolve a dispute. The settlement recognizes that the NEIL premiums belonged to customers, and that customers were giving up something of value when they agreed to forego 45% of the NEIL premiums.

URP has not articulated any reason why customers could not forego the NEIL credits as part of a settlement. Instead, URP argues only that the NEIL credits belong to customers. But that is exactly the assumption the settlement makes. PGE/7600, Tinker-Schue-Hager/11 ("Both net benefit analyses adopted precisely the assumption Mr. Lazar advocates. Both assumed that customers were entitled to 100% of the NEIL final distribution"). Again, PGE and customers are both giving up assets to settle a dispute. In this context, it is no more meaningful to point out that the NEIL credits "belonged to" customers than it would be to point out that the Trojan balance "belonged to" PGE.

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After testimony and a hearing, it is still not clear why URP has singled out the NEIL credit from among the credits that customers are foregoing in this settlement. URP's argument that, but for the settlement, the NEIL credit would belong to customers, is equally true of any of the other credits customers are giving up in this settlement. For that matter, it would also be true of the credits that PGE is giving up in this settlement.

In sum, PGE's net benefit analyses acknowledged that customers relinquished a benefit to which they were entitled when they gave up 45% of the NEIL credits in the settlement. Even after giving up that benefit, customers still received a net benefit of between $16.4 and $18.5 million from the settlement. URP has not articulated any reason why the NEIL credits could not be exchanged by customers in a settlement. The NEIL credits are simply one facet of a multi-part settlement that, when viewed in totality, is beneficial to customers and therefore should be approved.

V. ISSUE #5 – THE RATES ADOPTED IN ORDER NO. 02-227 WERE JUST AND REASONABLE

It bears noting that Order No. 02-227 had no rate impact whatsoever. PGE's current rates are set pursuant to Order No. 07-573 (UE 188). Here is a brief chronology:

- September 30, 2000 – Last day for the rates approved in UE 100;
- October 1, 2000 – New rates go into effect pursuant to Order No. 00-601, which implemented the settlement;
- September 30, 2001 – Last day for the rates approved in Order No. 00-601;
- October 1, 2001 – New rates go into effect pursuant to Order No. 01-777, at the conclusion of PGE's general rate case (UE 115)
- October 1, 2001 to Present –PGE's rates are revised either based on annual updates to power costs or in general rate cases UE 180 (effective January 1, 2007) and UE 188 (effective January 1, 2008).

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In short, Order No. 02-227 did not institute a rate increase, as URP suggests; indeed, it had no rate impact. The rate impact of the settlement implemented by Order No. 00-601 has been superseded by numerous later rate orders.

Nevertheless, Order No. 02-227 affirmed the conclusion in Order No. 00-601 that the proposed rates implementing the settlement were fair and reasonable. That conclusion is demonstrably correct based on the accounting and rate impact of the settlement, which (1) reduced rates immediately by $10.2 million over a 12-month period (on average a 1% rate decrease) (Order No. 00-601 at 3); (2) established a $2.5 million regulatory liability (customer credit), which accrued interest, (3) removed PGE's undepreciated investment in Trojan from its books; and (4) resulted in an overall net benefit to customers of between $16.4 to $18.5 million.

URP's objections under this topic are unpersuasive. For example, URP has claimed that the Trojan balance should be further reduced because it allegedly included CWIP. As a threshold matter, the exact nature of the adjustment URP seeks with respect to CWIP is uncertain. If it concerns the "return on" any such CWIP amounts, then this objection does not apply to the settlement which is the subject of UM 989 and this Phase III. The settlement removed Trojan from PGE's books in an instant. The entire Trojan balance at that time earned no "return on." Moreover, the alleged "return on" any CWIP component of the 1995 undepreciated balance concerns Phase I of this consolidated remand proceeding in which the Commission will address amounts collected from customers attributable to the "return on" the Trojan undepreciated balance. In this regard, any CWIP amounts are no different than any other component of the Trojan balance. To the extent URP's argument concerns not just "return on" CWIP but rather "recovery of" CWIP, URP offers no justification for such an adjustment. ORS 757.335 bars "return on" CWIP; it contains no prohibition against "return of" such amounts.

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More fundamentally, URP is wrong regarding the inclusion of CWIP in the Trojan balance. Commission Order No. 95-322 made two regulatory disallowances (one disallowing certain plugging and sleeving costs and the other based on the net benefit test) that resulted in a cumulative reduction of $53.8 million in the Trojan balance, but included no CWIP adjustment. PGE/7600, Tinker-Schue-Hager/16. URP's position that the Commission should impose an additional CWIP adjustment to further reduce the Trojan balance would inherently skew the results of the net benefit test in favor of the closure scenario. Eliminating the CWIP from one side of the net benefit equation (closure scenario) and not the other side (no-closure scenario), as URP suggests, would bias the result. As the Commission concluded in Order No. 02-227, "this form of the net benefit test is not the one the Commission used in Order No. 95-322, nor is it an appropriate test from a regulatory perspective." Order No. 95-322 at 17.

The undepreciated Trojan balance resulting from the UE 88 adjustments was $340.2 million. PGE's unamortized investment balance at the time ($393.9 million with CWIP and $383.6 million without CWIP) was more than sufficient to account for the $340.2 million balance. Accordingly, if the Commission in UE 88 had been presented with the CWIP accounts, it would have eliminated the CWIP balance as part of its ordered write-off of $53.8 million from the Trojan balance. PGE/7600, Tinker-Schue-Hager/16. The resulting undepreciated balance of $340.2 million would have been unaffected.

VI. ISSUE #6 – ORDER NO. 02-227 WAS SUPPORTED BY ADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record, and for the reasons set forth in prior briefing and testimony, PGE believes the Commission's Order No. 02-227 was supported by substantial evidence and in accordance with law. In any event, the record in the initial UM 989 proceeding, and in this Phase III of the consolidated Trojan remand proceeding, provides substantial evidence in the record to support the principal conclusions in Order No. 02-227,

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namely that approval of PGE's accounting order and proposed rate change provided benefits to PGE's customers, is in the public interest and resulted in fair and reasonable rates. PGE will address specific arguments made by URP on this issue, if any, in its responsive briefing.

VII. ISSUE #7 – URP HAS BEEN AFFORDED A FULL OPPORTUNITY TO PRESENT ITS EVIDENCE AND ARGUMENTS IN UM 989

Throughout these proceedings, URP has been given ample opportunity to make its arguments and present its evidence. URP has been given two lengthy hearings, three opportunities to present written testimony, two extended periods for discovery, and multiple briefs. These multiple opportunities to obtain discovery and present evidence and argument, both in writing and in person, go far beyond the constitutional minimum of notice and opportunity to be heard required by the Due Process Clause. PGE will address specific arguments on this issue, if any, in its responsive brief.

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VIII. CONCLUSION

We respectfully request that the Commission issue a comprehensive order resolving all issues in this consolidated remand proceeding, including resolution of the issues in this Phase III in a manner consistent with this opening brief.

DATED this 21st day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S OPENING BRIEF - PHASE III** by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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DATED this 21st day of July, 2008.

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We respectfully request that the Commission affirm its determinations in UM 989 (Order Nos. 00-601 and 02-227) that approval of PGE's accounting application implementing the settlement agreements between PGE, Commission Staff and CUB (the "settlement") provided benefits to PGE's customers, was in the public interest, and resulted in fair and reasonable rates.

I. ISSUE #1 – PGE'S REMAINING UNDEPRECIATED INVESTMENT IN TROJAN AS OF SEPTEMBER 30, 2000, WAS $180.5 MILLION

The record evidence is clear that the undepreciated Trojan balance as of September 30, 2000, was $180.5 million. PGE/7500, Tinker-Schue-Hager/3; Staff/500, Johnson/2. As Commission Order No. 00-601 required, PGE submitted final journal entries reflecting its implementation of the settlement. Those journal entries show an actual undepreciated Trojan balance of $180.5 million as of September 30, 2000. *See* Staff-PGE Exhibit 201; PGE/7500, Tinker-Schue-Hager/3. Joint Staff and PGE testimony submitted in the initial UM 989 proceeding set forth the actual Trojan balances from April 2000 through September 30, 2000, resulting in the final unamortized balance on the effective date of the settlement. Staff-PGE/200, Busch-Hager-Tinker/20; PGE/7500, Tinker-Schue-Hager/3.

The scoping order in this Phase III permitted URP and the Class Action Plaintiffs to submit evidence on any issue regarding the undepreciated Trojan balance as of September 30, 2000, except for claims that the Trojan balance should have been reduced by that portion of rates collected from customers from 1995 to 2000 that reflects a return on the Trojan investment. Scoping Order at 4-5. URP's witness declined to raise any substantive issues. His testimony was limited to correcting the Scoping Order's reference to the remaining balance as of October 1, 2000 (the day after the effective date of the settlement). URP/500, Lazar/6. The pertinent date of the remaining Trojan balance has now been

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corrected. Hearing Trans. at 133 (July 10, 2008). Accordingly, there is no factual dispute regarding the appropriate Trojan balance that is the subject of the settlement.

II. ISSUE #2 – THE RATES APPROVED IN ORDER NO. 02-227 DO NOT PROVIDE PGE WITH AN INDIRECT "RETURN ON" THE REMAINING UNDEPRECIATED INVESTMENT IN TROJAN

The rates approved in Order No. 02-227 did not provide PGE with an indirect return on the remaining undepreciated Trojan balance. Indeed, the settlement that Order No. 02-227 approved accomplished the exact opposite. Instead of having the Trojan balance remain in PGE's rate base, where it would have continued to accrue interest, the settlement amortized the remaining Trojan balance on a single day. PGE/7500, Tinker-Schue-Hager/4. By their very nature, interest and "return on" require a payment for the time value of money when full payment is delayed. PGE earned no interest or return on the Trojan balance as part of the settlement. It recovered the remaining investment balance without any delay or interest. *See* Order No. 02-227 at 12 ("Because the Trojan balance was collected in a day, there was no 'interest' or 'profit' allowed on that balance. Interest is associated with the time value of money paid over time."). As Staff's testimony put it:

> The relevant point is that both the Trojan liability and the customer credits were available for amortization on September 30, 2000. As PGE pointed out in PGE/7500/4, interest is applied when there is a delay in payment. In UM 989, the Commission in its discretion approved amortization of both the Trojan liability and the regulatory credits on a single day. There was no further delay in payment to either PGE or customers, so the question of whether these amounts could earn interest was no longer germane.

Staff/500, Johnson/3.

Nor does the use of customer credits in the settlement suggest an indirect "return on" the undepreciated Trojan balance. The applicable customer credits could have earned interest if they had been returned to customers over time. However, the Commission has broad authority to determine the amortization period of regulatory assets and liabilities

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alike. *See* ORS 757.105 to ORS 757.140. Customers have no legal right to delayed amortization of customer credits with interest. In this case, not only do customers have no such right to delayed amortization, but delayed amortization of those credits was not in customers' interest either. Immediate amortization of the customer credits accomplished three important benefits for customers: (1) removal of the remaining Trojan balance; (2) an overall substantial net benefit; and (3) immediately reduced rates by $10.2 million. Customers would not have received those benefits absent immediate amortization of the customer credits. Instead, customers would have continued to pay UE 100 rates, foregoing the $10.2 million rate decrease, with the looming prospect of a rate increase associated with a shortened recovery period for the remaining Trojan investment balance.

The real source of URP's complaint on this subject is its belief that what customers owed PGE for the undepreciated Trojan balance was actually worth much less than $180.5 million because they believe the balance must be paid in the future without interest. Thus, while the undepreciated balance was $180.5 million, the actual value was much lower, according to URP's theory, because PGE was required recover the investment over time without any interest. This is why Mr. Lazar claims "the entire trade is, from a ratepayer perspective, absurd." URP/500, Lazar/7. PGE's undepreciated investment in Trojan of $180.5 million is really worth only "$106 million [in present value terms] (at PGE's post-tax authorized ROI) or $87 million (at PGE's pre-tax authorized ROI)," according to Mr. Lazar. URP/200, Lazar/11.

The flaw in this argument is the assumption that customers had a right to make PGE wait for the return of its investment until 2011. What is the basis for this assumption? Mr. Lazar admitted he knows of no legal basis for requiring such an extended recovery period. Hearing Trans. at 99 ("I'm not aware of anything under Oregon law that would regulate the Oregon commission as to what term of amortization it would approve.").

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Rather, Mr. Lazar seems only to suggest that write-downs of nuclear plants are the norm based on his knowledge of recovery periods allowed by other state Commissions for abandoned (never in service) plant. Hearing Trans. at 114. The law of other states and their respective public utility commissions is not binding on the Commission. Oregon law expressly provides for recovery of amounts "the commission finds represent undepreciated investment in a utility plant, including that which has been retired from service." ORS 757.140(2). The Court of Appeals relied upon that statute in finding that PGE was entitled to recovery of the undepreciated Trojan balance. *Citizens' Utility Board v. OPUC*, 154 Or App 702, 713, 716, 962 P2d 744 (1998).

Further, shortening the recovery period of Trojan reflects good policy because it recognizes that full remaining investment in Trojan was owed to PGE (PGE/7600, Tinker-Schue-Hager/7) and it recognizes that the Commission already determined the amount of prudently incurred investment allowed for recovery in UE 88 (Order No. 95-322). That order required PGE to write-off portions of its Trojan investment to reflect decisions regarding prudence and the net benefit of closure relative to continued operation.

Back in 1995, nothing prevented the Commission from ordering the immediate recovery of PGE's remaining Trojan investment (after the write-offs required in Order No. 95-322) or otherwise shortening the recovery period. Likewise in 2000, the immediate amortization of the undepreciated Trojan balance could be accomplished at the same time as other customer credits were amortized, resulting in the removal of the Trojan balance with a rate decrease, instead of a rate increase. No statute required the Commission to deprive PGE of the value of its remaining investment to give customers a windfall. On the contrary, the law requires the Commission to fairly balance the interests on both sides. ORS 756.040(1).

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III. ISSUE #3 – THE FAS 109 LIABILITY AND ITS REPLACEMENT REGULATORY ASSET ARE CONSISTENT WITH STANDARD ACCOUNTING AND RATEMAKING PRINCIPLES

Contrary to URP's argument, the FAS 109 asset is not a "phantom" bookkeeping asset that should be disregarded for purposes of the settlement. Rather, it represents deferred taxes that were required to be carried on PGE's books as a result of accelerated depreciation of Trojan. This FAS 109 liability was required to be recorded under Generally Accepted Accounting Principles, was subject to independent annual audit, and is memorialized in journal entries in Staff-PGE Exhibit 201. PGE/7500, Tinker-Schue-Hager/6.

The FAS 109 asset reflects an actual economic benefit received by customers. FAS 109 requires an entity that takes accelerated depreciation of an asset, and thereby lowers its taxes during the period of accelerated depreciation, to create a balance-sheet entry for deferred taxes to reflect the fact that the entity will have a reduced remaining depreciable tax basis in later years, and therefore will pay higher taxes in those years. PGE/7600, Tinker-Schue-Hager/10. Because PGE used flow-through accounting in the early years of Trojan's operation, the benefit of PGE's lower taxes resulting from accelerated depreciation of Trojan flowed directly through to customers. (*See* URP Exhibit 603 at 2, and attached PGE 1979 Annual Report at 25-26.)

But having taken accelerated depreciation in the early years of Trojan, PGE was facing the tax consequences of that decision in the form of higher overall tax expenses in later years. That is what the FAS 109 balance represents. PGE/7700, Tinker-Schue-Hager/2-3. This is not a "phantom" bookkeeping entry; it is a required accounting practice reflecting that an entity that takes accelerated depreciation will have a reduced tax basis for use as tax depreciation later. *Id.*

URP's primary objection to inclusion of the FAS 109 asset in the settlement appears to be that PGE was a wholly-owned subsidiary of PGC or Enron during part of the

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useful life of Trojan. URP/510, Lazar/4-5. Because of its status as a subsidiary, PGE calculated its tax expense for ratemaking purposes on a stand-alone basis, but remitted its tax expenses to its parent corporation rather than directly to state or federal taxing agencies. From this, URP argues that PGE was not actually faced with greater tax liabilities in the later years of the Trojan asset because it did not pay taxes directly to the government. *Id.*

The fact that PGE was a subsidiary does not mean that for ratemaking purposes PGE avoided paying a tax expense under the Commission's practice. PGE/7700, Tinker-Schue-Hager/2. At the time of the settlement, PGE's tax expense included in rates was calculated on a stand-alone basis, pursuant to established Commission procedure. Calculated on a stand-alone basis, PGE's tax liabilities reflected the effects of accelerated depreciation taken in prior years. *Id.* The fact that this stand-alone treatment of a utility's tax expense might have changed after the 2005 enactment of SB 408 is not material to this docket, which is concerned with conditions at the time of the settlement in 2000. At that time, it is undisputed that PGE's tax expenses were calculated on a stand-alone basis. *Id.* Accordingly, URP's arguments about Enron's tax payments are not relevant to this docket.

In sum, the FAS 109 asset is not a "phantom" bookkeeping entry, but represents an actual benefit conferred on customers and an actual liability faced by PGE in the form of higher tax expenses. Accordingly, it should not be disregarded for purposes of this settlement.

IV. ISSUE #4 – THE SETTLEMENT DID NOT INAPPROPRIATELY TRANSFER THE PROCEEDS FROM THE NEIL POLICY

As part of the settlement customers received 100% of the value of the NEIL benefit while permitting customers to transfer 45% of the refunded NEIL insurance premiums to PGE in order to receive the benefits of the settlement. In its net benefit analyses, PGE assumed that 100% of those refunded premiums were owing to customers and, accordingly, treated the 45% transfer to PGE as a credit that customers gave up in the

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settlement. PGE/7500, Tinker-Schue-Hager/7. This was a conservative assumption; as noted in PGE's and Staff's written testimony; it is possible the customers did not, in fact, pay 100% of the NEIL premiums and, therefore, might not, in fact, be entitled to 100% of the refunds. PGE/7600, Tinker-Schue-Hager/11-12; Staff/500, Johnson/4. But for purposes of the settlement, PGE made that conservative assumption in favor of customers. Even with that assumption, the net benefit analyses reveal that the settlement generates a benefit for customers of between $16.4 and $18.5 million. PGE/7500, Tinker-Schue-Hager/7.

URP has argued that the settlement is improper because it transfers some of the NEIL credits, which belong to customers, to PGE. URP/500, Lazar/8-11. It is difficult to know what to make of this argument. The settlement does not treat NEIL any differently than it treats other credits given up by customers in the settlement (*e.g.*, the merger credit) or, for that matter, than it treats assets given up by PGE in the settlement (*e.g.*, the Trojan balance). This is a settlement in which both customers and PGE gave up assets as a compromise to resolve a dispute. The settlement recognizes that the NEIL premiums belonged to customers, and that customers were giving up something of value when they agreed to forego 45% of the NEIL premiums.

URP has not articulated any reason why customers could not forego the NEIL credits as part of a settlement. Instead, URP argues only that the NEIL credits belong to customers. But that is exactly the assumption the settlement makes. PGE/7600, Tinker-Schue-Hager/11 ("Both net benefit analyses adopted precisely the assumption Mr. Lazar advocates. Both assumed that customers were entitled to 100% of the NEIL final distribution"). Again, PGE and customers are both giving up assets to settle a dispute. In this context, it is no more meaningful to point out that the NEIL credits "belonged to" customers than it would be to point out that the Trojan balance "belonged to" PGE.

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After testimony and a hearing, it is still not clear why URP has singled out the NEIL credit from among the credits that customers are foregoing in this settlement. URP's argument that, but for the settlement, the NEIL credit would belong to customers, is equally true of any of the other credits customers are giving up in this settlement. For that matter, it would also be true of the credits that PGE is giving up in this settlement.

In sum, PGE's net benefit analyses acknowledged that customers relinquished a benefit to which they were entitled when they gave up 45% of the NEIL credits in the settlement. Even after giving up that benefit, customers still received a net benefit of between $16.4 and $18.5 million from the settlement. URP has not articulated any reason why the NEIL credits could not be exchanged by customers in a settlement. The NEIL credits are simply one facet of a multi-part settlement that, when viewed in totality, is beneficial to customers and therefore should be approved.

V. ISSUE #5 – THE RATES ADOPTED IN ORDER NO. 02-227 WERE JUST AND REASONABLE

It bears noting that Order No. 02-227 had no rate impact whatsoever. PGE's current rates are set pursuant to Order No. 07-573 (UE 188). Here is a brief chronology:

- September 30, 2000 – Last day for the rates approved in UE 100;
- October 1, 2000 – New rates go into effect pursuant to Order No. 00-601, which implemented the settlement;
- September 30, 2001 – Last day for the rates approved in Order No. 00-601;
- October 1, 2001 – New rates go into effect pursuant to Order No. 01-777, at the conclusion of PGE's general rate case (UE 115)
- October 1, 2001 to Present –PGE's rates are revised either based on annual updates to power costs or in general rate cases UE 180 (effective January 1, 2007) and UE 188 (effective January 1, 2008).

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In short, Order No. 02-227 did not institute a rate increase, as URP suggests; indeed, it had no rate impact. The rate impact of the settlement implemented by Order No. 00-601 has been superseded by numerous later rate orders.

Nevertheless, Order No. 02-227 affirmed the conclusion in Order No. 00-601 that the proposed rates implementing the settlement were fair and reasonable. That conclusion is demonstrably correct based on the accounting and rate impact of the settlement, which (1) reduced rates immediately by $10.2 million over a 12-month period (on average a 1% rate decrease) (Order No. 00-601 at 3); (2) established a $2.5 million regulatory liability (customer credit), which accrued interest, (3) removed PGE's undepreciated investment in Trojan from its books; and (4) resulted in an overall net benefit to customers of between $16.4 to $18.5 million.

URP's objections under this topic are unpersuasive. For example, URP has claimed that the Trojan balance should be further reduced because it allegedly included CWIP. As a threshold matter, the exact nature of the adjustment URP seeks with respect to CWIP is uncertain. If it concerns the "return on" any such CWIP amounts, then this objection does not apply to the settlement which is the subject of UM 989 and this Phase III. The settlement removed Trojan from PGE's books in an instant. The entire Trojan balance at that time earned no "return on." Moreover, the alleged "return on" any CWIP component of the 1995 undepreciated balance concerns Phase I of this consolidated remand proceeding in which the Commission will address amounts collected from customers attributable to the "return on" the Trojan undepreciated balance. In this regard, any CWIP amounts are no different than any other component of the Trojan balance. To the extent URP's argument concerns not just "return on" CWIP but rather "recovery of" CWIP, URP offers no justification for such an adjustment. ORS 757.335 bars "return on" CWIP; it contains no prohibition against "return of" such amounts.

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More fundamentally, URP is wrong regarding the inclusion of CWIP in the Trojan balance. Commission Order No. 95-322 made two regulatory disallowances (one disallowing certain plugging and sleeving costs and the other based on the net benefit test) that resulted in a cumulative reduction of $53.8 million in the Trojan balance, but included no CWIP adjustment. PGE/7600, Tinker-Schue-Hager/16. URP's position that the Commission should impose an additional CWIP adjustment to further reduce the Trojan balance would inherently skew the results of the net benefit test in favor of the closure scenario. Eliminating the CWIP from one side of the net benefit equation (closure scenario) and not the other side (no-closure scenario), as URP suggests, would bias the result. As the Commission concluded in Order No. 02-227, "this form of the net benefit test is not the one the Commission used in Order No. 95-322, nor is it an appropriate test from a regulatory perspective." Order No. 95-322 at 17.

The undepreciated Trojan balance resulting from the UE 88 adjustments was $340.2 million. PGE's unamortized investment balance at the time ($393.9 million with CWIP and $383.6 million without CWIP) was more than sufficient to account for the $340.2 million balance. Accordingly, if the Commission in UE 88 had been presented with the CWIP accounts, it would have eliminated the CWIP balance as part of its ordered write-off of $53.8 million from the Trojan balance. PGE/7600, Tinker-Schue-Hager/16. The resulting undepreciated balance of $340.2 million would have been unaffected.

VI. ISSUE #6 – ORDER NO. 02-227 WAS SUPPORTED BY ADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record, and for the reasons set forth in prior briefing and testimony, PGE believes the Commission's Order No. 02-227 was supported by substantial evidence and in accordance with law. In any event, the record in the initial UM 989 proceeding, and in this Phase III of the consolidated Trojan remand proceeding, provides substantial evidence in the record to support the principal conclusions in Order No. 02-227,

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namely that approval of PGE's accounting order and proposed rate change provided benefits to PGE's customers, is in the public interest and resulted in fair and reasonable rates. PGE will address specific arguments made by URP on this issue, if any, in its responsive briefing.

VII. ISSUE #7 – URP HAS BEEN AFFORDED A FULL OPPORTUNITY TO PRESENT ITS EVIDENCE AND ARGUMENTS IN UM 989

Throughout these proceedings, URP has been given ample opportunity to make its arguments and present its evidence. URP has been given two lengthy hearings, three opportunities to present written testimony, two extended periods for discovery, and multiple briefs. These multiple opportunities to obtain discovery and present evidence and argument, both in writing and in person, go far beyond the constitutional minimum of notice and opportunity to be heard required by the Due Process Clause. PGE will address specific arguments on this issue, if any, in its responsive brief.

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VIII. CONCLUSION

We respectfully request that the Commission issue a comprehensive order resolving all issues in this consolidated remand proceeding, including resolution of the issues in this Phase III in a manner consistent with this opening brief.

DATED this 21st day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S OPENING BRIEF - PHASE III** by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

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