BEFORE THE OREGON PUBLIC UTILITY COMMISSION

DR 10/UE 88/UM 989

In the Matters of

The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement. (DR 10)

Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company. (UE 88)

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

Phase 3 Response Testimony

URP Exhibit 510

REBUTTAL TESTIMONY OF JIM LAZAR

Phase 3

June 13, 2008

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

A. Jim Lazar, 1063 Capitol Way S. #202, Olympia, WA 98501. I am a consulting economist specializing in utility rate and resource issues. I am the same Jim Lazar who submitted testimony earlier in this docket.

Q. What are your responses to the Staff Response Testimony?

The Staff Response Testimony of Judy Johnson (May 16, 2008) many times touts the "net benefit analysis" used in OPUC Order No. 02-227 as a sort of panacea or overriding consideration that somehow negates all specific objections to the stipulation the Commission adopted in UM 989. But the "net benefit analysis" used by PGE and Staff is flawed for reasons previously stated in my testimonies in this docket. Further, it used an incorrect discount rate, consisting of PGE's authorized rate of return on investment without taxes. In the ratemaking methodologies used by the OPUC, that number is merely an intermediate step to determining the actual authorized multiplier applied to PGE's ratebase in order to calculate the actual rates charged to ratepayers. Applying the "without taxes" ROR skips over the Net-to-Gross step in the cost of capital calculations. There is no legitimate rationale (or, in this case, any rationale at all) for skipping that step.

The "net benefit analysis" is also fatally flawed by its baseline. It allegedly finds a small benefit for ratepayers, compared to an alternative which consists of continuing in place the unlawful rate treatment for Trojan adopted in OPUC Order No. 95-322. As I have previously testified in this remand docket, that rate treatment, rejected by the Oregon courts, has cost PGE ratepayers over $500 million in unlawful charges. To say that a new rate order is maybe $17-18 million better than a previous rate order (which was unlawful to the tune of hundreds of millions of dollars) does not establish a legitimate net benefit for ratepayers, even if the analysis were correct conceptually and mathematically (which it was not).

Staff's testimony asserts that somehow ratepayers are better off under OPUC Order No. 02-227. That is not the case. My testimony shows how much worse off they are. The correct measurement of the relative position of ratepayers is in my testimony, which shows the effect of:

(1) reversing out all of OPUC Order No. 00-601 and OPUC Order No. 02-227, thereby returning ratepayers to the status quo ante on September 30, 2000, from a ratemaking perspective;

(2) in its place, removing as of October 1, 2000, all Trojan return on investment from rates, while continuing to charge the same Trojan return of investment as had previously been authorized in OPUC Order No. 95-322, because the courts ruled that Trojan return on investment was unlawful.

My testimony shows that ratepayers are, as of October 1, 2008, $436.4 million worse off under OPUC Order No. 00-601 and OPUC Order No. 02-227 than they would be, if instead the Commission in 2000 had adopted a order producing fair, just, reasonable, and lawful rates by removing the Trojan return on investment from PGE rates and doing nothing else.

Staff asserts that the FAS 109 asset should indeed be charged to ratepayers. Staff claims that it is fine to have created this "asset" and then charge PGE ratepayers to pay for the asset. Staff's approach assumes that, in the early years of Trojan operation (1970s -1980s) that, because of accelerated depreciation and other features of federal and state income tax laws, PGE ratepayers paid less in income taxes than would have been "normal"--i.e., than would have been the case if these tax law features did not exist and the Trojan investment (for tax purposes) were depreciated ratably over its expected operating life and did not generate any investment tax credits. Thus, reasons PGE and Staff, having paid less than "normal" income taxes in the early years of Trojan operation, ratepayers should now pay more than "normal" income taxes.

This analysis is flawed for several reasons. First, there is no evidence that PGE paid any of its asserted federal and state "income taxes" at any time prior to 2006 (after the tax reporting requirements of Oregon's SB 408 of 2005 took effect). It is now known that the amount of federal and state income taxes paid by or on behalf of PGE under its Enron ownership (1997 - early 2006) was effectively zero, despite the fact that PGE was reporting to the OPUC "income tax" expenses on the order of $80 to $100 million per year. Prior to its ownership by Enron, PGE had its own corporate hierarchical structure and may or may not have paid in income taxes the amounts asserted in its reports to the OPUC. So there is no proof that PGE ratepayers in the early Trojan years were somehow benefitting from accelerated depreciation or other tax features applicable to the Trojan investment. In general, it was my experience during that period that utilities collected so-called "phantom taxes" based on hypothetical tax rates, when in fact their actual tax payments were dramatically lower, due to so-called "normalization" of accelerated depreciation and investment tax credits. PGE's experience during that period is undocumented.

More important, the "net benefit analysis" assumes that PGE (as of October 1, 2000) was somehow required to pay more in income taxes than "normal" for the remainder of Trojan's originally expected operating life (to 2011), because the effects of accelerated depreciation and other tax features applicable to the Trojan investment had "reversed" so that the result of all of the separate depreciation accounts would reach zero at the end of Trojan's expected operating life. But there were effectively no federal and state income taxes paid by or on behalf of PGE during the first 5.5 years after October 1, 2000, the effective rate of the rate orders in UM 989. (During 2003, PGE did pay $789,510 in federal income taxes in 2003, offset by a net refund of $63,265 in 2002.)

So, OPUC Order No. 00-601 and OPUC Order No. 02-227 apparently required PGE ratepayers to pay not only for income taxes that were not being paid to the federal or state government but also to pay extra income taxes, above and beyond "normal." Under those orders, the FAS 109 "asset" was charged to ratepayers

during the same period that PGE was not actually paying any income taxes. Thus, those orders required PGE ratepayers to pay an extra $47.4 million for alleged PGE income taxes costs, even though there existed no actual payments of those income taxes to the federal or state governments, and there is no evidence in this record that such taxes were in fact paid.

I am advised by counsel for Utility Reform Project that SB 408 (2005) deems rates not to be "fair, just and reasonable," if they "include amounts for taxes" which do not "reflect the taxes that are paid to units of government." I am also advised that the effective date of this new standard was September 5, 2005, and that the new standard applies to rate orders issued after that date. Thus, this new standard obviously applies to the OPUC's rate order to be issued in this remand docket.

Further, if PGE had not been allowed to charge ratepayers for the full return on investment on Trojan, PGE would have been compelled to write off a large share of its remaining Trojan investment. That write-off would have reduced PGE's reported net income and, accordingly, its nominal income tax liability. Thus, the "net benefit analysis" forces ratepayers to pay more in income taxes, because it preserves for PGE the functional equivalent of a return on investment on Trojan.

In addtion, Staff's position on the NEIL rebates is an unbelievable position for a regulatory staff to assert. Staff asserts:

> If the benefit [NEIL premium rebate] came in between rate cases, customers may not have benefited at all. In addition, even if the benefits were recognizable during a test period, the crediting of a NEIL benefit might have been considered a one-time occurrence for purposes of a rate case and removed from the test period as a non-recurring item.

This approach would bless any scheme under which the utility makes regular payments (or overpayments) to some other entity and then later receives a lump sum settlement or rebate. The regular payments would of course be included in the test years upon which rates are based. But, says Staff, maybe the lump sum settlemnent or rebate would be ignored. Thus, the utility can handsomely profit merely by arranging to overpay vendors on a regular basis and then receive lump

sum true-ups from the vendors, conveniently scheduled between rate cases or conveniently labeled "non-recurring items." This is another "heads-I-win--tails-you-lose" technique that Staff should not be endorsing.

CERTIFICATE OF SERVICE

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

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Dated: June 13, 2008

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