

**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 REPLY BRIEF—
PHASE III**

Portland General Electric Company ("PGE") submits this reply brief in Phase III of these consolidated Trojan remand proceedings. As Staff highlights in its reply brief, the parties raise few new issues at this point in these remand proceedings. The matters in this phase have already been the subject of two full contested cases, two hearings, and five rounds of legal briefs. The few new issues in URP's¹ reply brief reflect simple misunderstandings regarding the operation of the net benefit tests and the account balances involved in the settlement. Remarkably, URP never submitted testimony regarding these specific issues, but has waited until briefing to raise these questions. These last-minute attempts to create confusion and uncertainty are unavailing. The record is clear concerning the operation of the net benefit tests, the account balances at issue, and the magnitude of the benefit the settlement provided to customers (\$16.4 and \$18.5 million).

¹ Unless otherwise noted, "URP" refers to both the Utility Reform Project and the Class Action Plaintiffs.

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

URP misunderstands how the Trojan asset balance was actually depreciated from 1995 to 2000. URP Rep. Brf. at 2-3. Amortization of the Trojan asset balance was specifically addressed in UE 88, Order No. 95-322 at 65. The Commission established a Trojan Investment Recovery Account ("TIRA"). The Trojan balance in fact was amortized based on TIRA, not the methods URP postulates. URP has no basis for its concerns that customers (a) did not receive the benefit of higher-than-expected loads during the period and (b) were harmed by a declining Trojan balance between rate cases. TIRA answers both: TIRA reduced the Trojan balance based on (a) PGE's actual annual revenues—so customers received the benefit of higher-than-expected loads—and (b) the rate case ratio of the Trojan revenue requirement to PGE's overall revenue requirement—so Trojan's declining balance between rate cases had no impact on the amount of amortization attributed to Trojan in any given year.

URP mistakenly claims that PGE used a Trojan asset balance of \$219.6 million as part of the asset-based net benefit test. URP Rep. Brf. at 4. This is patently false. The asset-based net benefit test used a Trojan balance of \$180.5 million. Staff-PGE/200, Busch-Tinker-Hager/5; Order No. 02-227 at 4.

URP claims that Staff-PGE Exhibit 206 is "the only depiction of the asset-based test." URP Rep. Brf. at 5. That statement helps explain why URP appears so confused about the analysis. Staff-PGE Exhibit 206 describes the asset balances for Trojan, the FAS 109 asset, and the customers' assets and liabilities involved in the settlement. Those actual balance amounts were used in testimony and the final Order No. 02-227 as the basis for the asset-based net benefit test. Staff-PGE/200, Busch-Tinker-Hager/5; Order No. 02-227 at 4.

URP's incorrect figure for the Trojan balance (\$219.6 million) reflects the aggregation of three distinct items—the Trojan undepreciated balance, the FAS 109 asset, and the USDOE D&D Debit. The latter two items were accounted for separately in the net benefit analyses.

The FAS 109 asset is listed separately in each of the net benefit tests. Staff-PGE/200, Busch-Tinker-Hager/5; Order No. 02-227 at 4. The USDOE D&D Debit is one of the customer assets and liabilities, the net of which was offset against the Trojan balance.²

URP is similarly off the mark when it claims that the asset-based test used revenue streams and not actual balances. URP Rep. Brf. at 5. URP cites the figure of \$26,634,202 under the "net" column on line 20 of Staff-PGE Exhibit 206 as support. URP is doubly wrong on this account. First, the FAS 109 asset balance used in the settlement and asset-based net benefit analysis is the gross book amount of \$47.4 million, not the net number URP identifies. Staff-PGE/200, Busch-Tinker-Hager/5; Order No. 02-227 at 4-5. Second, the "net" figure to which URP alludes is a net tax figure, reflecting the gross book value minus deferred taxes. It does not reflect future revenue streams at all. The single use the asset-based test made of future revenue streams was to determine the net benefit customers received for PGE's treatment of the FAS 109 asset. In that calculation, the asset-based test provided a present value for the collection of the FAS 109 replacement asset over five years without any interest. This is a far cry from URP's claim that future revenue streams were used to determine the various balances used in the asset-based analysis.

² URP also points out immaterial differences between the net present values of the various customer credits and liabilities in the revenue requirement net benefit test and the asset-based net benefit test. URP Rep. Brf. at 5. A few factors explain these minor differences. First, the original revenue requirement net benefit test (Staff-PGE Exhibits 203 and 205) was based on forecasted balances at the time of the settlement of the various balances, and the asset-based test was completed later and used actual account balances. Order No. 02-227 at 5 n. 6. In addition, the revenue requirement figures were calculated using PGE's cost of capital with an income tax gross amount (as is standard for revenue requirement calculations) and then discounted to present value terms using PGE's authorized cost of capital. Finally, URP compares apples and oranges when it compares the "USDOE D&D/SNF" column in Staff-PGE Exhibits 203 and 205 with the USDOE D&D Debit item in Staff-PGE Exhibit 206. URP ignores the fact that the USDOE D&D/SNF column includes not only the USDOE D&D Debit but also an offsetting amount for the USDOE Fuel Credit. *See* Staff-PGE Exhibits 203 and 205. Staff-PGE Exhibit 206 identifies USDOE D&D Debit and USDOE Fuel Credit as separate and distinct accounts. Staff-PGE 203 and 205 net these two account balances against one another under the USDOE D&D/SNF column.

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

URP notably continues to offer no legal authority for why PGE should be forced to wait for recovery of the Trojan balance until 2011, as URP's analysis requires. URP's sole argument on this subject is Mr. Lazar's testimony regarding other state commissions' rulings and an unexplained reference to ORS 756.040. URP Rep. Brf. at 8-9. Mr. Lazar's testimony on this point simply ignores the facts in this case.

Unlike in the commission decisions Mr. Lazar cites that involved abandoned nuclear plants in other states, the Trojan facility was in service many years before it was closed.

"Q. So I think I heard you testify that none of the nuclear power plants that you identified, the abandoned plants that you identified in response to that question, never actually produced electricity themselves.

"A. That's correct.

"Q. They were all abandoned before being put into service?

"A. Yeah.

Hearing Trans. at 124-125.

Finally, URP's complaint that the Commission has provided full recovery of the Trojan balance is wrong, both on the facts and the law. Just like the partial recovery cases Mr. Lazar cited at the hearing, PGE was not in fact provided a full return of its Trojan investment after the shutdown. In UE 88, the Commission imposed regulatory disallowances in the amount of \$53.8 million. PGE/7600, Tinker-Schue-Hager/10. In addition, as part of the settlement, PGE removed the remaining Trojan balance as part of an exchange for customer credits of substantially lesser value, thereby providing customers with a substantial net benefit. That net benefit should not be ignored when considering whether PGE has recovered the full value of its Trojan investment.

URP also ignores Oregon law on the subject. The Oregon statutes give the Commission broad authority over the recovery period of utility assets and accounts. ORS 757.120-

140. Requiring PGE to wait to recover the Trojan balance until 2011 without any interest is a one-sided approach that is inconsistent with the Commission's obligation to fairly balance the interests of utility shareholders and customers. ORS 756.040. URP neglects to mention that Oregon law specifically 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). URP's oversight is not surprising. URP's similar position in UE 88 against "return of" the Trojan balance was rejected by the Court of Appeals, which concluded that ORS 757.140(2) authorized the recovery of the undepreciated Trojan balance. *Citizens' Utility Board v. OPUC*, 154 Or App 702, 713, 716, 962 P2d 744 (1998).

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

URP's Reply Brief adds nothing new on this topic.

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

URP raises two new arguments with respect to NEIL. First, it argues that earlier versions of net benefit tests did not properly account for NEIL. Second, it argues that customers were owed amounts from 1993-1999 related to NEIL, apart from the treatment under the settlement. We will address each of these arguments in turn.

A. THE NET BENEFIT TESTS PROPERLY ACCOUNT FOR NEIL

No one—not even URP—can dispute how the *final* net benefit analyses described in Order No. 02-227 treated the final NEIL proceeds. As part of the settlement, customers were given the full value of the NEIL proceeds and permitted to use 45% of those proceeds to receive the overall benefits of the settlement. Thus, both net benefit tests assumed that customers were entitled to 100% of the NEIL final distribution absent the settlement. The net benefit tests showed that, with this most conservative assumption, customers received a substantial net benefit from the settlement of between \$16.4 and \$18.6 million. At hearing, URP's witness admitted as much.

"Q: So when judging the net benefit of this settlement, the parties adopted the treatment that but for the settlement, 100% of the NEIL premiums would have been payable to customers; correct?

"A. (URP witness Mr. Lazar) Yes."

Hearing Trans. at 104.

In its reply brief, URP seeks to create confusion by ignoring the final presentations of the net benefit tests and focusing on early versions of the revenue requirement net benefit test.

Those earlier versions were in a different format but made the same assumption, that customers were entitled to 100% of the NEIL premiums absent the settlement. The steps below from Staff-PGE

Exhibit 205 are what confuse URP:

Line 1	No-Offset Revenue Req.	58.2
Line 2	Offset Rev. Req.	42.5
Line 3	NPV Benefit of Offset	<u>\$15.7</u>
Line 4	Decrease to Reflect NEIL Value	(14.2)
Line 5	Net Benefit Before NEIL Split	<u>\$1.5</u>
Line 6	55% of NEIL Value to Customers	13.1
Line 7	Additional \$2.5 MM Rate Red.	2.5
Line 8	Net Customer Benefit	<u>\$17.1³</u>

The net benefit amount (line 3) was derived by comparing the "no-offset" revenue requirement with the "offset" revenue requirement. The "no-offset" revenue requirement included annual NEIL credits under UE 100 in the amount of \$1.4 million annually and \$9.6 million NPV. Because this NEIL figure did not accurately reflect what customers would have received as the final NEIL distribution, it was adjusted in Line 4 to provide customers with the full benefit of the forecasted final NEIL distribution in the no-offset case. The net benefit of the settlement is decreased in Line 4 by the additional NEIL proceeds customers were expected to receive under the final NEIL distribution absent the settlement (\$14.2 = \$23.8 million (the final NEIL distribution

³ This net benefit figure (\$17.1 million) differs from the final revenue requirement figure (\$18.5 million) because the final net benefit test used updated figures for the final NEIL distribution and the FAS 109 asset. See Order No. 02 227 at 5 n. 6.

forecast at the time)—\$9.6 million (the net present value of the continued NEIL credit from UE 100 that was assumed in prior steps).

This results in a net benefit of \$1.5 million (Line 5). But this reflects an incomplete analysis because the no-offset revenue requirement did not include any amount for a NEIL distribution to customers. At this point in the analysis, the final NEIL distribution under the "offset case" has been ignored. Accordingly, 55% of the forecasted NEIL final distribution is added on Line 6 to the net benefit, providing the final net benefit (Line 8) after the final addition of the \$2.5 million rate credit included in the settlement.

This shows that URP just has it wrong. URP claims that "any honest and rational ratemaking would have included a much greater credit to ratepayers for anticipated NEIL refunds [than the \$1.4 million from UE 100]." URP Rep. Brf. at 12. The net benefit test did just what URP suggests through Line 4 by supplementing that UE 100 figure with the projected final NEIL distribution in the no-offset scenario.

URP is similarly confused about the presentation of NEIL in Staff-PGE Exhibit 204, which formed the basis of the revenue requirement net benefit test in the Commission's final order.

The steps that confuse URP from that exhibit are set forth below:

Line 1	NPV Rev. Req. of No Offset	58.2
Line 2	Remove NEIL From No Offset	9.9
Line 3	No-Offset Case wo/NEIL	<u>68.1</u>
Line 4	Offset Case wo/NEIL	36.7
Line 5	Customer Benefit From Offset	31.4
Line 6	Temporary Customer Rate Relief	2.5
Line 7	Company's Share of NEIL Settlement (NPV \$34.3 x .45)	(15.4)
Line 8	Net Customer Benefit	<u>\$18.5</u>

As with Staff-PGE Exhibits 203 and 205, the revenue requirement for the "no offset" case included the annual \$1.4 million NEIL credit from UE 100 and the "offset" case included no NEIL refunds. Line 2 is based on URP's observation that the UE 100 projected credit for NEIL should be removed since it does not reflect accurately what customers would have received absent

the settlement.⁴ Under this presentation, NEIL is excluded from both the “no-offset” revenue requirement and the “offset” revenue requirement. The entire treatment of NEIL is on Line 7, where the exchange of 45% of the final NEIL distribution under the settlement is appropriately counted as a reduction in the net benefit customers received given that it is assumed customers would have received 100% of the NEIL final distribution absent the settlement.⁵

Finally, URP misunderstands the treatment of NEIL under the asset-based net benefit test. That test appropriately considered the NEIL final distribution. Staff-PGE/200, Busch-Tinker-Hager/5, Order No. 02-227 at 4. The exhibit URP cites (Staff-PGE Exhibit 206) sets forth the balances for the regulatory assets and liabilities involved in the settlement, except the NEIL final distribution, which was confirmed separately. July 11, 2001 Hearing Trans. at 67.

B. THERE IS NO ACCUMULATED NEIL BALANCE OWED TO CUSTOMERS

URP makes a variety of claims about the historic treatment of NEIL that are not in the record. When the record was open, URP repeatedly argued that customers were entitled to 100% of the NEIL final proceeds but submitted no testimony regarding the ratemaking treatment of NEIL rebates before 2000. In briefs, URP now claims, for the first time, without any supporting testimony, that there was an "accumulated balance of the NEIL refunds that PGE had not returned to ratepayers during at least the 1993-1999 period." URP Rep. Brf. at 12. URP apparently believes the

⁴ URP thinks removal of NEIL credit from the “no offset” case means the revenue requirement should go down. URP Rep. Brf. at 7. This is wrong. The removal of a rate credit will serve to increase the revenue requirement. URP appears to not recognize that the impact of the NEIL distribution under the settlement is factored into this final version of the revenue requirement net benefit test later on Line 7.

⁵ URP also claims there is a discrepancy between the FAS 109 revenue requirement amounts in Staff-PGE Exhibit 204, as compared with Staff-PGE Exhibits 203 and 205. URP Rep. Brf. at 12 n 6. URP is right. As mentioned in Order No. 02-227, the final net benefit analyses (both the revenue requirement and asset-based test) replaced the forecasted FAS 109 balance with the actual FAS 109 balance. That explains the difference between Staff-PGE Exhibit 204 (final account balance) and Staff-PGE Exhibits 203 and 205 (forecasted balance). In this manner, the revenue requirement and asset-based net benefit tests serve as independent means of verifying the benefits provided to customers. See PGE/7600, Tinker-Schue-Hager/13.

NEIL premiums and refunds were subject to some kind of true-up. They were not. Indeed, this has been our point all along—there was no guarantee that customers paid all the NEIL premiums because there was no balancing account in place. *See* Staff-PGE/200, Busch-Tinker-Hager/16. PGE's rates at the time reflected forecasts of NEIL premiums and refunds. As with any expense or revenue used to set rates, the actual premiums and refunds could vary from forecasts used to set rates.⁶ URP's argument about an "accumulated balance of NEIL refunds" misunderstands fundamental principles of ratemaking.

V. ISSUES #5 -7

URP offers no new arguments concerning these topics.

⁶ URP's calculation of the amount of rebates not returned to customers is suspect. It claims a \$1.4 million credit for refunds applied from 1995 to 1999. URP Rep. Brf. at 12. There is no basis for that assumption in the record. Nor is there any information in the record regarding whether customers in fact paid 100% of the NEIL premiums or what portion of the rebates were the return of premiums or reflected investment gain. Neither NEIL premiums nor NEIL rebates were the subject of a balancing account during the applicable period.

VI. 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 PGE's opening, response, and reply briefs.

DATED this 13th day of August, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **PORTLAND GENERAL ELECTRIC COMPANY'S REPLY 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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