

# BEFORE THE OREGON PUBLIC UTILITIES 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)

UTILITY REFORM PROJECT  
SPONSORS AND ADOPTS  
TESTIMONY OF JIM LAZAR  
AND DANIEL MEEK

May 19, 2005

The Utility Reform Project (URP) sponsors and adopts the testimony of Jim Lazar and Daniel Meek filed this date.

Dated: May 19, 2005

Respectfully Submitted,

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**CLASS ACTION  
PLAINTIFFS  
SPONSOR AND  
ADOPT  
TESTIMONY OF**

**LAZAR AND MEEK**

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Utility Reform  
Project (URP)

Exhibit 200

## TESTIMONY OF JIM LAZAR

Phase I

May 18, 2005

1 **Direct Testimony of Jim Lazar**

2  
3 **Q. Please state your name, address, and occupation.**

4  
5 A. Jim Lazar, 1063 Capitol Way S. #202, Olympia, WA 98501. I am a consulting economist  
6 specializing in utility rate and resource issues.

7  
8 **Q. Please summarize your qualifications.**

9  
10 A. I have been engaged in utility rate and resource analysis since 1975, and have been  
11 working as a consultant in the field since 1979. I have appeared as an expert witness on  
12 more than fifty occasions before state regulatory commissions in Washington, Oregon,  
13 California, Arizona, Idaho, Montana, and Hawaii, including several appearances before  
14 the Oregon Public Utility Commission (OPUC) involving Portland General Electric Co.  
15 (PGE). I first testified before the Oregon PUC in Docket UF-3518 in 1979, and have  
16 appeared on a number of instances since that time. I am a member of the Northwest  
17 Power and Conservation Council's Regional Technical Forum, and a board member of  
18 the Northwest Energy Coalition. My resume is Exhibit URP 201.

19  
20 I previously testified in Docket UM 989 on the issue of Trojan overcharges.

21  
22  
23 **Introduction and Summary**

24  
25 **Q. What is the purpose of your testimony in this proceeding?**

26  
27 A. I have been asked to respond to the Orders of the Marion County Circuit Court remanding  
28 the various cases back to the OPUC. This requires that I compute the amount of refund

1 that is due to ratepayers as a result of including profit on the Trojan investment in PGE  
2 rates during the period April 1, 1995 through September 30, 2000 (which I refer to as “the  
3 5.5-year period”).

4  
5 **Q. Is this the only amount that ratepayers have paid for Trojan since the plant was**  
6 **closed?**

7  
8 A. No. In addition to these amounts, ratepayers paid for Trojan between the time it closed in  
9 1992 and April 1, 1995, through rates in effect at the time of closure and also paid for  
10 Trojan on and after October 1, 2000, through the transfer of ratepayer assets to PGE and  
11 the creation of a phantom “regulatory asset” in place of Trojan. In addition, PGE  
12 significantly overearned its allowed return during much of this period.

13  
14 **Q. What is the total amount that is due to ratepayers under this analysis?**

15  
16 A. I believe that the best estimate of the amount due to ratepayers to reimburse for the  
17 amount of return on Trojan charged to ratepayers during the 5.5 year period is **\$642**  
18 **million**, if the refund is fully paid to ratepayers by December 31, 2005. This consists of  
19 \$241 million in return allowed in rates during this period, plus interest at the pre-tax  
20 return for PGE during this period. This is shown on Page 1 of URP-202, and calculated  
21 on the following pages of this exhibit.

22  
23 A smaller estimate, of \$523 million, could also be calculated, but as I will demonstrate,  
24 the larger figure is more accurate. This alternative approach is also calculated in URP-  
25 202.

26  
27 In addition, PGE should refund an additional \$83 million for deferred taxes that should  
28 have been refunded when Trojan was closed, plus \$85 million in compound interest on

1 the deferred taxes.

2  
3 The total refund, at January 1, 2006, comes to \$806 million. If the full refund is delayed  
4 beyond the end of 2005, it should continue to escalate at the pre-tax allowed rate of return  
5 on investment.

6  
7  
8 **Description of Basic Methodology – Allowed Rate of Return**

9  
10 **Q. Please detail the derivation of the figures you have just calculated.**

11  
12 A. First, I have calculated the amount paid for Trojan return on investment directly from  
13 information provided by PGE. This ultimately produces the figure of \$523 million I  
14 described above.

15  
16 To compute this, I have taken the annual return on Trojan provided by PGE in response to  
17 URP Data Request #6, dated November 22, 2004, and clarified in the workpapers to PGE  
18 Exhibit 6201. These are detailed on the top section of Page 2 of Exhibit URP-202 and  
19 total \$193 million.

20  
21 To prepare this calculation, I took the Trojan Rate Base of \$264 million, as it was  
22 approved by the Commission in the 1995 rate proceeding, and multiplied it by the pre-tax  
23 rate of return for each year. This produces a charge paid by ratepayers of \$35.2 million  
24 per year. For the first and last year, only nine months of revenue is included in the  
25 calculation. The total comes to \$193 million over the period April 1, 1995, through  
26 September 30, 2000.

27  
28 **Q. How do your figures differ from those prepared by the Company?**

1 A. The company figures, shown in their workpapers to Exhibit 6201, compute a lower  
2 amount of return, based on a declining Trojan rate base over the same period. I presume  
3 this is based on the assumption that PGE would accrue depreciation over time on Trojan,  
4 and the net book value would decline. I did not include that provision for accumulated  
5 depreciation, because PGE did not file any general rate cases to update its rate base or rate  
6 of return during the 5.5-year period. Therefore, while the Company undoubtedly DID  
7 accrue depreciation on its books, it DID NOT reduce the amount being charged to  
8 ratepayers. Since ratepayers continued to pay Trojan return on investment at the level set  
9 in the UE 88 rate case, I have used a constant value for the term of the analysis. The  
10 Company approach would be appropriate only if the Company had filed for annual rate  
11 reductions for the Trojan component of rates, which it did not.

12

13 **Q. How did you convert the amounts paid in the past into a refund amount due to**  
14 **ratepayers?**

15

16 A. I have computed the escalation factor for each year of the analysis period, using the pre-  
17 tax rate of return that PGE used in its own analysis of Trojan costs. The sum of the  
18 interest since the original \$193 million was collected comes to \$330 million.

19

20 Because a decade has elapsed since PGE began collecting these amounts, the compound  
21 interest is actually a greater amount than the original amount charge to ratepayers during  
22 the 5.5-year period.

23

24 **Q. Why have you used the pre-tax rate of return?**

25

26 A. This is the amount that ratepayers pay in revenues for an asset included in the utility's  
27 rate base. It includes the return to equity investors, the return to debt investors, and the  
28 amount included in rates for payment of state and federal income taxes (whether they

1 were actually paid or not). It represents the amount charged to and paid by ratepayers to  
2 produce the “return on investment” or “profit” to the Company. It is the amount that  
3 would not have been charged to ratepayers, but for the continued inclusion of Trojan in  
4 rate base in OPUC Order No. 95-322. The relevant question is “How much were  
5 ratepayers charged for the unlawful profits on Trojan?” Those are the charges I have  
6 documented.

7  
8 To the extent that the utility actually paid income taxes on its earnings during the  
9 overcharge period, the tax effects upon the Company of the forthcoming refund will  
10 completely offset the tax effects upon the Company of the overcharges, adjusted for the  
11 time value of money.

12  
13 **Recommended Methodology: Adjusted Rate of Return**

14  
15 **Q. Please describe the differences between the basic methodology you have described**  
16 **above, and your recommended methodology.**

17  
18 A. The methodology above uses the rate of return that the OPUC allowed in the 1995 rate  
19 case. That rate of return assumed that the inclusion of Trojan investment in rate base was  
20 permitted, something the Oregon courts have ruled was unlawful. In my recommended  
21 methodology, I adjust the rate of return to reflect the removal of Trojan from rate base.

22  
23 This recommended approach has the advantage of calculating what the Commission  
24 would have allowed in rates in 1995, if it had known that leaving Trojan in rate base was  
25 unlawful. It includes not only the removal of Trojan from the rate base but also the effect  
26 that the removal of Trojan would have had on the capital structure and rate of return. The  
27 basic methodology above simply assumes that neither of these would change with a major  
28 disallowance, something that fails to recognize the impact of a disallowance on the

1 company's capital structure.

2  
3 **Q. How did you prepare this calculation?**

4  
5 A. I first computed the return for the total company rate base as approved by the OPUC, by  
6 multiplying the allowed rate base by the allowed pre-tax rate of return. I then computed  
7 the effect of a disallowance of Trojan, with a write-off of the investment. This results in  
8 a \$206 million reduction in PGE equity. I then adjusted the PGE capital structure to  
9 reflect this lower equity capitalization ratio and then computed an adjusted rate of return,  
10 taking the removal of Trojan into account. This results in a reduction of the common  
11 equity ratio from 46.47% equity down to 40.46% equity.

12  
13 **Q. How does this affect the rate of return?**

14  
15 A. The overall rate of return is reduced, because the proportion of the investment supported  
16 with high-cost equity is reduced.

17  
18 I did not change either the allowed return on equity or the allowed cost of debt, but  
19 because the equity ratio is lower, and equity is more expensive than debt, the result is a  
20 reduction in the rate of return. The pre-tax rate of return declines from 13.34% to  
21 12.71%.

22  
23 I believe that this is the rate of return that the Commission would have ordered for PGE  
24 in the UE 88 rate proceeding, had it known that inclusion of Trojan in rate base was  
25 unlawful. It relies on the same rate of return on common equity, the same rate of return  
26 on preferred equity, and the same cost of debt as the Commission actually ordered. Only  
27 the percentage of capital supporting plant in service for ratepayers is changed. Any  
28 attempt to speculate that the Commission might have ordered a different return on equity

1 is just that – speculation.

2  
3 **Q. In your opinion, is there any reason that a higher rate of return on equity could**  
4 **have been justified in light of a Trojan write-off?**

5  
6 A. No. The elimination of Trojan from the PGE resource portfolio eliminated a significant  
7 business and financial risk for the Company. Trojan had been unreliable, creating a  
8 chronic risk of unrecoverable replacement power costs. In addition, as a nuclear unit,  
9 Trojan created an aura of riskiness for PGE. Removing these elements of uncertainty in a  
10 benign manner should logically have bolstered the Company’s attractiveness to investors.  
11 Furthermore, with PGE owned by Enron, investors would have been looking at the  
12 overall investment risk of Enron, not at the company-specific investment risk of PGE.  
13 Enron purchased all of PGE’s common stock in 1997 and remains its 100% owner.

14  
15 **Q. What is the next step of this calculation?**

16  
17 A. At the bottom of page 4 of URP-202, I compute the required revenue for PGE’s rate base  
18 both with and without Trojan. The first calculation uses the Commission-approved rate  
19 base (including Trojan) and the Commission-approved rate of return. The second adjusts  
20 the rate base to reflect the removal of Trojan and uses the rate of return that would be  
21 appropriate, after the removal of the equity associated with the Trojan write-off. The  
22 result is a difference of \$43.9 million per year without Trojan in rate base. In my opinion,  
23 this fairly measures the difference in the revenue requirement “with” and “without”  
24 Trojan profits and would have been the logical result of a rate case in 1995 that followed  
25 the legal requirement to exclude Trojan from rate base. This compares with \$35.2 million  
26 computed without taking the effect of the disallowance on the capital structure into  
27 account. This difference is explained exclusively by the changes to the PGE capital  
28 structure that would have taken place, had the Commission excluded Trojan from rate

1 base, and the Company had written off the investment.

2  
3 **Q. Why do you recommend this methodology?**

4  
5 A. Failing to adjust the capital structure to reflect the lower equity resulting from removal of  
6 Trojan has the effect of allowing the Company to indirectly recover part of the return on  
7 Trojan even if Trojan investment is removed from rate base. As page 4 of URP-202  
8 shows, about \$9 million of Trojan profits are left in rates without this adjustment.

9  
10 After removal of Trojan from rate base, and the write-off of the investment, the Company  
11 would have less equity invested in providing service to ratepayers (and more of that  
12 equity invested in a non-performing facility). My understanding is the Oregon courts  
13 have interpreted ORS 757.355 as not allowing charging ratepayers for profit or return on  
14 investment in plant other than that which is providing service to the customers.

15  
16 **Q. What is the net effect of making this change on the amount of the refund?**

17  
18 A. As shown on the bottom of page 2 of URP-202, this results in an increase in the refund  
19 due to ratepayers from the return on Trojan from \$536 million up to \$642 million. This  
20 consists of \$241 million in direct charges to ratepayers through rates during the 5.5-year  
21 period, plus \$401 million in compound interest since those overcharges took place.

22  
23  
24 **The Trojan Deferred Taxes**

25  
26 **Q. Please briefly explain what “deferred taxes” are?**

27  
28 A. Deferred taxes are amounts that the Company has collected from ratepayers to pay for

1 income taxes over the life of the plant, less the amount that the Company computes as  
2 income taxes due to government agencies.

3  
4 **Q. Why are these amounts different?**

5  
6 A. These two figures are different, because accounting rules allowed the utilities to use  
7 “accelerated depreciation” for tax purposes but did not allow the Commission to  
8 recognize this in setting current rates. As a result, over the life of any major asset, a  
9 balance builds of income taxes that have been charged to and paid by ratepayers but not  
10 paid to any government.

11  
12 **Q. Why doesn’t the Commission simply limit the collection of taxes to the amounts that  
13 are actually due?**

14  
15 A. The Commission was constrained by the IRS – if it “flowed through” the tax benefits of  
16 accelerated depreciation to ratepayers, the utility would not be allowed to receive the tax  
17 benefits at all. In essence, the IRS regulations made this a “shareholder benefit” at least  
18 in the short run. The Commission was allowed, however, to recognize this as a pool of  
19 “ratepayer-supplied capital” and to reduce the rate base upon which the utility earned a  
20 return. In the case of Trojan, this was an \$83 million balance of income taxes prepaid by  
21 ratepayers but not remitted to government agencies, at the time of the 1995 rate case.

22  
23 **Q. What should the Commission have done with the deferred taxes upon termination of  
24 Trojan?**

25  
26 A. Upon termination of Trojan, it was evident that these deferred taxes associated with  
27 Trojan would never be paid to the government, since Trojan would not be producing  
28 income (a return) in the future. Furthermore, with a write-off of the Trojan investment,

1 the IRS policy of disallowing accelerated depreciation if the tax benefits were flowed  
2 through was no longer logically applicable. The appropriate thing to do with this  
3 ratepayer-supplied capital would have been to return it to ratepayers at that time, in the  
4 case that the Commission did not have authority to allow PGE to continue to earn profits  
5 on Trojan.

6  
7 **Q. What would the effect be of returning this amount to ratepayers?**

8  
9 A. The principal amount at March 31, 1995 was \$83.6 million. Including interest at the pre-  
10 tax allowed return to January 1, 2006 would bring the amount due to \$164 million. This  
11 is in addition to the refund of the amounts paid by ratepayers for the unlawful return on  
12 the Trojan investment discussed above. This is shown on page 5 of Exhibit URP-202.

13  
14  
15 **Total Refund Amount Due**

16  
17 **Q. What is the total refund amount due, in your opinion, from the items discussed**  
18 **above?**

19  
20 A. The total due is the sum of \$642 million for the return paid on the Trojan rate base, plus  
21 the \$164 million refund of the deferred taxes paid by ratepayers but never paid by PGE,  
22 for a total of \$806 million. Using the alternative methodology, not including the effect of  
23 the Trojan write-off on the cost of capital, the total comes to \$687 million. These figures  
24 are shown on Page 1 of Exhibit URP-202.

25  
26  
27  
28

1 **Response to PGE Testimony**

2

3 **Q. Have you reviewed the testimony filed by PGE in this proceeding?**

4

5 A. Yes, I have.

6

7 **Q. Do you agree with their analysis of what rates the Commission would have set had it**  
8 **known that the return of and on Trojan investment was unlawful?**

9

10 A. No, I do not. The basis of their testimony is, generally, that, if the Commission had know  
11 that what it was doing was unlawful, it would have found another way to do the same  
12 thing and come up with either the same revenue requirement or even a higher one. This  
13 portrays ratemaking by a utility commission as an essentially corrupt endeavor, with the  
14 PUC first determining the outcome (overall revenues to be collected), based on factors  
15 other than the evidence and the law, and then trying to piece together any and all possible  
16 rationales to support the predetermined outcome.

17

18 **Q. If you were to prepare an “what if” analysis, what elements would it consist of?**

19

20 A. Were I to attempt to estimate the action the Commission would have taken, had it  
21 understood the law and the effect of the Enron purchase of PGE at the time of the original  
22 decisions on Trojan, I think that the Commission logically would have adopted a rate  
23 order that:

24

25 a) reflected a write off the Trojan investment at the time the plant operation was  
26 terminated;

27 b) set rates that excluded the write-off amount from the calculation of shareholder equity  
28 and allowed PGE a lower rate of return on a smaller rate base as a result;

1 c) possibly allowed an amortization without return of the unamortized balance of the  
2 plant investment in Trojan;

3 e) recognized in advance (with the foreknowledge PGE now advocates) that PGE would  
4 not actually pay federal income taxes during most of the rate period, and adjust the rate of  
5 return to reflect a lower pre-tax rate of return needed to produce the allowed rate of  
6 return. This alone would have reduced rates by \$80 million per year during at least 1997-  
7 2000, an amount far exceeding the amount of the Trojan recovery.

8  
9 **Q. Have you estimated the effect of this?**

10  
11 A. No. This calculation is quite complex and beyond the scope of this proceeding. This is a  
12 relatively simple proceeding for the Commission to compute how much return was  
13 allowed, and to order a refund of that amount with interest. However, I have calculated  
14 the present value of allowing a 5 or 10-year amortization of the Trojan investment,  
15 without return, to the amount that the Commission allowed in rate base in 1995. This  
16 amount, which I address in ©) above should be compared with the \$80 million in unpaid  
17 income taxes that PGE was allowed annually for at least 1997 through the present.

18  
19 Fully revisiting the entire ratemaking treatment surrounding Trojan is not appropriate for  
20 this remand proceeding, in my opinion. Because PGE collected so much other money  
21 from ratepayers for Trojan that is not the subject of this proceeding, there can be no  
22 question that the return of the 1995-2000 overcharge amounts, with interest, is  
23 reasonable.

24  
25 Basically, my testimony shows that PGE recovered \$45 million per year for Trojan during  
26 this period, and \$80-86 million per year in income taxes that it did not pay for at least the  
27 last 4 years included in the 5.5 year period. If the Commission had “perfect foresight” in  
28 1995, it should have eliminated the \$45 million per year in Trojan return, might have

1 allowed a faster amortization of Trojan offsetting some of this, but would also have  
2 eliminated the income taxes charged to ratepayers but never to be paid to the state or  
3 federal government. The Commission should also have reduced PGE rates by the \$83.6  
4 million of Trojan-related accumulated deferred income taxes. The combination of these  
5 would have produced a revenue requirement very significantly lower than the revenues  
6 PGE actually collected, in part because the unpaid income tax charges dwarf any possible  
7 Trojan amortization amounts.

8  
9 **Q. Have you considered the other amounts that PGE collected for Trojan in your**  
10 **analysis?**

11  
12 A. No. I have used only the return on capital during the UE-88 rate period and as adjusted  
13 for the removal of the Trojan investment from the capital structure. I view the purpose of  
14 this phase of this proceeding to determine how much return (profit) PGE received on  
15 Trojan during the period covered by UE-88, and adjusting that to reflect accrued interest  
16 to be refunded along with the overcharge.

17  
18 **Q. What other amounts might be considered in determining other amounts reasonably**  
19 **due to ratepayers?**

20  
21 A. To look at Trojan overcharges comprehensively, the OPUC would need to consider:

- 22
- 23 a) The amounts collected between actual permanent closure of the plant in  
24 November 1992 and April 1, 1995, when the UE-88 rates became effective
  - 25 b) The lump sum transfers made from ratepayers to shareholders in 2000 in the UM  
26 989 case;
  - 27 c) The value of the phantom regulatory asset created by the Commission to replace  
28 Trojan in 2000;

- 1 d) Interest to the date of refund on all of the above; and  
2 e) Lower rates that would have been charged in the interim (i.e., from 1992 to  
3 present) if the Trojan investment had been written off, and the utility's capital  
4 structure adjusted for the lower equity capitalization ratio as a result of the  
5 writeoff.  
6

7 **Q. Should any of these be considered in this proceeding?**  
8

- 9 A. I do not think so. The last of these – recognizing the effect that the write-off would have  
10 had on the utility's equity ratio, and therefore the lower cost of capital that should have  
11 applied to post-termination rate base – is one possible exception. I have included this  
12 factor for the 1995 - 2000 period, but not for the prior or subsequent periods. Had Trojan  
13 been written off when the plant was terminated in 1992, this impact would have affected  
14 other years as well as the period covered by my testimony. The other items are entirely  
15 related to other rate periods.  
16

17 **Q. Were you an observer of regulatory commission decisions on the recovery of  
18 abandoned nuclear plant investment in the western states during the 1980s?**  
19

- 20 A. Yes. I was a witness in several proceedings on this topic before the Washington Utilities  
21 and Transportation Commission, the Oregon PUC, and the Idaho Public Utilities  
22 Commission in proceedings involving the Skagit, Pebble Springs, and WPPSS #3 and #5  
23 nuclear power plant projects that failed to provide utility service to customers.  
24

25 **Q. What was the typical treatment allowed by the states?**  
26

- 27 A. In nearly every case, the utility was directed to write off the value of the abandoned plant,  
28 taking the tax benefits of doing so into account. In many cases, a portion of the

1 investment was disallowed as imprudently incurred. The utilities were then generally  
2 then allowed to amortize the net prudent investment over a period of 5 - 15 years, without  
3 a return on the unamortized balance.

4  
5 However, in some cases no recovery was allowed. For example, in Cause U-82-12, the  
6 Washington Commission refused to allow any recovery of or on the Pebble Springs or  
7 WPPSS #5 investment for Pacific Power and Light Company. It later relented, in Cause  
8 U-83-33, allowing a 5-year amortization without return, but the Company has already  
9 absorbed about two years of time with no recovery at all.

10  
11 In Idaho, the Commission initially allowed amortization of about one-half of the  
12 investment by Washington Water Power in WPPSS #3 and ordered a 15-year  
13 amortization period (Docket U-1008-204). A few years later, after WWP received a  
14 power contract from BPA in exchange for relinquishing claims against BPA related to the  
15 termination of WPPSS #3, the IPUC allowed WWP to increase the recovery to 59% of its  
16 investment, but only beginning ten years after work was halted on the plant.

17  
18 Puget was allowed a 10-year amortization of its Pebble Springs investment (Cause U-82-  
19 38) and a 10-year amortization of a portion of its Skagit/Hanford investment (Cause U-  
20 83-54), both without return on investment.

21  
22 Pacific Power declined to request recovery of its WPPSS #3 investment in Washington  
23 and was allowed to sell the rights to the power contract it received from BPA in exchange  
24 for settling WPPSS #3 litigation.

25  
26 Q. To your knowledge, did any state Commission allow a 1-year amortization of an  
27 abandoned nuclear investment during the period when nuclear plants were being  
28 cancelled?

1 A. No. The shortest amortization period I recall was five years. One-year amortizations are  
2 sometimes allowed for small items (less than \$1 million), but large items are typically  
3 amortized over a much longer period.

4  
5 Q. Have you calculated the effect of an amortization without return?

6  
7 A. Yes, this is shown at page 6 of URP-202.

8  
9  
10 **THE AMOUNT TO BE REFUNDED**

11  
12 **Q. What is the amount that you propose be refunded to consumers?**

13  
14 A. I recommend that the Commission order a refund of \$806 million to be paid prior to the  
15 close of 2005. This consists of \$241 million in direct charges for the Trojan return on  
16 investment charged to ratepayers during the 5.5-year period, the \$83 million in deferred  
17 taxes that PGE was allowed to keep, plus \$400 million in interest to the date of refund on  
18 the return component, and \$81 million interest on the deferred taxes. This is based on an  
19 assumed refund date of January 1, 2006. If the refund is delayed beyond that date, or is  
20 spread out over a period of months or years, then additional interest should accrue to the  
21 un-refunded balance at the rate of 13.34% per year. This is summarized at page 1 of  
22 URP-202.

23  
24 **Q. Does this complete your testimony?**

25  
26 A. Yes.

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**Portland General Electric Company's  
Application for an Accounting Order and  
for Order Approving Tariff Sheets  
Implementing Rate Reduction. (UM 989)**

**Utility Reform  
Project (URP)**

**Exhibit 202**

**EXHIBITS OF OF JIM LAZAR**

**Phase I**

**May 18, 2005**

Jim Lazar is a consulting economist specializing in utility rate and resource analysis. In more than seventy appearances before regulatory bodies in the United States and abroad, he has provided expert assistance in the areas of revenue requirement, cost of capital, formation of new publicly owned utility systems, electric and gas utility integrated resource planning, cost of service and rate design, least cost and integrated resource planning, the appropriate regulatory treatment of excess capacity, subsidiary profits, and regulatory treatment of real estate transactions.

**Technical Assistance:** Jim Lazar has provided technical assistance to local, state, and federal public agencies, public interest groups, industry trade groups, and electric utilities. Expert testimony has been presented before the state regulatory commissions of Washington, Idaho, Montana, Hawaii, Illinois, Oregon, and Arizona, before the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, Economic Regulatory Administration, Bonneville Power Administration, California Energy Commission, British Columbia Utilities Commission, and numerous local regulatory agencies. Internationally, Mr. Lazar has assisted clients in New Zealand, Ireland, Mozambique, Namibia, and Canada with utility rate and resource analysis.

**Training:** Jim Lazar has taught Energy Economics as a member of the faculty of Edmonds Community College, and previously served as a faculty member to the Western Consumer Utility Training Center in 1982. He was the lead author of a guidebook on utility rate and resource issues, The People's Power Guide, published in 1982, and a handbook on electric utility cost of service analysis prepared for the Arizona Corporation Commission in 1993. He has presented papers at numerous conferences in the United States, as well as Canada, New Zealand, and Austria, and has taught courses utility resource and regulatory principles in The Philippines, India, China, Indonesia, Brazil, and for the regulatory Commission of Kyrgyzstan.

**EDUCATION:**

University of California, Los Angeles  
Shimer College, Mt. Carroll, Illinois  
Western Washington University, Bellingham B.A. 1974 (Economics)  
Graduate work: Western Washington University (Economics)  
University of Washington (Public Administration)

**EMPLOYMENT HISTORY**

1979 to Present  
Self-employed consulting economist, and community college faculty: Transportation studies; Utility rate and resource analysis, conservation program design and evaluation, transportation system analysis. Associate with the Regulatory Assistance Project since 1999.

1983-84  
Research Director, Northwest Energy Coalition: Directed studies on energy resource cost-effectiveness, including nuclear, conservation, building codes, and unconventional resources;

1982  
Research Associate, Metropolitan Development Council of Tacoma, Washington: Research Director, People's Organization for Washington Energy Resources

**JIM LAZAR CONSULTING ECONOMIST**  
**RECENT CONSULTING CLIENTS [PARTIAL LISTING]**

UTILITIES AND UTILITY ASSOCIATIONS

City of Burbank, California  
Emerald People's Utility District [Eugene, OR]  
Hawaiian Electric Company  
Mason County Public Utility District #3 [Shelton, WA]  
Salem Electric Cooperative [Salem, OR]  
Snohomish County Public Utility District [Everett, WA]  
Northwest Gas Association [Portland, OR]

PUBLIC AGENCIES

Arizona Corporation Commission  
City of Bellevue, Washington  
County of Maui, Hawaii  
Environmental Protection Agency  
Hawaii Department of Commerce and Consumer Affairs  
Idaho Public Utilities Commission  
Mount Rainier National Park  
National Marine Fisheries Service  
Office of the Attorney General, Washington  
Pacific States Marine Fisheries Commission  
Research Corporation of the University of Hawaii  
Washington State Department of Community, Trade, and Economic  
Development  
Washington State Department of Wildlife  
Washington Utilities and Transportation Commission

NONPROFIT ENTITIES

Association for the Advancement of Sustainable Energy Policy (Canada)  
British Columbia Energy Coalition (Canada)  
Citizen's Utility Board, (Illinois)  
Columbia River Intertribal Fish Commission  
EnergyWatch (New Zealand)  
Institute of International Education  
Montana Electricity Buying Cooperative  
Natural Resources Defense Council  
Nez Perce Indian Nation  
Northwest Conservation Act Coalition  
Regulatory Assistance Project  
Squamish Indian Nation (Canada)  
Time to Respect Earth's Ecosystems (Canada)  
Yakima Indian Nation

**Total Amounts Due to Ratepayers**  
\$x1000

	<b>Recommended Methodology</b> Includes Effect of Write-off on Capital Structure	<b>Alternative Methodology</b> Ignores Effect of Write-off
<b>Overcharges - Trojan in Rate Base</b>		
Principal Amount of Overcharges	\$ 241,404	\$ 193,372
Interest to January 1, 2006	\$ 400,494	\$ 329,491
Total associated with Overcharges	\$ 641,898	\$ 522,862
<b>Deferred Taxes Retained by PGE</b>		
Principal associated with Deferred Taxes	\$ 83,627	\$ 83,627
Interest to January 1, 2006	\$ 80,628	\$ 80,996
Total associated with Deferred Taxes	\$ 164,255	\$ 164,623
<b>Total Due to Ratepayers:</b>	<b>\$ 806,152</b>	<b>\$ 687,485</b>

## Sum of Ratepayer Contributions for Trojan

### Based on Allowed Rate of Return

a	b	c	d		g	h
Year	Source	Return Amount \$x1000	Years to 2006	Interest Rate	Compound Interest Multiplier	Amount Due @ 1/1/2006
234Q1995	1995 to 2000	\$26,164	10.25	13.22%	3.57	\$ 93,455
1996	1995 to 2000	\$35,202	9.5	13.34%	3.20	\$ 112,749
1997	1995 to 2000	\$35,202	8.5	13.34%	2.83	\$ 99,478
1998	1995 to 2000	\$35,202	7.5	13.34%	2.49	\$ 87,770
1999	1995 to 2000	\$35,202	6.5	13.34%	2.20	\$ 77,439
123Q2000	1995 to 2000	\$26,401	5.75	13.34%	1.97	\$ 51,972
Total:		\$ 193,372				\$ 522,862

Note: Multiplier for 1995 includes 1 year at 13.22%, balance at 13.34%, consistent with PGE Exhibit 6201/02 Workpapers.

Sources: PGE Workpapers for Exhibit 6201/02  
Tabs HistNetSum and HistnetDetail

### Based on Capital Structure Adjusted For Writeoff

a	b	c	d		g	h
Year	Source	Return Amount \$x1000	Years to 2006	Interest Rate	Compound Interest Multiplier	Amount Due @ 1/1/2006
234Q1995	1995 to 2000	\$32,663	10.25	12.60%	3.48	\$ 113,625
1996	1995 to 2000	\$43,946	9.5	12.71%	3.13	\$ 137,439
1997	1995 to 2000	\$43,946	8.5	12.71%	2.77	\$ 121,936
1998	1995 to 2000	\$43,946	7.5	12.71%	2.46	\$ 108,182
1999	1995 to 2000	\$43,946	6.5	12.71%	2.18	\$ 95,979
123Q2000	1995 to 2000	\$32,959	5.75	12.71%	1.96	\$ 64,736
Total:		\$ 241,404				\$ 641,898

## Trojan Return Payment by Ratepayers

### Per Company Filing

Year	Return of Investment \$x1000	Return on Investment \$x1000	Total \$x1000
Apr 1, 1995 – Dec 31, 1995	\$39,200	\$26,164	\$65,364
1996	\$25,600	\$35,202	\$60,802
1997	\$23,700	\$35,202	\$58,902
1998	\$22,600	\$35,202	\$57,802
1999	\$26,500	\$35,202	\$61,702
Jan 1, 2000 – Sept 30, 2000	\$22,200	\$26,401	\$48,601
<b>Total:</b>	<b>\$159,800</b>	<b>\$193,372</b>	

Source: PGE Workpapers for Exhibit 6201/02; Response to DR #6

### Adjusted to Recognize No Intervening Rate Cases We Filed

Year	Trojan Rate Base	Pre-Tax Return	Annualized Ratepayer Payment for Return	Period Return On Capital
Apr 1, 1995 – Dec 31, 1995	\$ 263,880	13.22%	\$ 34,885	\$ 26,164
1996	\$ 263,880	13.34%	\$ 35,202	\$ 35,202
1997	\$ 263,880	13.34%	\$ 35,202	\$ 35,202
1998	\$ 263,880	13.34%	\$ 35,202	\$ 35,202
1999	\$ 263,880	13.34%	\$ 35,202	\$ 35,202
Jan 1, 2000 – Sept 30, 2000	\$ 263,880	13.34%	\$ 35,202	\$ 26,401
<b>Total:</b>				<b>\$ 193,372</b>

Source for Trojan Rate Base: PGE Workpapers for Exhibit 6201, Tab Write-off Exhibit

### Adjusted to Recognize Effect of Trojan Write-Off

Lower Equity Ratio in Capital Structure

Year			Annualized Ratepayer Payment for Return	Period Return On Capital
Apr 1, 1995 – Dec 31, 1995			\$ 43,550	\$ 32,663
1996			\$ 43,946	\$ 43,946
1997			\$ 43,946	\$ 43,946
1998			\$ 43,946	\$ 43,946
1999			\$ 43,946	\$ 43,946
Jan 1, 2000 – Sept 30, 2000			\$ 43,946	\$ 32,959
<b>Total:</b>				<b>\$ 241,404</b>

## Comparison of PGE Rate If Commission Had Ordered Writeoff

URP Exhibit 202

Page 4

As Approved By Commission

Capital Structure:	Return	Weighted Return	Net to Gross	Pre-Tax Cost of Capital
Common Equity Percent	46.47%	11.60%	5.39%	1.648
Preferred Equity Percent	4.67%	8.27%	0.39%	1.648
L-T Debt Percent	48.86%	7.82%	3.82%	1.000
Total Capital Structure	100.00%		9.60%	13.34%

### Effect of Trojan Write-Off

Trojan Rate Base from UE 88

3/31/95  
Balance After  
UE-88 Write-  
Off

Trojan Investment		\$ 340,162
Tax Benefit at:	0.3934	\$ 133,820
Net Reduction in Equity		\$ 206,342

Trojan Investment (Pre-tax)	\$ 340,162
Deferred Taxes	\$ (66,526)
Trojan Investment Tax Credits	\$ (9,756)
Trojan Investment (After-tax)	\$ 263,880

### Capital Structure Adjustment For Writeoff

	Approved Capital Structure	Approved Rate Base	Less Trojan Write-off	Adjusted Capital Structure	Return	Weighted Return	Net to Gross	Pre-Tax Cost of Capital
Common Equity Percent	46.47%	\$ 770,448	\$ (206,342)	\$ 564,106	40.46%	11.60%	4.69%	1.648
Preferred Equity Percent	4.67%	\$ 77,426	0	\$ 77,426	5.55%	8.27%	0.46%	1.648
L-T Debt Percent	48.86%	\$ 810,073	\$ (57,538)	\$ 752,535	53.98%	7.82%	4.22%	1.000
Total Capital Structure	100.00%	\$ 1,657,947	\$ (263,880)	\$ 1,394,067	100.00%	0.00%	9.37%	<b>12.71%</b>

Rate Base from UE-88 Appendix F, Page 19

### Revenue Associated With Trojan In 1995 Rate Case

	With Trojan	Without Trojan	Difference
Rate Base	\$ 1,657,947	\$ 1,394,067	\$ (263,880)
Pre-Tax Return	13.34%	12.71%	-0.63%
Return	\$ 221,185	\$ 177,240	\$ (43,946)

**Deferred Taxes**

				Recommended Methodology	Alternative Methodology
Deferred Tax Balance at October 1, 1995				\$ 83,627	\$ 83,627
Compound Interest Multiplier				1.96	1.97
Refund Due:				\$ 164,255	\$ 164,623

Source: Workpaper to PGE 6201, Tab Write-off Exhibit

## Amortization Without Return

Net Trojan Investment:                 \$   206,342

Write off Exhibit

### Five Year Amortization Without Return

Discount Rate:                                 12.71%

Pre-tax Cost of Capital

Year	Amortization	Present Value at 1995
1995	\$       30,951	\$     30,039
1996	\$       41,268	\$     35,534
1997	\$       41,268	\$     31,526
1998	\$       41,268	\$     27,970
1999	\$       41,268	\$     24,815
2000	\$       10,317	\$      5,671
Total:	\$       206,342	\$    155,555

Percentage Recovery:                         75%

### Ten Year Amortization Without Return

Discount Rate:                                 12.71%

Year	Amortization	Present Value at 1995
1995	\$       15,476	\$     15,019
1996	\$       20,634	\$     17,767
1997	\$       20,634	\$     15,763
1998	\$       20,634	\$     13,985
1999	\$       20,634	\$     12,408
2000	\$       20,634	\$     11,008
2001	\$       20,634	\$      9,766
2002	\$       20,634	\$      8,665
2003	\$       20,634	\$      7,687
2004	\$       20,634	\$      6,820
2005	\$        5,159	\$      1,559
Total:	\$       206,342	\$    120,447

Percentage Recovery:                         58%

# Compound Interest Multiplier

## Pre-Tax Rates of Return

Prior to 12/31/95	0.1322
1/1/96 - 10/1/2000	0.1334
After 10/1/2000	12.72%

Capital Structure: UE 115				Return	Weighted Return	Net to Gross	Pre-Tax Cost of Capital
Common Equity Percent			52.16%	10.50%	5.48%	1.648	9.03%
Preferred Equity Percent			1.53%	8.43%	0.13%	1.648	0.21%
L-T Debt Percent			46.32%	7.51%	3.48%	1.000	3.48%
Total Capital Structure			100.01%		9.08%		12.72%

## Without Adjustment for Capital Structure

Costs Incurred	Escalate to 1/1/96	Escalate to 1/1/97	Escalate to 1/1/98	Escalate to 1/1/98	Escalate to 1/1/99	Escalate to 10/1/2000	Escalate to 12/31/2005
	13.22%	13.34%	13.34%	13.34%	13.34%	13.34%	12.72%
April - December, 1995	1.05	1.19	1.35	1.53	1.73	1.91	3.57
Calendar Year 1996		1.07	1.21	1.37	1.55	1.71	3.20
Calendar Year 1997			1.07	1.21	1.37	1.51	2.83
Calendar Year 1998				1.07	1.21	1.33	2.49
Calendar Year 1999					1.07	1.17	2.20
January - September, 2000						1.05	1.97

## With Adjustment for Capital Structure

Costs Incurred	Escalate to 1/1/96	Escalate to 1/1/97	Escalate to 1/1/98	Escalate to 1/1/98	Escalate to 1/1/99	Escalate to 10/1/2000	Escalate to 12/31/2005
	13.22%	12.71%	12.71%	12.71%	12.71%	12.71%	12.72%
April - December, 1995	1.05	1.18	1.33	1.50	1.69	1.86	3.48
Calendar Year 1996		1.06	1.20	1.35	1.52	1.67	3.13
Calendar Year 1997			1.06	1.20	1.35	1.48	2.77
Calendar Year 1998				1.06	1.20	1.31	2.46
Calendar Year 1999					1.06	1.16	2.18
January - September, 2000						1.05	1.96

**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)**

**Utility Reform  
Project (URP)**

**Exhibit 204**

**TESTIMONY OF DANIEL W. MEEK**

**Phase I**

**May 18, 2005**

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

2 A. Daniel W. Meek

3 10949 S.W. 4th Avenue

4 Portland, OR 97219

5 I am an attorney with 25 years of practice. A resume is attached as Exhibit  
6 URP 205.

7 **Q. Please summarize your qualifications.**

8 A. I have been engaged in utility rate cases and other utility regulatory matters  
9 since 1980. I have appeared as an expert witness in previous OPUC  
10 proceedings and have participated in dozens of OPUC cases and litigation  
11 involving OPUC decisions.

12 **Q. What is your testimony in Phase I of this proceeding?**

13 A. My testimony is stated below, in a normal narrative format, with no  
14 unnecessary questions interspersed to simulate a direct examination.

15  
16 **1. THE PGE TESTIMONY DEPENDS UPON ADDITIONAL UNLAWFUL**  
17 **ACTION BY THE COMMISSION.**

18  
19 All of the PGE testimony submitted February 15, 2005, is irrelevant to any  
20 lawful implementation of the remands by the Oregon courts of the orders in DR 10,  
21 UE 88, and UM 989. Any action by the Commission, other than (1) calculating the  
22 amount of Trojan profits charged to ratepayers and (2) ordering full refunds of that  
23 amount with interest to the date of the refund, would constitute indirectly charging  
24 ratepayers for Trojan profits.

1 This is utterly clear and factually undeniable. PGE attempted to charge  
2 ratepayers for Trojan profits directly, commencing with DR 10 and UE 88, which the  
3 Oregon courts have found, with finality, to have been unlawful. So now PGE is  
4 claiming it should keep the same money it collected for Trojan profits but for new  
5 reasons, never before presented to or adopted by the OPUC. Retaining the Trojan  
6 profits, based on these other rationales, would constitute an indirect charge to  
7 ratepayers for Trojan profits, which is equally unlawful under ORS 757.355.

8  
9 **2. PGE'S TESTIMONY OFFERS AND DEPENDS UPON A MODEL OF**  
10 **CORRUPT REGULATION WHICH REWARDS UNREASONABLE UTILITY**  
11 **CONDUCT.**  
12

13 All of PGE's testimony is premised upon an assumed unlawful model of utility  
14 regulation, in which the OPUC arbitrarily predetermines a utility's revenue  
15 requirement based on factors other than the admissible evidence and applicable  
16 law (perhaps some sort of gestalt or maybe just pure political influence by the  
17 utility) and then cobbles together "facts" and "rationales" to support the overall  
18 revenue requirement it arrived at before considering the facts or rationales. PGE  
19 further assumes it will not be held to the standard of reasonable conduct of its  
20 business affairs, even though it imprudently chose to charge rates which were not  
21 final (as very potent legal challenges were pending) without taking steps to mitigate  
22 risk and withheld relevant evidence it now claims it could have presented in 1995  
23 (in addition to the presentation of facts not knowable in 1995). PGE continued to  
24 charge ratepayers for Trojan profits, despite the fact that PGE knew that the Marion

1 County Circuit Court in early 1996 declared its OPUC Order No. 95-322 rates to be  
2 unlawful and knew that the Oregon Court of Appeals had agreed with this  
3 conclusion in June 1998.

4 PGE's testimony thus views the Commission's ratemaking process as  
5 essentially corrupt, with the task now of merely thinking up new reasons to allow  
6 PGE to retain the unlawful charges it sought in UE 88 and continued to charge, fully  
7 aware that the charges were not final and were quickly declared unlawful by the  
8 courts. PGE does not attempt to justify this unreasonable business decision or  
9 offer any rationale why it is either just or reasonable why ratepayers should pay for  
10 such gross mismanagement, undertaken solely on behalf of PGE's stockholders  
11 (prior to mid-1997) and thereafter on behalf of PGE's stockholder.

12 Ratepayers, however, believe that the appropriate model is to assume that  
13 the Commission is not corrupt and that in 1993 and 1995 (DR 10 and UE 88) it  
14 actually considered the evidence and arguments and came to conclusions based on  
15 the merits of all issues presented to it. In that case, the Commission upon remand  
16 would not be reconsidering any of its decisions, except (1) the conclusion of law in  
17 DR 10 deemed by the Oregon courts to have been unlawful--allowing PGE to  
18 charge ratepayers for profits on Trojan after it closed, and (2) the addition to rates  
19 that the Commission justified on the basis of that incorrect conclusion of law.  
20

1 **3. NONE OF THE "FACTS" OFFERED IN THE PGE TESTIMONY ARE**  
2 **COGNIZABLE UPON A REMAND.**  
3

4 PGE's testimony demonstrates the quite obvious notion that the OPUC could  
5 change the way it handled dozens of issues in past cases in order to cobble  
6 together a new set of issues for allowing PGE to keep the amounts charged to  
7 ratepayers for Trojan profits. But all of these new rationales are beyond the  
8 appropriate or lawful scope of the courts' remands.

9 Losing a case on appeal does not provide the losing defendant with the ability  
10 to introduce new issues and new facts upon remand to the trier of fact, and every  
11 justification now offered by PGE is an entirely new issue not offered at the trial or  
12 evidence-taking level (the UE 88 proceeding)--and in fact never before offered to  
13 the OPUC in any proceeding to try to justify collecting from ratepayers return on the  
14 Trojan investment. If the law allowed defendants who lose on issues of law on  
15 appeal to then present new issues and new evidence to the trial court on remand,  
16 then litigants throughout the courts would be seeking to lose their appeals, as  
17 remand to the trial court would provide an opportunity to re-litigate the case at the  
18 trial level on entirely new grounds and new evidence.

19 For example, say Paula Plaintiff sues Dean Defendant for \$1 million in  
20 damages due to breach of a contract, under which Dean was required to provide a  
21 specific service to Paula in exchange for the payments of money that Paula made  
22 to him. Dean's defense at trial that the contract did not required him to provide that  
23 specific service, and he prevails at trial on that argument. Paula appeals. The

1 highest appeals court interprets the contract language and agrees with her that  
2 Dean was contractually obligated to provide that specific service and remands the  
3 case to the trial court. Upon remand, the trial court certainly could not allow Dean  
4 to offer new defenses, not previously asserted in his original pleadings. Instead,  
5 the trial court would lawfully proceed to determine the amount of damages suffered  
6 by Paula and to award her the appropriate sum. If losing on appeal were to allow a  
7 litigant to raise new issues at the trial court upon remand, then there would be flood  
8 of litigants purposely losing on appeal, whenever they think, after the close of trial,  
9 of potential arguments and evidence that they failed to offer to the trial court in the  
10 first place.

11 Here, PGE in UE 88 and UM 989 had every opportunity to present evidence  
12 pertaining to all elements its cost of service, and all such evidence should have  
13 been incorporated into the original factfindings by the Commission.

14 Under the law-of-the-case doctrine, the holdings of an appellate court on  
15 questions presented to it in reviewing proceedings of the trial court become the law  
16 of the case. Such holdings conclusively settle, for purposes of that litigation, all  
17 matters ruled upon, either expressly or by necessary implication. The failure of a  
18 party to challenge a trial court's ruling or to brief a particular issue on appeal results  
19 in a waiver of that issue. This is black letter law in Oregon and every reported  
20 jurisdiction.

21 All questions which could have been raised and adjudicated on that  
22 appeal are *res adjudicata*. 3 Cyc 398; **Smith v. Seattle**, 20 Wash 613,

1 56 Pac 389; *Smyth v. Neff*, 123 Ill 310, 17 NE 702; *Dilworth v. Curts*,  
2 139 Ill 508, 29 NE 861.

3  
4 *Hanley v. Combs*, 60 Or 609, 610, 119 P 333 (1911).

5 The law of the case doctrine is not an historical artifact. In *Washer v. Clatsop*  
6 *Care and Rehabilitation District*, 98 OrApp 232, 235, 778 P2d (1989), the Court  
7 endorsed the principle:

8 Questions that could have been raised and adjudicated on appeal are  
9 deemed adjudicated. *City of Idanha v. Consumer's Power*, 13 OrApp  
10 431, 509 P2d 1226 (1973). Plaintiff, as appellant, could have contended  
11 on appeal that the ruling striking his claim for pre-formation expenses  
12 was error. Because he did not do so, the ruling became the law of the  
13 case.

14  
15 The rule is the same in administrative review cases--where an appeal is taken  
16 with respect to only a particular issue or issues, there can be no retrial after remand  
17 of issues previously tried and determined but not appealed from. The failure of a  
18 party to take a cross-appeal as to other elements of the agency decision (not  
19 included as an issue on appeal by the appellant) will foreclose appellate  
20 consideration of the aspect of the agency decision as to which no appeal was  
21 taken.

22  
23 **4. PGE'S CONDUCT IN CONTINUING TO CHARGE FOR TROJAN PROFITS**  
24 **WAS UNREASONABLE AND IMPUDENT.**  
25

26 In light of overwhelming case law and public policy against endless cycles of  
27 litigation and retroactive ratemaking, I strongly urge the Commission to place the  
28 entire burden of "reopening" the evidence upon PGE. Therefore, as a threshold,  
29 PGE must persuade the Commission that it should be allowed to present evidence

1 it had available to it in 1995 but chose not to present. Was it prevented from  
2 putting on evidence by any facts then existent?

3 If there is no basis for choosing to not make a case for rates in 1995, PGE  
4 acted unreasonably. Furthermore, PGE was unreasonable and imprudent in the  
5 course of conduct it undertook since 1995. It continued to charge rates that  
6 included Trojan profits after it lost at the first and second levels of appeal. It  
7 continued to charge for Trojan profits after the voters overwhelmingly refused to  
8 accept the legislative fix PGE engineered in 1999. It delayed consideration by the  
9 Oregon Supreme Court for over 2 years by its run through the Legislature and  
10 charged ratepayers for profit on Trojan during that interval as well. Such persistent  
11 conduct without any effort to mitigate risk is imprudent as a matter of law. PGE  
12 might look to its managers, advisors and lawyers to recover for their negligence or  
13 malpractice, but it cannot justly or reasonably now seek to recover costs from  
14 ratepayers that it knew were not final and that every court considering the matter  
15 had found to be unlawful--and now claim that it had evidence all the time which it  
16 could have presented, but never did.

17 As all the parties know, when a utility seeks to change rates, the Commission  
18 conducts a review under ORS 757.210(1) to determine whether the proposed rate  
19 increase is "just and reasonable." The Commission's final determination of costs  
20 allowable in PGE's rates is subject to a finding by the commission that the cost was  
21 prudently incurred. PGE voluntarily chose a path of extreme financial risk: charging  
22 for Trojan profits in rates while a robust challenge worked its way through the

1 courts. A prudently operated business would not have placed itself in this huge  
2 financial hole, assuming that the courts would eventually bail it out. PGE took a  
3 very large risk and bet it would win, but it lost. PGE bears the burden of  
4 persuading the Commission that the strategic path it took (and the lengthy delays it  
5 caused) were prudent.

6 Instead, The various alternative rationales offered by PGE fail every test of  
7 plausibility, including the test that PGE itself must have applied when presenting its  
8 UE 88 rate case some 10 years ago. PGE chose to seek to recover both return of  
9 and return on investment in Trojan. PGE could have chosen to offer any or all of  
10 the rationales it now offers, but it did not. It must have judged those rationales to  
11 be unsupportable, implausible, or unlawful. Nothing prevented PGE from offering  
12 all of the rationales then. If the Commission rejected them, nothing would have  
13 prevented PGE from assigning error to those rejections on appeal. PGE chose to  
14 rely upon what it must have believed to be the most supportable and lawful case for  
15 having ratepayers pay it profit on the closed Trojan plant.

16  
17 **5. IF NEW ISSUES AND NEW FACTS ARE COGNIZABLE, THEN THERE ARE**  
18 **NEW FACTS THAT COMPLETELY OVERWHELM ALL OF PGE'S NEW**  
19 **RATIONALES.**

20  
21 PGE offers selective new "facts" for the OPUC to consider under the pretense  
22 that the OPUC has somehow time-traveled back to 1995 but with knowledge of  
23 these new rationales and new facts. This includes several facts that were  
24 unknowable by anyone in 1995. PGE claims that the premise of this proceeding is

1 that the OPUC is placed in a time machine and teleported back to 1995, but with  
2 knowledge as of 2005 (as in the movie "Back to the Future"), then that knowledge  
3 cannot be restricted to the selective facts offered by PGE. Here are some other  
4 facts that the OPUC would know, which would completely overwhelm all of PGE's  
5 new facts and issues:

6  
7 **A. Enron bought all of PGE's common stock in 1997 and paid a huge**  
8 **premium over its market value on the New York Stock Exchange.**  
9

10 Enron announced its intent to purchase PGE on July 22, 1996. The price  
11 was to be a one-for-one swap of PGE stock for Enron stock, which amounted to a  
12 premium above PGE's value of over \$700 million. This near-immediate \$700  
13 million gain was enjoyed by PGE stockholders.

14 Even if Trojan profits had not been included in rates, it is highly likely that  
15 PGE stockholders as of the effective date of OPUC Order No. 95-322 (April 1995)  
16 would have received very high percentage gains on their investment in PGE stock.  
17 Thus, it was not necessary for the OPUC to allow PGE to collect profits on Trojan  
18 in OPUC Order No. 95-322, as PGE stockholders were going to receive a huge  
19 gain anyway. Further, as of Enron's closing of the PGE deal in 1997, there  
20 remained no PGE common stock traded on financial markets, thus eliminating the  
21 rationale that PGE needed higher rates in order to attract equity capital.  
22

1           **B. During the period 1995 through 2000 (the period to be addressed in**  
2           **this Phase I), PGE significantly overearned its authorized return on**  
3           **investment, apparently in every single year.**  
4

5           The publication WILLAMETTE WEEK, February 9, 2005 {URP Exhibit 206]

6 reported:

7           But the confidential document prepared by Texas Pacific when  
8           it was determining whether to purchase PGE shows that  
9           during a nine-year period ending in 2000, PGE earned nearly  
10          a quarter of a billion dollars more than the "maximum" return  
11          the PUC allowed.

12  
13          PGE Chief Financial Officer Jim Piro takes issue with the way  
14          Texas Pacific calculated his company's earnings, but he  
15          acknowledges that PGE earned significantly more than  
16          allowed during several years in the '90s. (PGE's figures show  
17          that it over-earned by about \$150 million during the same  
18          period.)

19  
20          PGE's regulatory guru, Pamela Lesh, says over-earning is  
21          unlikely to happen again because the PUC now adjusts for  
22          variable power costs every year rather than every few years.

23  
24          For whatever reason, PGE has publicly admitted that it earned significantly more  
25          than its authorized return on investment "during several years in the '90s." The  
26          TPG document quantified the overearning by year, showing the levels occurring  
27          during the latter half of the 1990s and the year 2000, which corresponds to the 5.5  
28          year period encompassed by this Phase I. As TPG in January 2005 voluntarily  
29          disclosed its previously "confidential" documents in the UM 1121 proceeding (by  
30          providing them to THE OREGONIAN), this document may well not be confidential now.  
31          I will inquire of its status and provide it, either as a confidential exhibit or as a  
32          nonconfidential exhibit. TPG assigned it a number, OE 116002.

1 In any event, the level of PGE overearning during the 5.5 year period should  
2 be quantifiable by reference to PGE financial reports to the Securities and  
3 Exchange Commission (SEC), to Federal Energy Regulatory Commission (FERC),  
4 and to the OPUC itself. URP requested that PGE state its actual rate of return on  
5 investment and actual rate of return on equity for these years, but PGE provided in  
6 response only a box of FERC-1 reports and not the specific information requested.

7 Thus, if PGE's theory is that the OPUC wanted PGE to earn a specific level of  
8 overall profit, then the profit on Trojan can be removed without depriving PGE of the  
9 level of overall profit that the OPUC supposedly intended to bestow on PGE in  
10 OPUC Order No. 95-322. Even if the Trojan profits had not been included in rates,  
11 PGE would still have earned more than the overall level that PGE theorizes that the  
12 OPUC must somehow have intended. Thus, even under PGE's corrupt model of  
13 utility regulation, in which the Commission first determines the outcome that it wants  
14 and then cobbles together some rationales for it, PGE would not get to keep the  
15 charges to ratepayers for Trojan profits. Even without those charges in rates, PGE  
16 would have earned more than the "end result" that PGE claims the OPUC intended.

17 Consequently, under PGE's theory that the Commission can retroactively  
18 determine rates for PGE as of April 1, 1995, I recommend that the Commission set  
19 rates lower than authorized in OPUC Order No. 95-322, to take into account the  
20 known fact that PGE earned far more under OPUC Order No. 95-322 than the  
21 Commission had contemplated or intended. There are many way to make this  
22 adjustment. The Commission could take PGE's average utility operating income

1 during the 5.5 year period and subtract from that the utility operating income  
2 contemplated by OPUC Order No. 95-322. The result would be a measure of  
3 PGE's excess earnings and would be subtracted from the OPUC Order No. 95-322  
4 revenue requirement. Since PGE was able to earn that much more, per year, than  
5 OPUC Order No. 95-322 contemplated, such a reduction in rates would have  
6 allowed PGE to earn what the OPUC actually intended in OPUC Order No. 95-322.

7 Another method would be to reduce PGE's authorized rate of return on equity  
8 in OPUC Order No. 95-322 to account for the overearning during the 5.5 year  
9 period.

10  
11 **C. During the period 1995 through 2000 (the period to be addressed in**  
12 **this Phase I), PGE charged ratepayers either \$80.1 million or \$86.1**  
13 **million per year for "state and federal income taxes" that was not**  
14 **paid to either government during most, if not all, of those years.**

15  
16 OPUC Order No. 95-322 allowed PGE to include in rates charges for "state  
17 and federal income taxes" equal to \$80.1 million per year. In the UE 100  
18 proceeding, this was increased to \$86.1 million per year, effective at the start of  
19 1997. This level of charges for "income taxes" did not change during the remainder  
20 of the 5.5 year period.

21 In OPUC Docket UCB 13, PGE stated in discovery responses that PGE  
22 actually paid nothing to the U.S. Government for federal income taxes and nothing  
23 to the State of Oregon in state income taxes in any of the years 1997, 1998, 1999,  
24 or 2000. PGE has since stated in its annual financial reports to the Securities and  
25 Exchange Commission (SEC) that Enron's ultimate federal income tax liability for

1 those years also amounted to zero. For at least those 4 years, this non-payment of  
2 "state and federal income taxes" charged to ratepayers had the effect of increasing  
3 the effective return on investment for the company's sole common shareholder,  
4 Enron, during each of the years 1997-2000 by \$86.1 million per year. As OPUC  
5 Order No. 95-322 contemplated overall "Utility Operating Income" of \$154.4 million  
6 (to achieve the pre-tax 13.34% rate of return on investment noted in the testimony  
7 of Jim Lazar), this addition of another \$86.1 million to income for PGE's shareholder  
8 increased its effective return on investment by approximately 7.4 percentage points.

9 This bonus to return on investment is in addition to the overearning described  
10 in the WILLAMETTE WEEK above. PGE's financial statements for those years shows  
11 payment of state and federal income taxes as reductions to its income, even though  
12 those payments were not going to governments but instead to Enron. This means  
13 that PGE earned for Enron an additional profit of \$86.1 million per year that was not  
14 included in PGE's financial statements as profit. Thus, even if PGE never collected  
15 the \$35.2 million per year charged to ratepayers for profits on Trojan during the 5.5  
16 year period, PGE would nevertheless have effectively earned for its stockholder far  
17 more than its authorized rate of return on investment.

18 I have yet to determine how much PGE actually paid in state and federal  
19 income taxes for 1995 and 1996. That information may show additional,  
20 unaccounted-for income to PGE that should be considered in determining whether  
21 PGE would nevertheless have earned what the OPUC supposedly intended (under

1 the model of corrupt regulation offered by PGE), without the charges for Trojan  
2 profits.

3 Thus, using PGE's corrupt model of utility regulation, the OPUC intended that  
4 PGE would earn \$154.4 million in utility operating income per year. But PGE  
5 actually earned far more than that during at least the last 4 years of the 5.5 year  
6 period, due to the fact that its stockholder retained \$86.1 million per year in "state  
7 and federal income taxes" charged to PGE ratepayers. Removing the full amount  
8 charged for Trojan profits (\$35.2 million per year, as documented by witness Jim  
9 Lazar) does not bring PGE's actual net income per year down to the level  
10 supposedly intended by the OPUC. With perfect foreknowledge, the OPUC would  
11 have reduced PGE's OPUC Order No. 95-322 authorized revenue requirements by  
12 even more than just denying PGE profits on Trojan.

13 Consequently, under PGE's theory that the Commission can retroactively  
14 determine rates for PGE as of April 1, 1995, I recommend that the Commission set  
15 rates lower than authorized in OPUC Order No. 95-322, to take into account the  
16 known fact that PGE would be charging ratepayers, at least during the 1997-2000  
17 period (if not also earlier) \$86.1 million per year for "state and federal income taxes"  
18 that in fact were ultimately not paid to any government. The logical adjustment to  
19 OPUC Order No. 95-322 rates would be to remove from rates all charges for state  
20 and federal income taxes. This would change the gross-up factor to near zero and  
21 result in rates \$80-86 million lower on an annual basis than OPUC Order No. 95-  
22 322 authorized.

1 **6. PGE'S "POLICY" TESTIMONY IS UNSUPPORTABLE.**

2  
3 PGE witness Pamela Lesh (PGE Exhibit 6000) makes numerous  
4 unsupportable claims. I address a few of them here.

5 She claims (p. 16) that utilities need lots of incentives. PGE had plenty of  
6 incentive already provided by ratebase treatment (profit) on plants that do provide  
7 service. Further, there is no such thing as an incentive to avoid doing the  
8 impossible. By the time PGE even filed its UE 88 rate request, Trojan had been  
9 permanently closed for nearly two years. The plant broke down and became  
10 inoperable in November 1992. One cannot provide an incentive in 2005 for a utility  
11 to take an action in 1992 or 1993, because time does not run backwards.

12 She (p. 17) makes various claims about the need to attract investment capital.  
13 But PGE stock has not been on market since mid-1997, when Enron closed its  
14 purchase of PGE. Nor was it traded on the basis of PGE's operations or  
15 performance since Enron announced the purchase in July 1996. After that, PGE's  
16 stock price was heavily influenced by Enron's stock price, as Enron proposed a  
17 swap. Enron's complete ownership of PGE since then has obviated any need for  
18 PGE to appear to be attractive to equity investors.

19 She argues that most of the equipment at Trojan continued to provide some  
20 sort of service even after the plant permanently ceased producing electricity.  
21 Apparently, that service was protecting the public from the severe hazards of the  
22 intensely radioactive elements of the plant, including the spent fuel. Protecting the

1 public from a hazard created by PGE's own conduct is some sort of a "service," but  
2 it is not the "utility service" required by ORS 757.355:

3 (1) Except as provided in subsection (2) of this section, a public utility  
4 may not, directly or indirectly, by any device, charge, demand, collect or  
5 receive from any customer rates that include the costs of construction,  
6 building, installation or real or personal property not presently used for  
7 providing utility service to the customer.  
8

9 (2) The Public Utility Commission may allow rates for a water utility that  
10 include the costs of a specific capital improvement if the water utility is  
11 required to use the additional revenues solely for the purpose of  
12 completing the capital improvement. [1979 c.3 <sup>o</sup>2; 2003 c.202 <sup>o</sup>2]  
13

14 If radioactive waste protection were a "utility service," nothing prevented PGE from  
15 offering this rationale to the Commission in 1995. And, of course, ratepayers  
16 continue to pay the full cost of decommissioning and waste disposal through  
17 additional charges in rates.

18 If PGE's theory here were correct, it opens a whole new avenue for profit  
19 maximization: The utility would build a dangerous plant, allow it to break down,  
20 close it, and continue to charge ratepayers for profit on the plant, solely because it  
21 remains dangerous after closure. And the utility would also get to charge  
22 ratepayers for profits on the plants built or bought to replace the outcome of the  
23 closed dangerous plant. Under this system, the utility has a very strong incentive to  
24 build dangerous plants, because its ability to charge ratepayers for profits on the  
25 plant, after it is prematurely closed, depends upon the level of danger it continues  
26 to pose. After all, after closure the service that PGE is providing is protection  
27 against danger. No danger means no protection and no profits.

1 She often refers to a "disallowance of \$182 million." But that is a disallowance  
2 from an unlawful number, recovering all of Trojan investment with full return on  
3 investment on it. She fails to explain the consequence of "lower retained earnings."  
4 The only possible impact would be a lower stock price, which for the vast majority  
5 of PGE shareholders in 1995 would have meant simply less of a windfall gain when  
6 Enron in July 1996 stepped in to buy all PGE stock at a huge premium. Thus, even  
7 if a rate order allowing only recovery of Trojan investment (and not return on it) had  
8 reduced the value of PGE stock on the market in 1995 and early 1996, even that  
9 would not have harmed the preponderance of PGE stockholders--who received a  
10 huge gain above its market price from Enron. The PGE stockholders could have  
11 realized this gain at any time after Enron announced its purchase of PGE in 1996,  
12 as the stock price rose upon the announcement.

13 She recommends amortizing the book value of the plant over one year. She  
14 never explains how that would be consistent with her musings about  
15 intergenerational equity. How is it that only ratepayers in 1995 were responsible for  
16 PGE's unsuccessful investment in Trojan, which had an expected life of 30 years,  
17 of which about 17 were remaining at the time of its breakdown in late 1992?

18 In essence, she argues (p. 24 and elsewhere) in favor of a regulatory regime  
19 under which the most profitable course for the utility is to operate a plant so poorly  
20 that it breaks and needs replacement. Then the utility gets to double its return on  
21 investment, because it then receives the return both on the broken plant and the  
22 plant built to replace it. Further, under the PGE-favored regime, the utility can itself

1 cause plants to be "economically retired before the end of their depreciation lives"  
2 simply by derelict or incompetent operation and maintenance.

3 She mentions (p. 27) PGE's settlement with Westinghouse. PGE has to date  
4 claimed that the settlement is strictly confidential. Suddenly, when convenient, PGE  
5 states that it received only \$4 million in settlement from Westinghouse. This can be  
6 confirmed only if PGE now releases all of the relevant documents. This is  
7 immaterial, in any event, as PGE had complete control over its litigation with  
8 Westinghouse, while ratepayers had none. She merely speculates that the  
9 Commission might not have made this disallowance, had it understood the meaning  
10 of ORS 757.355 in 1995.

11 **7. PGE'S "HISTORY" TESTIMONY IS UNSUPPORTABLE.**

12 The testimony of Randy Dalhgren testimony includes several incorrect  
13 statements about the Commission's action in UM 989. As this is a remand  
14 proceeding that includes UM 989, I incorporate by reference all of the URP  
15 testimony and briefing in UM 989.  
16  
17

**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)**

**Utility Reform  
Project (URP)**

**Exhibit 205**

**RESUME OF DANIEL W. MEEK**

**Phase I**

**May 18, 2005**

# DANIEL W. MEEK

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## EDUCATION

Stanford Law School  
J.D. 1978

Editor, Stanford Law Review 1977-78  
Member, Stanford Law Review 1976-77  
Murie Award in Environmental Law 1978

## LAW PRACTICE

Full-Time: 1987 - Present  
Part-Time: 1982 - 1986

Daniel W. Meek, Attorney  
Portland, Oregon

### Utility Regulatory Proceedings and Litigation

Since 1982, I have represented electricity ratepayers, public interest groups, and others in many proceedings before federal agencies and before the Oregon, Washington, California, Nevada, and Idaho utility commissions and in subsequent litigation against the utilities and the regulatory agencies. My clients have included Utility Reform Project (URP), Oregon Legal Services, Idaho Fair Share, Citizens Utility Board of Oregon (CUB), commercial energy conservation firms, and others. I have also testified as an expert witness in several rate cases.

1. In 1991, settlement of litigation pursued solely by my public interest clients required Pacific Power & Light Company (PP&L) to:
  - A. Drop its claim to be legally entitled to charge Oregon ratepayers an additional \$105 million to pay for its abandoned Skagit 1 & 2 and WPPSS 5 nuclear power plants.
  - B. Contribute \$1,300,000 and another \$875,000 in matching funds for the "I Have a Dream" Foundation (Oregon) to provide academic enrichment and support services during grades 5-12 and guaranteed 4-year college tuition payments for 700 students in low-income areas. PP&L was also required to raise an additional \$2,625,000 from other sources, for a total of \$4.8 million to this program.
  - C. Contribute \$1,700,000 and another \$300,000 in matching funds for the Neighborhood Partnership Fund (NPF) to develop housing, employment, and services in low-income Portland neighborhoods. PP&L was also required to raise an additional \$900,000 from other sources, for a total of \$2.9 million to this program. The NPF used the funds to create Albina Community Bank, which is now financing the redevelopment of Portland's low-income areas.
  - D. Devote a total of \$7 million to complete within 3 years comprehensive weatherization (including shelter repair) for 7,000 low-income residences. This increased PP&L's low-income effort by a factor of 6 for those years.

- E. Contribute \$400,000 to Oregon Legal Services (OLS) to provide service for low-income persons.
- 2. In 1985, settlement of litigation pursued solely by my public interest clients required Portland General Electric Co. (PGE) to refund \$14 million to its residential ratepayers, to abandon its claimed right to charge ratepayers over \$122 million for its 4 terminated projects, and to contribute \$500,000 to environmental organizations undertaking projects in the public interest of the residents of Oregon.
- 3. In 1987, the Oregon PUC agreed with only my client (Oregon Legal Services) that CP National Corp. should not be allowed to charge any of its \$10 million annual cogeneration costs (34% of overall revenue requirement) to ratepayers in the absence of showing that it prudently negotiated its cogeneration contracts.
- 4. In 1986, the Idaho Public Utilities Commission (IPUC) agreed with only my client that (Idaho Fair Share) that Washington Water Power Co. should not be allowed to charge ratepayers 90% of the cost of the WPPSS 3 nuclear project.

**Private Enterprise Conservation Projects**

Since 1990, I have represented several residential energy service companies ("ESCOs") in the western U.S., including the largest such firms in the nation. These companies have projects completed or underway in Oregon, Washington, California, Maine, New York, New Jersey, Massachusetts, Illinois, and Texas. My primary purpose is to ensure that funds provided by utility ratepayers for conservation are employed competitively to produce actual conservation results, not merely public relations points for the utilities. I served for 2 years on the California DSM Measurement Advisory Committee (CADMAC) established by the California Public Utilities Commission (CPUC).

**Creation of Oregon's Largest Electric Cooperative**

In 1987, I organized and incorporated Oregon Trail Cooperative and negotiated the purchase of the entire CP National system in Oregon. Oregon Trail Coop began operating in October 1988 as Oregon's largest electric cooperative (\$30 million annual revenue) and as the first new electric cooperative in the United States in decades.

**UNITED STATES HOUSE OF REPRESENTATIVES**

Staff Director and Senior Energy Adviser January 1985 - February 1987	House Committee on Interior Affairs, Subcommittee on General Oversight, Northwest Power, and Forest Management
Senior Energy Adviser and Legal Counsel May 1983 - December 1984	House Committee on Interior Affairs, Subcommittee on Mining, Forest Management, and the Bonneville Power Administration

## CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the listed documents by email to the email addresses shown below and by U.S. Mail, first class postage prepaid, to the addresses below, which comprise the service list as shown this day on the web site of the Oregon Public Utility Commission for these dockets.

1. Testimony of Jim Lazar.
2. Resume of Jim Lazar.
3. Exhibits of Jim Lazar.
4. Testimony of Daniel W. Meek.
5. Resume of Daniel W. Meek.
6. Utility Reform Project Sponsors and Adopts Testimony.
7. Class Action Plaintiffs Sponsor and Adopt Testimony.

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Dated: May 19, 2005

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Daniel W. Meek