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Douglas C. Tingey
Assistant General Counsel

April 17, 2009

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street NE, #215
PO Box 2148
Salem OR 97308-2148

Re: UE 88/DR 10/UM 989

Attention Filing Center:

Enclosed for filing in the captioned docket are an original and one copy of:

- **PGE MOTION FOR MODIFICATION OF INTEREST RATE AFTER
ORIGINALLY ORDERED REFUND DATE**

This document is being filed by electronic mail with the Filing Center. An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

This document is being served upon the UE 88/DR 10/UM 989 service lists.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "D. C. Tingey".

Douglas C. Tingey

DCT:smc
Enclosures
cc: Service Lists-UE 88/DR 10/UM 989

**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)

**MOTION FOR MODIFICATION OF
INTEREST RATE AFTER
ORIGINALLY ORDERED REFUND
DATE**

INTRODUCTION

In this docket the Commission resolved a long-standing dispute about the appropriate ratemaking for the retired Trojan generating facility. As part of that Order (No. 08-847) the Commission ordered Portland General Electric ("PGE") to refund over \$33 million, plus interest at 9.6%. PGE did not appeal or otherwise contest that Order; in fact, when other parties to this docket petitioned for review and requested a stay of the Order, PGE successfully opposed it. That action and others by the other parties have delayed the refund ordered in this docket by about six months. For the reasons set forth below, PGE moves and requests that the interest rate on the ordered refund amount be lowered after the originally ordered refund date.

If this change is deemed to be an amendment to the Order, then PGE moves, pursuant to ORS §756.568, for amendment to Order 08-487 as set forth below. Because the

Commission has retained jurisdiction to carry out all aspects of the refund during the pendency of the judicial review, and because the requested modification if ordered will be subject to a supplemental petition for judicial review, there is no jurisdictional obstacle to the Commission's consideration of this Motion.

HISTORY

Order No. 08-487, entered September 30, 2008, in this docket, requires PGE to refund \$33.1 million, plus interest at 9.6% from the date of the Order. The Order set out the refund methodology, including a timeframe of six months for customers to make claims for refunds, with the refunds sent to customers shortly after the conclusion of that six month period. Under that Order, PGE expected to send refunds to the appropriate customers in April 2009. PGE did not seek reconsideration of that decision and did not file an appeal. PGE immediately began steps to implement the refund ordered by the Commission.

That Order also directed Commission Staff to convene a workshop to develop language for the customer notice, the form to be used to submit a claim, and to "to consider and recommend any changes to these procedures to minimize the burdens placed on eligible customers seeking a refund." Order 08-487 at 105. Staff convened workshops and on November 20, 2008, PGE filed a motion for approval of the refund methodology, which included some suggestions for changes to the refund procedures developed during those workshops. Staff supported the motion.

On November 26, 2008, the Utility Reform Project ("URP") and the Class Action Plaintiffs (Gearhart, Morgan, and Kafoury Brothers Inc.) ("CAPs") filed an opposition to PGE's motion. In that opposition, URP and CAPs stated they would ask the Court of Appeals for a stay of the Commission's refund order. On December 1, 2008, the

Commission entered Order 08-559 in this docket, which suspended for 60 days PGE's obligations to comply with Order 08-487 "to allow URP and the CAPs to file a request for a stay at the Court of Appeals." Order 08-559, p.2. That order also said: "[w]e anticipate that URP and the CAPs will file its request expeditiously to eliminate unnecessary delays in this proceeding." URP and CAPs did file a motion for stay with the Court of Appeals, but not until January 26, 2009.

On February 2, 2009, the Commission entered order 09-039, which extended the "suspension period indefinitely pending the Court of Appeals decision on the motion for a stay."

On February 6, 2009, PGE filed its response in opposition to the motion to stay with the Court of Appeals. On February 9, 2009, counsel for the Commission filed a response to the motion to stay on behalf of the Commission, opposing the stay. On February 24, 2009, the Court of Appeals issued an Order Denying Motion for Stay of Agency Order. Appellate Commissioner's Order Denying Motion for Stay of Agency Order (A140317, 2/24/09).

On March 19, 2009, the Commission issued Order 09-093, denying PGE's motion for approval of changes to the refund methodology. That Order also requires PGE to "comply with the timelines imposed by the refund mechanism outlined in Order 08-487 as measured from the date of this order." So, under this latest order, customers have until September 19, 2009, to make claims for the refund. After all timely claims are received and verified, refund amounts will be calculated and refunds will then be issued, likely sometime in early October 2009.

DISCUSSION

The actions of URP and the CAPs have delayed the refund ordered in this docket by

about six months. PGE did not cause this delay. Yet, if there is no modification of the interest rate in this docket PGE will incur over \$1.6 million in additional interest, at an annual rate of 9.6% compounded monthly, due to the delay. That interest rate reflects financial conditions in 2000, and is above the cost of capital rate approved by the Commission in PGE's recently concluded rate case (8.334%). It is also well above any interest rates available for savings or borrowing in the market today. Short term interest rates are at historic lows, and the Commission could take official notice of prevailing interest rates. As discussed below, the Commission itself has set a Blended Treasury Rate for deferral amortizations in 2009 of 2.05%, again significantly below 9.6%.

PGE did not appeal the refund order, and accepted the ordered 9.6% interest rate under the terms of the order – which had a timeframe of less than seven months from the order date until refunds were issued. It will now be over twelve months after the refund order until refunds are issued. The Commission itself has recognized that a delay in implementing the refund places an unfair burden on PGE. In its response to URP and CAP's motion to stay at the Court of Appeals, counsel for the Commission stated:

In the alternative, if [the Court of Appeals] were to grant petitioners' motion for a stay, the court's order should clarify that all provisions of the order are stayed, including the provision requiring interest to accrue on the refund amount. Allowing interest to accrue at PGE's authorized rate of return in 2000 (9.6%) on the delayed refund would significantly prejudice PGE. Given that the delay would be attributable to petitioners' request to stay the refund, it would be unfair to burden PGE with the costs of that delay.

Respondent Public Utility Commission's Response to Motion to Stay, Oregon Court of Appeals No. A140317, February 9, 2009, p. 12. While that discussion contemplated a lengthier delay if the motion for stay had been granted, the same considerations apply here.

The interest rate is based on financial conditions in 2000. It is unfair to burden PGE with this additional expense, because the delay is solely attributable to the voluntary, unsuccessful actions of URP and the CAPs. PGE therefore requests that the interest rate be modified, effective with the date refunds were to be made under the original order. The six month claim period in that order ended March 30, 2009. After verification of claims, and calculation of refund amounts, refunds would have been issued in April. To be conservative, a date of May 1 is appropriate for purposes of a date for a change in the interest rate.

At the Court of Appeals PGE and the Commission argued that all interest should be stayed during the delay period. PGE continues to believe that to be appropriate. This delay was caused by the actions of URP and the CAPs, and absent the delay PGE would be issuing refunds to customers in the next few weeks. The delay will, it appears, not be as long as would have been the case if the Court of Appeals had granted the stay, but the harm during the delay places the same significant prejudice on PGE. In dollar terms, it is over \$1.6 million in additional interest. PGE should not be forced to incur this expense it did not cause.

As an alternative, the deferral amortization interest rate could be applied. In UM 1147, the Commission determined that the interest rate during amortization of deferrals should be lower than during the deferral period as a reflection of the financing period and financial risks associated with amortization. Order 08-263, p. 15. That order set a formula for determining the amortization interest rate based on treasury rates. As discussed above, the Blended Treasury Rate for 2009 is 2.05%. The refund order in this docket is similar to an amortization order in its financing period and risks associated with the refund. Adoption of the amortization rate during the delay period beyond May 1, 2009, would alleviate much of


the significant prejudice placed on PGE as a result of the refund delay.

CONCLUSION

The refund ordered in this docket has been delayed through no action or fault of PGE. To avoid significant prejudice to PGE caused by that delay, the interest rate on the refund should be adjusted beginning with a date by which the refund would have been made without the delay. In this case, the interest rate should be changed beginning May 1, 2009, until the refund is made. Absent relief from the high interest rate used in that order, PGE will be significantly prejudiced as a result of the delay.

DATED this 17th day of April, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused **PGE's MOTION FOR MODIFICATION OF INTEREST RATE AFTER ORIGINALLY ORDERED REFUND DATE** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have not waived paper service from OPUC Docket Nos. UE 88/DR 10/UM989.

Dated at Portland, Oregon, this 17th day of April, 2009.



DOUGLAS C. TINGEY

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OPUC DOCKET # UE 88/DR 10/UM 989

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