

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)

RESPONSE TO
ALJ RULING RE
IDENTIFYING
ISSUES ON
REMAND

The ALJ Ruling and Notice of Conference (February 22, 2008) asks Utility Reform Project, Lloyd K. Marbet, and Colleen O'Neil [hereinafter URP] by today to notify the Commission of issues to add to the list at page 4 of the February 22 Ruling.

First, by so listing additional issues, URP does not agree that the February 22 Ruling constitutes a lawful response to the remand of OPUC Order No. 02-227 by the Court of Appeals and Marion County Circuit Court. Nor does URP abandon rights to state objections and take exceptions to the components of the February 22 Ruling, including its restrictions on issues and its limitations on the scope of new evidence.

Second, there were numerous issues raised on appeal or cross-appeal that are not mentioned in the list of 7 issues in the Ruling. However, the Ruling (p. 7) states:

These issues are intended to be broad enough to encompass any sub-issues raised in prior proceedings. For example, URP's arguments that the Trojan balance used in the settlement inappropriately included

construction-work-in-progress expenses would be considered a sub-issue under Issue 1. Furthermore, although the issues are broad, the parties may not raise any issues that were not raised in prior proceedings before the Commission, the circuit court, or the Court of Appeals.

So the question is whether the list of 7 issues **excludes** any of the issues raised in the prior proceedings, apart from the Ruling's express exclusion of "whether the portion of rates collected from customers from 1995 to 2000 that reflect a return on the Trojan investment should be used to reduce or eliminate the Trojan balance."¹

We assume that the list of 7 issues is intended to encompass all of the issues raised in prior proceedings, apart from that exclusion.² To avoid any other misunderstanding, we would modify the list of 7 issues as follows (with indented comments following each suggested change). New words are underlined.

Issue 1: What was PGE's legitimate remaining undepreciated investment in Trojan as of October 1, 2000?

We know what PGE's books said about the undepreciated investment and claim that that number is not the legitimate investment for ratemaking purposes, for several reasons (including but not limited to accounting for CWIP and deferred taxes).

Issue 2: Do the rates approved in Order No. 02-227 provide PGE with the functional equivalent of a "return on" the remaining undepreciated investment in Trojan?

Issue 3: Should the creation of a new regulatory asset to increase rates due to alleged ~~pay the customers'~~ "FAS 109 liability" be disregarded because it is a phantom bookkeeping asset?

or

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1. URP will object or take exception to this ruling at an appropriate time.
 2. If that is not the case, then we reserve the opportunity to offer additional issues.

Is the alleged "FAS 109 liability" a legitimate component of return of investment on Trojan?

This issue appears to be stated in a way that allows only a very narrow examination and prejudices the outcome.

Issue 4: ~~Did the settlement~~ Do the rates approved in OPUC Order No. 02-227 improperly transfer the proceeds and/or premium refunds from PGE's NEIL policy from ratepayers to PGE?

Issue 5: ~~Were the rates adopted in Order No. 02-227 unjust and unreasonable for any reason stated in prior proceedings because they were higher than the rates adopted in UE 88, which the Court of Appeals declared unlawful in Citizens' Utility Board?~~

The briefing by URP in the prior proceedings presented several reasons why the rates adopted in OPUC Order No. 02-227 were not just and reasonable. For example, URP questioned in many ways the validity of the "Net Benefit Analysis" used to attempt to justify the OPUC Order No. 02-227 rates as just and reasonable. There is no basis for limiting this issue to just one of the reasons. Further, it remains the burden of the applicant, PGE, to prove that the rates it desires are just and reasonable, not the other way around. So perhaps a better way to state Issue 5 would be: "Were the rates adopted in OPUC Order No. 02-227 just and reasonable?"

Issue 6: Was each finding in Order No. 02-227 supported by substantial evidence and substantial reasoning?

Evidence is what supports a finding of fact. Thus, the issue is whether each finding of fact in OPUC Order No. 02-227 was supported by substantial evidence. Further, URP argued in the prior proceedings that several of the findings lacked a rational stated basis, citing cases including *Dickinson v. Davis*, 277 Or 665, 667 n2, 561 P2d 1019 (1977) and *Market Transport, Ltd. v. Maudlin*, 301 Or 727, 725 P2d 914, 918 (1986). This is sometimes referred to as the "substantial reasoning" test and should be included in the list.

Issue 7: Did the Commission deny URP due process in docket UM 989?

As noted above, this URP response does not abandon rights to state objections and take exceptions to the components of the February 22 Ruling, including its restrictions on issues and its limitations on the scope of new evidence.

Dated: March 11, 2008

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the original and 5 copies of the foregoing by email to the Filing Center and by mail, postmarked this date, and that I served a true copy of the foregoing RESPONSE TO ALJ RULING RE IDENTIFYING ISSUES ON REMAND by email to the physical 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: March 11, 2008

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