**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UE 197

| | |
|---|---|
| In the Matter of<br>PORTLAND GENERAL ELECTRIC COMPANY<br>Request for a general rate revision | STAFF'S OPENING BRIEF |

## I. INTRODUCTION

On February 27, 2008, Portland General Electric Company ("PGE") filed for an increase in revenue of $92,900,000. On April 4, 2008, PGE filed an errata filing, which increased its revenue request by $1,340,000, to $94,200,000.

On August 5, 2008, a stipulation was filed regarding revenue requirement issues. On October 9, 2008, a stipulation was filed regarding certain revenue requirement and tariff issues. These two stipulations, taken together, reduce PGE's proposed revenue requirement by $26,741,000, to $67,459,000. The stipulated issues and the associated revenue impact are summarized in the following table:



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**Stipulated Issues:**

| Issue | Description | Amount ($000) |
|---|---|---|
| S-0 | Rate of Return | (12,906) |
| S-1 | Other Electric Revenues | 471 |
| S-2 | Research and Development | (677) |
| S-5 | Cap Ex | (11,100) |
| S-6 | Lease Adjustment | 0 |
| S-7 | Fuel Adjustment | 0 |
| S-8 | Membership Adjustment | 0 |
| S-10 | WECC, RTP & flow mitigation | (156) |
| S-12 | Kelso Beaver Pipeline Transmission | (1,040) |
| S-13 | NERC/WECC, RCM, Misc | (208) |
| S-16 | Revenue Sensitive Costs | (860) |
| S-17 | Schedule 300 | 0 |
| S-18 | Port West/Biglow Canyon True-up | (113) |
| S-19 | Energy Audits | (152) |
| | | |
| | **Total Revenue Requirement Impact** | **(26,741)** |

Staff's remaining adjustments total $33,539,000, which would result in a PGE revenue requirement increase of $33,920,000. In addition, Staff recommended at Staff/800, Owings/34 that the Commission consider CUB's proposed adjustment for cost containment. The following table highlights Staff's remaining adjustments:

**Staff's Remaining Adjustments:**

| Issue | Description | Amount ($000) |
|---|---|---|
| S-3 | Workforce Adjustment | (8,891) |
| S-4 | Corp Incentives | (6,963) |
| S-9 | A&G and O&M | (8,336) |
| S-11 | Fixed Plant Costs | (6,348) |
| S-14 | Property Tax Adjustment | (3,001) |
| | | |
| | **Total Revenue Requirement Impact** | **(33,539)** |

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## I. BURDEN OF PROOF

As the proponent of a rate increase, PGE has the burden to establish that its proposed rates are just and reasonable. ORS 757.210(1); *Pacific Northwest Bell Telephone Co. v. Sabin*, 21 Or App 200, 213 (1975). The burden of producing evidence of a particular fact (*i.e* burden of production) can shift to other parties, but the burden of persuading the Oregon Public Utility Commission that a proposed fact is true remains with PGE throughout this case. *See Marvin Wood Products v. Callow*, 171 Or App 175, 180 (2000).

## II. STAFF ADJUSTMENTS

1. PGE has failed to carry its burden of persuasion to demonstrate that its proposed workforce level is just and reasonable.

Based upon inconsistent information provided by PGE, Staff's adjustment is generous and should be adopted as reasonable. As an example, the following table illustrates the variances in PGE's production responses when asked to provide the actual number of full-time equivalent employees (FTE) for the year 2007:

| **2007** | | | |
|---|---|---|---|
| **Source of Information** | **# of FTE reported by PGE** | **Labeled as:** | **Cite** |
| | | | |
| PGE's response to Staff DR 203-B | 2560 | Actual FTE by Employee Class | ICNU/114 |
| PGE's response to ICNU's DR 272-A | 2597 | Actual Straight-time FTE | ICNU/115 |
| PGE's response to ICNU's DR 272-A | 2713 | Actual FTE | ICNU/115 |
| PGE/800 Workpapers | 2594 | FTE by division by year | Staff/805, Owings/1 |
| Rebuttal Testimony | 2612 | Actual FTE | PGE/1400, Tooman-Tinker/9 |
| PGE's response to ICNU's DR 237-A | 2713 | Actual FTE | ICNU/121 |
| PGE's response to Staff DR 319-A | 2560 | Actual FTE by Employee Class | Staff/804, Owings/2 |



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As Staff's base, it uses 2,560 as the number of 2007 full-time employee equivalents ("FTE"). *See* PGE/1400, Tooman-Tinker/8, line 17 ("The 2,560 figure contains no overtime for exempt employees but the corrected 2612 figure includes these overtime hours."). Staff believes that 2007 should be chosen as the base year because 2007 was the UE 180 test period. In addition, because PGE's application was filed in March of 2008, after the 2007 books had closed, PGE should have the ability to accurately reflect the actual number of employees for 2007. The 2,560 FTE is also consistent with PGE's original response provided in Staff's data request no. 203-B and consistent with data request 319-A (see table, above).

The base FTE number Staff relies upon creates the foundation of 2007 actual FTE, excluding exempt and non-exempt overtime. This is appropriate because PGE separately expenses overtime. *See* Staff/800, Owings/14, lines 9-16; PGE/2304, Tooman-Tinker/1, "over-time FTE"; and Staff/808, Owings/1, line 20. Overtime should not be translated into a number for straight-time FTE's as it over-states the actual number of employees performing the tasks. *See* Staff/800, Owings/17, lines 9-16. Therefore, Staff eliminates "budgeted" overtime that has been translated into an FTE number. *See* Staff/800, Owings/13, lines 17-23.

After establishing the accurate foundation number, Staff's adjustment provides for a growth rate of 1.45 percent for 2008 and 2009, respectively. *See* PGE/1400, Tooman-Tinker/9, Table 3. The result of applying the growth rate of 1.45 percent to the base of 2,560 FTE's is a staff proposed workforce level for the test period of 2,635 straight-time FTE's. This is the figure that should be compared to PGE's proposed test period FTE level that, as shown below, is 2,733; a difference of 98 FTE (2,733 FTE's less 2,635 FTE's).

The results of Staff's analysis results in allowing an additional 75 FTE for the years between 2008 and 2009. As demonstrated at PGE/1400, Tooman-Tinker/9, between the years 2004 and 2005, PGE's actual workforce growth (removing the effects of Trojan) was 0.64 percent; between 2005 and 2006, growth was 1.43 percent; and between 2006 and 2007, it was 2.27 percent. These growth rates equal an overall average growth of 1.45 percent. Staff's



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adjustment allows for the average growth rate of 1.45 percent; resulting in a generous increase of 75 FTE over 2007 actuals.

In spite of its inconsistent provision of documentation, PGE alleges that Staff's analysis contains errors because "[s]taff has misinterpreted the relationship between 2007 actuals with the conversion hours and the 2009 forecast." *See* PGE/2300, Tooman-Tinker/11. However, that statement is incorrect. At PGE/1400, Tooman-Tinker/8, Line 17, PGE states that: "The 2,560 figure contains **no overtime** for exempt employees but the corrected 2,612 figure includes these overtime hours" (emphasis added). The Commission should disregard PGE's reliance upon the 2,612 figure for 2007 FTE because it includes overtime hours for exempt employees.

In the final 2009 test period analysis, PGE asserts that it has made an adjustment to remove 30 FTE. *See* PGE/2303, Tooman-Tinker/1. The Company asserts that this adjustment was made prior to its application, yet the Company submitted a forecast of 2,733 FTE for 2009. *See Id*. Nonetheless, PGE states at PGE/2300, Tooman-Tinker/13, lines 1-8, that it is now requesting only 2,703 FTE due to the $1.9 million adjustment made prior to submitting its original application. *See* PGE/1400, Tooman-Tinker/10, Table 4. Staff reviewed this adjustment and acknowledges an adjustment of approximately $1.9 million. *See* PGE/2303, Tooman-Tinker/1. However, Staff strongly disagrees that PGE's adjustment results in a request of FTE's lower than 2,733. Rather, this adjustment indicates that PGE would have requested a total of 2,7**63** FTE in its original application, rather than 2,733, but for an adjustment to remove 30 FTE. Simply put, PGE's original request of 2,733 FTE, was already adjusted to remove the 30 FTE claimed at PGE/1400, Tooman-Tinker/10, Table 4. Staff's adjustment removing 98 FTE is the measure between 2,733 and the level of FTE derived from the 2007 base year; 2,635. The Commission should ignore PGE's claims that it is now requesting only 2,703 FTE for the 2009 test period.

PGE has utterly failed to demonstrate that an increase of 130 FTE to its workforce – in a time of deteriorating economic circumstances – is warranted. Based upon PGE's 2007 FTE



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numbers and a reasonable allowance for growth, based upon historic averages (removing the effect of Trojan layoffs), an increase of 75 FTE is generous and reasonable.

Staff's next step is to derive a dollar per FTE to estimate an adjustment that represents removing 98 FTE from the test period. Staff derives this amount by taking the total wages and salaries for the 2009 test period of $209,610,000 (Staff/808, Owings/1 Line 21) and adding the amount included in PGE's errata filing of April 3, 2008 (425,000- See Staff/807, Owings/2) totaling $210,459,751, which represents the total amount of wages and salaries expense forecast for the test period. Staff then divides that total amount by the total number of FTE's forecast for the test period (2,733 FTE) resulting in a dollar per FTE of approximately $77,000. When loadings are added at a rate of 48.5 percent (*See* PGE/1400, Tooman-Tinker/16, line 8) the result is $114,355 per FTE. Multiplying the fully-loaded dollar per FTE by the 98 FTE to be removed from the test period results in an adjustment of $11,329,421. This total adjustment is then allocated to both capital and O&M (28.25 percent and 71.75 percent, respectively) results in Staff's proposed reduction to revenue requirement of $8,891,000.

2. Staff's Corporate Incentive adjustment is reasonable and should be adopted.

Staff's adjustment is found at Staff/809, Owings/2. This adjustment was intended to begin with the total amount of incentive compensation for the test period. Staff relied upon PGE/800; Work paper 10 for this amount which showed a total of $13,683,127[1]. From this amount, Staff removes the total amount in the test period of Officer ACI and the Stock incentive plan ($1,738,870 and $2,812,721, respectively – a total of $4,207,787[2]). The result is $9,455,340. From this balance, Staff removes the portion of Corporate Incentives already considered in Staff's workforce adjustment ($255,435; *See* Staff/809, Owings/2) resulting in a

[1] Staff later learned that the total incentive compensation was $14.7 M shown in Staff/808, Owings/1, line 28. Because this was a higher amount and would have resulted in a larger Staff adjustment, Staff did not adjust its Corporation Incentive adjustment to accommodate for the difference between the two figures.

[2] These amounts are reduced by 92.49 percent to represent the difference between the $14.7 M (described above) and the $13.6 M Staff believed was actually in the test period for 2009. This is a conservative approach because it does not remove 100 percent.



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balance of $9,199,905. Staff then removes 50 percent of the remaining incentive compensation that represents PGE's Cash Incentive Programs (ACI and CIP) and Notables - a total of $4,599,962. This culminates in a total adjustment of $8,807,740 which is further allocated 28.25 percent to capital and 71.75 percent to O&M. *See* Id. Staff's recommendation for corporate incentives results in a downward adjustment of $6.9 million to PGE's revenue requirement.

Staff believes it is appropriate to allow 50% of PGE's ACI, CIP and Notables due to the fact that PGE has modified the programs to more closely align the incentive programs with customer benefits (See PGE/1500, Barnett-Bell/9-11), in addition to the benefits typically provided to shareholders. Commission policy would typically recommend a disallowance of 75% of performance-based bonuses because they are generally focused on increased earnings and therefore, bring more benefit to shareholders. (See Order 99-033 at 62, Order 99-697 at 44). Due to the realignment toward customer benefits described at PGE/1500, Barnett-Bell/9-11, Staff recommends the Commission allow 50% of PGE's ACI, CIP and Notables.

PGE's most recent proposal from surrebuttal testimony (*see* PGE/1500, Tooman-Tinker/3) proposes to remove the entire amount for Officer ACI ($1,738,870), but does not remove the entire amount representing the Stock Incentive Plan ($2,812,721). *See* Staff/808, Owings/1; Staff/809, Owings/1*)*. Rather, PGE proposes to remove only $1,679,958 (PGE/1500, Tooman-Tinker/3) of the Stock Incentive Plan, drawing a distinction between the Officer's Stock Incentive Plan and the entire Stock Incentive Plan. Since PGE makes this proposal in its second round of testimony rather than its original application, this adjustment has not been adopted and inadequately represents the amount of Corporate Incentives that should be included in the test period.

PGE asserts that Staff errs when it identifies the full amount of Officer's Stock Incentive Program. *See* PGE/2400, Barnett-Bell/7. In spite of PGE's allegation, Staff's Corporate Incentive calculation is correct because it removes the entire impact of the Stock Incentive plan and not just the *officer's* portion of the Stock incentive plan. *See* Staff/809, Owings/2. The



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"error" in Staff's testimony is simply the reference to "Officers" Stock Incentive program. Staff's removal of costs should have more accurately referred simply to the "Stock Incentive Program."

Additionally, PGE does not propose to remove any amounts associated with the non-officer ACI, CIP, and Notables (Staff proposes to remove 50 percent). *See* PGE/2400, Barnett-Bell/7. Rather, PGE complains that Staff's adjustment is outdated and that these programs benefit both shareholders and ratepayers. *See* PGE/2400, Barnett-Bell/8.

PGE also inappropriately and unlawfully relies on a stipulated result in UE 180. *See* PGE/2400, Barnett-Bell/9, line 17. As the UE 180 stipulation clearly states, it is inappropriate to use the stipulation for the purpose of resolving issues in any other proceedings. *See* PGE/2400, Barnett/Bell/9-10.

PGE also asserts that Corporate Incentives benefit customers. *See* PGE/2400, Barnett-Bell/10. While Staff agrees that there may be some customer benefits, PGE fails to persuade that there are sufficient customer benefits to support customers paying 75 percent of corporate incentives.

3. PGE's SB 408 ratio proposal is inconsistent with the language and intent of SB 408.

The Commission should reject PGE's proposal to insulate its shareholders from sharing the tax benefit of disallowed expenses with ratepayers when truing up the amount of taxes collected to taxes paid in the SB 408 proceeding. *See* PGE/2300, Tooman-Tinker/24; *see also* PGE/1400, Tooman-Tinker/30-31. Stated another way, because ratepayers will not be funding these expenses, PGE believes it should not have to share the tax benefit of paying the expenses.

While the Commission has not directly addressed costs disallowed in a rate case, it has indirectly addressed the issue as to whether or not it could legally insulate shareholders from sharing tax benefits with ratepayers when costs are borne only by shareholders. *See* Order No. 07-421. In AR 499, Order No. 06-400 at 12 and again in Order No. 07-421, at 6, the Commission stated:



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> [A]doption of a deferral mechanism would be in opposition to the intent of the legislature, because it would effectively offset the automatic adjustment clause so that it did not 'adjust' rates, as it was designed to do. * * * [T]his deferral mechanism could net out the automatic adjustment clause. Because this would be contrary to the intent behind SB 408 to adjust rates for the difference between taxes collected and taxes paid, we decline to adopt a deferral mechanism as proposed by PGE.
>
> * * *
>
> We reach the same conclusion here. Our authority to establish rates that include amounts for income tax expense has been specifically constrained by the Legislative Assembly. SB 408 expressly prohibits rates ultimately paid by customers to be based on the estimated taxes of the utility itself, without regard to unregulated activities or the operations of its parents and affiliates. Instead, the law requires that customers receive a share of tax savings realized when taxes are filed on a consolidated basis. Given the nature of the utility business, these tax savings are generally created when unregulated losses offset regulated revenues. While we have adopted rules to ensure that customers receive only the portion of those benefits properly attributed to regulated operations of the utility, SB 408 does not allow us to withhold all such realized benefits from ratepayers.

PGE's proposal is inconsistent with SB 408 and the Commission's previous decisions on this issue and should, therefore, be rejected.

4. Staff's combined adjustment for A&G and O&M adjustments equal $8.3 million. PGE has not supported additional expenses.

**Medical**

Staff has proposed an adjustment to reduce PGE's medical and dental benefits by $532,674. In sursurrebuttal testimony, PGE responded with general disagreement to Staff's adjustment, but failed offer any relevant or new information.

PGE claims that a "problem" with Staff's method is that: "Staff used incorrect dollar amounts for the 2007 baseline for active and non-active union medical and dental benefits." See PGE/2400, Barnett-Bell/12, Lines 6-7. In fact, the "problem" identified by PGE is that Staff's adjustment is $127,911 lower than it would have been if Staff were to use PGE's 2007 baseline amounts. *See* Staff/900, Ball/2, line 13 through Ball/3, line 19; Staff/901, Ball/2. Staff would



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support an adjustment to reduce PGE's medical and dental benefits by $660,585, rather than the originally proposed $532,674, which would resolve this "problem" identified by PGE.

As an escalation factor for union medical and dental benefits, Staff applied the rate of 8.5 percent, which Staff supported and provided documentation for in direct testimony. *See* Staff/300, Ball-Dougherty/3, lines 7-12, including fn 1. While PGE has simply stated that they disagree with this rate, they offer no further explanation or support for their disagreement. Staff's application of an 8.5 percent escalation factor for medical and dental benefits is reasonable and remains unrebutted by PGE.

PGE's current union contract is effective through February 2009. Under this contract, PGE's contributions for union medical and dental benefits are set at a defined level. Staff has proposed to allow increased medical and dental benefits for only 10 months during 2009, which represents the months that the new union contract will be in place. *See* Staff/900, Ball/4, lines 4-7. While PGE indicates that Staff's assertion on only 10 months of increased benefits is incorrect, they offer no support for this statement. Pursuant the union contract, PGE will not incur any increased union medical expenses unless the fund, to which PGE and union employees contribute, has insufficient funds to ensure the viability of benefits. *See* PGE Exhibit 2405. While PGE asserts that Staff's assumption is incorrect, they have offered no support that there is any indication that this fund will be insufficient.

**Miscellaneous Benefits**

For the most part, PGE has been unable to directly identify the source of the various increases it seeks. Staff has attempted to identify the cost drivers of the increased funding PGE is seeking, but PGE has continually shifted its explanation from one cost driver to another. PGE has failed to meet its burden of proof or to rebut Staff's testimony.

**Porcelain Insulator Replacement**

Staff's adjustment sets the non-labor costs for the Porcelain Insulator Replacement project at the 2007 level, adjusted for inflation. *See* Staff/302, Ball-Dougherty/9. According to



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Staff's methodology, during 2007, this program was completed with PGE labor and if PGE chooses to shift the labor component of this project to contract labor for 2009, they should fund such a change with the reduced PGE labor. *See* Staff/900, Ball17, lines 4-7. PGE contends that Staff only looked at Non-Labor Expenses and that PGE actually had Labor and Non-Labor expenses in 2007. *See* PGE/2500, Hawke/2, lines 12-14. This is correct. Staff only adjusted the Non-Labor portion of this expense.

PGE has stated that: "If contract labor is used for this program it does not mean that PGE labor is reduced but that it is being deployed elsewhere in the Distribution area." *See* PGE/2500, Hawke/2, Lines 14-16. While PGE is undoubtedly increasing its overall labor expense in this rate case, we are attempting to set a reasonable expense for this specific project during the 2009 test year. If there are savings from this specific program, those savings need to be a considered in the setting of costs for this specific project.

**Locating Expenses**

The issue at hand is the forecasted increase to contract costs and whether or not PGE will incur increased contract costs of approximately $665,000 (95 percent of $700,000) over the 2007 level, as they have indicated. *See* Staff/902, Ball/19. Rather than addressing this issue, PGE attempts to introduce new cost drivers related to its locating expense, which were not identified in the initial filing, and for which Staff has not performed any analysis.

In its initial filing, PGE requested an increase to locating expense of approximately $700,000, of which 95 percent was identified by PGE as being due to higher contract costs. Staff conducted analysis on this forecasted increase to contract costs and determined that it was overstated by approximately $271,000. *See* Staff/302, Ball-Dougherty/10.

As stated by PGE, "Staff based their analysis on PGE's response to Data Request No. 183, in which Staff specifically asked for non-labor costs only, and as a result, their analysis does not consider total costs for locating." *See* PGE/2500, Hawke/4, Lines 1-3. PGE is correct that Staff adjusted the non-labor cost, and that the adjustment made to reduce contract locating



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expenses down by approximately $271,000. However, to the extent that PGE is implying that Staff should have analyzed additional cost drivers, this is a meritless argument. Of the total 2009 locating expense requested by PGE, Staff's only adjustment was to reduce the forecasted increase to contract locating expenses. In essence, any additional cost increases beyond contracted locating costs in the originally filed case remain unadjusted by Staff.

**Tree Trimming**

PGE is requesting that customers fund an increase to tree trimming expense of approximately 13 percent when the actual cost per line mile is expected to decrease by approximately 17 percent. As stated at Staff/900, Ball/20, Lines 18-19, actual tree trimming costs per line mile have decreased from $2,532 in 2007, to $2,100 in 2009, a reduction of $432 per line mile. As stated at PGE/2500, Hawke/8, line 1, during 2007 PGE spent approximately $10.9 Million for tree trimming. As stated by PGE at PGE/2500, Hawke/7, line 11, the total number of miles trimmed in 2007 was 4,112.

With this information, we can put PGE's requested level of tree trimming expense for 2009 into perspective. During 2007, PGE spent approximately $10.9 Million for tree trimming, of which $10.4 Million (95 percent of total costs) was attributable to trimming 4,112 miles at a cost of $2,532 per mile. In 2009, when the tree trimming cost per line mile is expected to decreased by $432 per line mile, which would represent a decrease of over $1.7 Million (4,100 miles X $432 per mile), PGE is requesting that customers actually fund an increase to tree trimming expense of approximately $1.4 Million. PGE is ignoring the fact that the tree trimming cost per line mile (the cost driver of 95% of all tree trimming expenses in 2007) has actually decreased substantially.

Additionally, while PGE claims that it is not significantly increasing its number of tree trimming miles, PGE/1600, Hawke/7 states: "The full $12.3 Million is required to fund the current Vegetation Management Program through 2009. This provides 38 two-person bucket crews, 3 three-person climbing crews, and 12 full-time flagging crews to complete scheduled



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trimming along approximately 4,500 distribution line miles at a cost of $2,100 per mile." This clearly states that the requested $12.3 Million includes trimming 4,500 miles at a cost of $2,100 per mile. However, through sursurrebuttal testimony, PGE explained that the 4,500 mile number was overstated and double-counted "carryover miles". According to PGE Exhibit 2501, the 2009 number of trimmed miles should be only 4,100. It would seem reasonable that PGE would then propose, at a minimum, to remove the cost of trimming the double-counted miles. This is not the case and PGE continues to seek funding of $12.3 Million which includes trimming 400 miles that will not be completed during 2009. Again, PGE continues to request an increase to tree trimming expenses which clearly lacks justification.[3]

**Underground FITNES**

Although moving the FITNES program from a 4-Year cycle to a 10-Year cycle would result in a lower cost per year, Staff does not support this proposal as part of UE 197. The FITNES program is a Service Qualify Measure (SQM). Any changes to the frequency of this program would require changing the SQM and would be more appropriately handled outside of UE 197, through discussions with interested parties and OPUC Safety Staff. Additionally, Staff does not agree with the reduction amount of $900,000, if this program were to be moved to a 10 year cycle. *See* PGE/2500, Hawke/9, lines 2-3. While PGE has requested funding for this program during 2009, of $1,428,803, the total cost for the last cycle was $3,988,412, as stated in Staff/900, Ball/22, lines 2-4. If this were to be spread over 10-years, the average per year would be approximately $398,841, resulting in an adjustment in the amount of approximately $1,029,918, rather than $900,000 as proposed by PGE.

Staff has proposed to set the 2009 funding of this project at the average cost per year of the last 4-Year cycle, adjusted for inflation. This method for calculating Underground FITNES

[3] In fact, this demonstrates that Staff's first method shown in Staff/301, Ball-Dougherty/11 is more accurate. If Staff's first method was adopted, it would result in a larger adjustment of $2.5 million rather than the $1.3 million adjustment proposed under the second method.



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program costs provides an accurate representation of costs on an ongoing basis. Staff's proposed adjustment of $311,855 is reasonable and should be adopted by the Commission.

**Insurance**

Staff is proposing several adjustments to PGE's forecasted insurance expense for the 2009 test year. First is an adjustment to remove 50 percent of the excess D&O insurance as a shareholder cost. Staff has demonstrated that these policies benefit shareholders as much if not more than they benefit customers. *See* Staff/300, Ball-Dougherty/10-11, including fn 7-9. However, through sursurrebuttal testimony, PGE refuses to address the relationship between D&O Insurance and shareholders.

PGE's sursurrebittal testimony, at PGE/2700, Piro – Tooman/4, lines 6-13, quotes Staff out of context and inaccurately portrays Staff's "main argument" regarding the disallowance of 50 percent D&O Insurance costs. Staff's "main argument" regarding the disallowance of 50 percent excess D&O Insurance is stated in Staff/900, Ball/11, lines 5-10: "Customers, who have no say in electing or appointing PGE's Directors of Officers, should not be held financial responsible in providing 100 percent of insurance coverage against business decisions or improprieties by management which results in lawsuits. This is especially true given the fact that roughly half of all such lawsuits are brought by the very shareholders who elected the Board of Directors."

Instead of addressing the relationship between D&O Insurance and Shareholders, PGE attempts to inappropriately bring in new insurance policies. *See* PGE/2700, Piro-Tooman/4, line 14 through Piro-Tooman/7, line 19. With the exception of the Biglow 1 policy, which PGE attempted to raise in its rebuttal testimony (and responded to by Staff/900, Ball/11) and the small policy discussed in Piro-Tooman/5, lines 1-5, PGE inappropriately raises new information that Staff has not had the opportunity to sufficiently review.

Not only is it inappropriate for PGE to bring this new information into the case at this late junction, PGE has failed to demonstrate that Staff disallowed these insurance policies. Without



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explicitly showing that these policies were included in the base amounts, from which Staff made its adjustment, PGE cannot effectively make the argument that Staff disallowed such policies. In order to show that the policies were disallowed, PGE would first need to distinctly show that Staff included these policies in the base amount, and not in the allowed amount. PGE has made no such demonstration.

PGE is again attempting to take a new position which is inconsistent with its rebuttal testimony regarding applying an inflation rate to property insurance premiums. Through sursurrebuttal testimony, PGE asserts that it is does not know why Staff did not escalate the property insurance premiums. However, Staff/300, Ball-Dougherty/9, lines 17 -19, demonstrates that there was no escalation for any of the current policies due to the current soft market for insurance. Again, MarketScout reports that, as of May 2008, overall insurance policy premiums were down 11 percent. *See* Staff /304, Ball-Dougherty/18 through Ball-Dougherty/20.

Staff also proposes to apply a utility allocation percentage to the overall insurance premiums to allocate the cost between utility and non-utility aspects of PGE operations. *See* Staff/900, Ball/13, lines 11-23. While PGE initially stated that such an allocation was already performed, they have since changed their position and acknowledged that some adjustment is necessary. *See* PGE/2700, Piro – Tooman/9, Lines 9-16. PGE is now proposing to apply individual allocations factors to individual insurance policies. This new PGE proposal does not allow Staff time to review or conduct discovery on the allocations proposed by PGE, or to review any non-utility use of additional policies. As an example, while PGE indicates auto policies should be applied solely to utility, Staff suspects that there may be non-utility use of PGE automobiles. Additionally, PGE has stated that it has already applied a sharing to its property insurance policy; however, Staff is unaware of the application of any allocation of this expense to non-utility.

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**Miscellaneous Adjustments**

In its review of various expenses, Staff identified expenses that were incurred in 2007, that will not be incurred at the same level in 2009. Two specific items are legal expenses related to the California refund for energy contracts and the inclusion of two years' rent expense, See PGE/2700, Piro – Tooman/13 – Piro – Tooman/14. Staff identified these cost decreases and removed the expense from the 2009 budget as they are not ongoing annual expenses.

Staff also correctly adjusted certain discretionary expenses that are not directly related to the generation, transmission, and distribution of electricity. These adjustments included the following: 1) 50 percent of certain meal and entertainment expenses; 2) 50 percent of office refreshments and catering; 3) 50 percent of gifts such as flowers and awards. Because these expenses are discretionary and not required to provide safe and adequate service to customers, a 50 percent sharing between customers and shareholders was recommended. This is a fair approach that somewhat mirrors the policy associated with bonuses (50 percent sharing between customers and shareholders) and the handling of meal and entertainment expenses for income tax purposes. As such, customers should not have to assume the full burden of these costs and a 50 percent sharing with shareholders should be accepted by the Commission. See Staff /300, Ball-Dougherty/13 through Ball-Dougherty/15

Staff also correctly removed 100 percent of civic activities recorded in A& G accounts. The Commission has not previously allowed regulated utilities to recover contributions to charities, community affairs, and economic development organizations through rates charged for regulated services. These expenses are discretionary and are not required to provide safe and adequate service to customers. In addition, Commission policy does not require customers to support causes in which they do not believe. Staff /300, Ball-Dougherty/15.

A common theme of PGE's initial filing was to identify cost increases over the 2007 expense level. Two of many such examples are PGE/500, Piro-Tooman/6, lines 3 – 5 and PGE/600, Hawke/12, Lines 18-20. However when Staff identified and adjusted for cost



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decreases from the 2007 expense level, PGE objected with the statement that that these items were not in the budget for 2009. It is not reasonable for PGE to use the 2007 level of expense to justify cost increases with one hand and to then claim it is unreasonable to make such a comparison for cost decreases on the other.

5. Staff's treatment of Fixed Plant Costs is reasonable should be adopted.

PGE requested a $6.8 million increase to O&M based upon a one-time fixed plant for maintenance on three of its generation plants. *See* PGE/400, Quennoz-Lobdell/9-11. Staff disagreed with this addition to rates because it was a discrete, non-recurring event and unrepresentative of normal O&M expenses. However, Staff proposed an adjustment to fixed plant O&M to allow one-tenth of the projected excess maintenance costs. *See* Staff/1000, Durrenberger/6. The result is a reduction in revenue requirement of approximately $6.3 million.

In its final round of testimony, PGE offers to remove the $6.8 million expense and, instead, create a regulatory asset account and increase O&M expenses in the test year to reflect 20 percent of the $6.8 million amount so it would recover the entire amount within five years. In addition, PGE would add $6.2 million to rate base for which a return would be earned upon. *See Id.*

In revenue requirement terms, the difference between Staff's and PGE's proposals is approximately $0.6 million. Staff's adjustment remains appropriate because the excess costs are not known and measurable but estimates, PGE would have more incentive to keep costs down, and it presents none of the administrative issues included in PGE's proposal.

6. Staff's Property Tax adjustment is based upon PGE's own methodology versus PGE's opportunistic bottom-line results oriented approach.

Staff proposes to reduce the level of property tax expense that PGE requested in this rate proceeding. PGE is attempting, at the last minute, to create red herrings that distract from the relevant issue.



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Quite simply, Staff's proposal is based on a methodology presented by PGE. In its initial presentation of this methodology, PGE stated that [this method]: "provides the derivation of a reasonable level of 2009 property tax expense that is aligned with 2007 actuals…" *See* PGE/1400, Tooman – Tinker/24, Lines 1-5. However, when Staff identified and corrected a mismatch in the method (related to Port Westward rate base), (*See* Staff/900. Ball/26, lines 13-21) PGE objected to setting property tax expense based on this methodology. PGE's objection is not with the corrections made by Staff, as they state that "Staff's proposed adjustments to PGE's method seem reasonable." *See* PGE/2300, Tooman – Tinker/21, line 13, but rather with the resulting property tax amount.

PGE states that Staff's proposed adjustment would result in a property tax expense which is too low. However, the only support PGE provides is a high level calculation, for which they do not provide adequate supporting information for parties to analyze. *See* PGE Exhibit 2310. This PGE calculation is not an actual representation of what the forecasted property tax expense for 2008 or 2009 is expected to be, but rather an arbitrary calculation that lacks support.

Staff's method demonstrates its application, while illustrating the fact that applying the same method to 2007 would result in a level of property tax expense that represents the actual expense. PGE's allegations are oversimplified and offer no support for their application in real world examples.

7. Staff's Rate Design proposal is necessary to move PGE's seasonal rates in the right direction and the Commission should reject PGE's efforts to deal with the merits of the issue by stalling its consideration.

Oregon has a long-standing commitment to cost-based rates. Staff's rate design proposal would bring that commitment to greater fruition.

In order to understand Staff's rate design proposal, some basic facts and projections should be reviewed. First, on average the highest monthly average marginal costs expected to be experienced by PGE over the course of the year are during the summer "peak" period (i.e., 6 am to 10 pm, July through September**).** *See* attached Exhibit Staff/502 Updated; Attachment 452-B-



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2 and Confidential Attachment 452-A to PGE Response to OPUC Data Request No. 452 (Staff Cross Exhibit 4); and PGE Exhibit/2801. Note: The monthly on-peak and off-peak data contained in the Updated Staff/502 came directly from PGE's response to Staff Data Request DR 450 (Staff Cross Exhibit 2). The quarterly values in Updated Staff/502 are calculated based on those monthly figures provided by PGE. The intent was to incorporate into Staff/502 the new material behind PGE's Sursurrebuttal Exhibit/2801. Second, more rapid summer period growth is projected to make PGE first a dual-peaking utility and then a summer-peaking utility**.** *See* pages 215 -216 of PGE's 2007 IRP (Docket LC 43). Third, PGE has already experienced a year, 2006, when the summer contained the highest hourly peak demand *and* the highest monthly energy sales. *See* page 216 of PGE's 2007 IRP and pages 400 and 401b of 2006/Q4 of FERC Form No. 1 (Staff Cross Exhibit 5). With air conditioning being the primary seasonal peak load driver for the western region of the United States, it also is no wonder that the highest market prices for energy during the summer occur during the hours of noon to 8 pm. *See* Confidential Attachment to PGE's Response to OPUC Data Request No. 364 (Staff Cross Exhibit 1) and lines 13-18 on page 9 of Exhibit Staff/500. During summer periods of high regional energy use due to air conditioning, peak power may come at a very high price, when available at all. *See* page 216 of PGE's 2007 IRP (Docket LC 43).

In developing Staff's rate design proposal, Staff had two objectives in mind. First, Staff is proposing rate design reforms that would inform customers that summer afternoon and early evening costs are expected to be among the highest, if not the very highest, costs experienced by PGE annually. Second, it is important that rate design begins to reflect the seasonal and diurnal marginal energy cost information that PGE has now proposed as the basis for inter-schedule production cost allocations. In the current case, PGE allocates energy/production costs to the schedules on the basis of monthly peak- and off-peak loads and the accompanying monthly peak- and off-peak mid-C-market-based prices, thereby making a major move towards marginal-cost-based inter-customer-class rate spreads. *See* PGE/1200, Kuns-Cody/20, lines 5-10; PGE/1204;



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PGE/1200, Workpapers/45-50. Staff has endorsed that allocation approach and the other parties have now stipulated to it. It would be unfortunate if Mid C market prices that are used for purposes of rate spread, are ignored by not reflecting them in seasonal and time-of-day rates. Staff's proposals would remedy that omission.

With these facts and objectives in mind, Staff proposes changes to PGE's rate design. For Residential Customers (i.e., Schedule 7): For the summer only, add a third, inverted block rate, set at 1000 kWh's so as to target air conditioning loads. *See* Staff's proposal (which assumes the originally requested PGE revenue requirement) displayed at Staff Exhibit/500, Compton/18. Because the average residential summer season monthly consumption level is only 773 kWh's (*see* Staff Exhibit 507/2), it is clear that low- or average-use customers would be spared the burden of the higher, third-block rate.

For Large Industrial Customers (i.e., Schedule 89): During the summer only, designate an eight-hour super-peak period within the existing sixteen-hour-peak period. *See* Staff Exhibit 504, which is a general depiction of the proposal, with the caveats stated in the bottom-note. In regards to other industrial and commercial schedules: Introduce a modest (i.e., less than 1 cent/kWh) summer-seasonal energy rate differential. The specific amount of the differential is the summer versus rest-of-the-year overall average cost differential shown in Staff Exhibit 502 Updated.

Notwithstanding the reasonableness of Staff's rate design proposal, PGE states several objections, the first of which involves the empirical foundation of Staff's summer peak-oriented proposals. PGE states, "We conclude that a more extensive analysis of wholesale market price data does not support Staff's assertion that the highest prices occur in the summer months," PGE presumes that the empirical foundation of the Staff's summer-peak-oriented proposals has been severely undermined. *See* PGE/2800, Kuns-Cody-Lynn/3-4. Staff disagrees for the following reasons: a) What is germane are market price projections for the future, not records of past experiences. Accordingly, the Jan-03 through Dec-07 Index figures shown in PGE/2801 are



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irrelevant. What is relevant in that exhibit are the 2009 projections; b) Since the Staff's primary reform initiatives (i.e., the Schedule 89 super-peak rates and the AC-targeted residential inverted rate) focus **on-peak** price projections, the off-peak price projections shown for 2009 are also irrelevant; c) Seasonal prices are appropriately based upon season averages. As shown, the quarterly *on-peak seasonal* averages projected for Jul-Sep of 2009 are greater than all of the other quarters' projections; d) The quarterly on-peak price projections for 2010 also reveal the Q3 figure to be higher than those of the other quarters. *See* Confidential Attachment 452-A of PGE Response to OPUC Data Request No. 452 (Staff Cross Exhibit 4). The 2007 projections for 2009 that were the basis of Staff/502 showed the same general pattern. (The main reason that the Staff/502 figures are higher than those of PGE/2801 is that the former incorporate line losses and other transmission costs.); and, finally, e) In light of the above, and reviewing the "Average Quarterly Prices 2009" block in PGE/2801, one must conclude that, indeed, "the highest *relevant (i.e., on-peak)* prices are *projected* to occur in the summer months."

In PGE's second objection, it asks, after observing three or four distinct seasons with regard to cost, "Why single out the summer season for special rates treatment?" *See* PGE/2000, Kuns-Cody/3. From Staff's viewpoint, the existence of three or four discrete seasons rather than two (as proposed by Staff) should not force rates to be designed as if there were only one season. *See* Staff/1200, Compton/4-5. If Commission prefers three (or even four) distinct rates periods, Staff is more than happy to work with the utility to design appropriate rates.

Finally, as a third objection, PGE claim's that there will be high administrative costs and challenges to developing more sophisticated tariffs, including effects on the Schedule 128 Short-Term Transition Adjustment. *See* Kuns-Cody/3-6 of PGE/2000. In response to PGE's concerns, it should be noted that seasonal rates in general and super-peak industrial rates in particular are common in our region (i.e., outside of Washington and Oregon) and in the rest of the country. *See* Staff Cross Exhibit 3. PGE should be able to do what other utilities have long been able to do without undue cost or developmental challenges.



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In addition to PGE's objections, other parties have objections to Staff's proposal and have entered into a stipulation with PGE to generally preserve the status quo with respect to rate design. *See* TERM #2 of the October 8th "STIPULATION REGARDING RATE SPREAD AND RATE DESIGN." There the stipulating parties assert that the issues have been inadequately vetted. As a result, they contend the Commission needs to open a formal docket to further explore rate spread and rate design matters while doing nothing at this time in this proceeding. Staff sees little or no merit in delaying its suggested rate design reforms. We currently have sufficient knowledge of a *significant* emerging problem and *decent* solutions are available to act at this time. The parties ask for only a study – thereby preserving the price status quo for two or more years. Based upon current knowledge and available solutions, there is no reason to continue to set rates with only minimal deference to reality.

To further illustrate the value of adopting Staff's rate design proposal at this time, consider that the summertime introduction of a super-peak price period can foster advantageous load shifting by large industrial customers. The smaller and more concentrated the highest-priced period (i.e., by adopting a super-peak period within the on-peak period), and the greater the price differential, the greater the likelihood of load shifting. *See* Staff/500, Compton/11, lines 1-4. In addition, an upper-level inverted residential rate during the summer will target peak-period, air-conditioning loads and an important price signal will be provided to customers contemplating adding AC. *See* pages 215 and 47 of 2007 PGE IRP (LC-43) for statement that many customers still do not have AC, but the penetration level continues to increase. Even if customers do not respond to the price signal, requiring the AC users to pay their full cost will avoid cross-subsidization by non-AC customers. *See* Staff/500, Compton/14, line 20 through Compton/15, line 7. Absent that cross-subsidization, i.e., by introducing the higher, above-1000 kWh summer price, *all other* prices – both in summer and in winter -- can be lower. *See* again Staff's residential proposal displayed at Exhibit/500, Compton/18.



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Recognizing the fact that the high summer third-block rate targets AC use and enables all other rates to be lower than otherwise should nullify CAPO/OECA's major objection to seasonal rates. It was that "low-income customers do not contribute to the seasonal differences in residential electricity usage….To the extent that PGE's peak residential demand is associated with higher costs, those customers, and that consumption, that do not contribute to that peak demand should not be called upon to pay those higher seasonal rates." *See* CAPO-OECA/301, Colton/21, lines 5-12. Having argued that "low-income customers consistently use less electricity than the average customers" (*see*, for example, CAPO-OECA/301, Colton/16, lines 1-2), CAPO/OECA should be confident that relatively few low-income consumers would be harmed by the Staff's proposed summer-only seasonal rate, and, conversely, the large majority of those consumers would benefit.

In making its rate design proposal, Staff recognizes that high costs are not limited to the summer. *See* Staff/1200, Compton/3, lines 10-12. But difficulties in dealing with challenges of, for example, the winter season should not interfere with adopting solutions applicable to the summer season. An important advantage of addressing the summer load and price concerns without necessarily attacking the winter concerns is that it is more problematic to deal with the dual-peak (i.e., early morning and late afternoon/early evening) that characterizes the winter load. Even two separate super-peak price periods were adopted; industrials would appear to be less capable of shifting load away from two periods rather than from one. *See* Staff/500, Compton/11, lines 7-15. As a consequence, dual super-peaks pricing for the winter would be much less likely to be effective in reducing utility costs than the proposed summertime single super-peak.

CUB's opposition to the Staff residential reform proposal focused upon customer resistance to anything but "constant" rates. As a compromise, Mr. Jenks stated that "If the Commission is inclined to add a third pricing block, we would recommend that such a block be done on an annual basis. *See* CUB/100, Jenks/35 (particularly lines 13-14). Staff replies that



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winter inverted residential rates are problematic for two reasons: First, there are equity concerns regarding harm to "legacy" residential heating customers. Heating is clearly less of a luxury than is AC; and all-electric heating is more likely concentrated with low-income consumers. *See* Exhibit Staff/1200, Compton/9, lines 10-12; *see also* page 46 of 2007 PGE IRP (Docket LC 43) for space heat saturation levels. Second, extending the period of applicability of the third-level rates inversion would, algebraically, reduce its margin above the lower rate(s), thereby diluting the tail-block rate's efficacy as a price signal.

Addressing the possible concern that not all heavy-use residential customers were necessarily heavy AC users, Staff pointed to PGE's existing optional time-of-day (TOD) rates as a safety net for summer high-use customers whose loads are not during the super-peak period. *See* Staff/500, Compton/18. The disparity between Staff's proposed definition of "summer" and PGE's existing TOD definition can be easily remedied, most likely by adopting the Staff proposal and making whatever price adjustments are necessary. *See* Staff/1200, Compton/5.

Before addressing ICNU's objections to Staff's proposal regarding Schedule 89, it would be helpful to review some key elements and caveats that pertain to it. *See* Staff/504; Staff/500, Compton/10-13. First, the objective is to capture the higher super-peak-period costs that appear during the summer's (Q3) high on-peak cost period and to foster load shifting from super-peak to shoulder- or off-peak periods. Second, "the numerical figures [shown in Staff/504] are estimates and approximations." *See* Staff/500, Compton/13, lines 15-16. As stated in the note at the bottom of Staff/504, the "prices are subject to true-up based upon refinements in billing determinant estimates and revenue requirement adjustments." Third, as refined, this proposal would naturally be revenue neutral vis-a-vis PGE's alternative in the context of whatever revenue requirement is established by this Commission. Fourth, most of PGE's rate design proposals (i.e., basic and distribution charges) are accepted in Staff's proposed Schedule 89. What is at issue, then, are the seasonal and time-of-day energy charges. PGE has proposed an on-peak versus an off-peak differential in the neighborhood of 16 mils, with no seasonality.



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Staff is proposing a super-peak/off-peak differential in the neighborhood of 20 mils for the summer, with a shoulder-peak/off-peak differential at a lower, intermediate level. Consistent with the Staff proposal would be a peak/off-peak differential for the rest of the year that would be comparable to what PGE advocates. *See* Staff/500, Compton/13, lines 11-12; Staff Exhibit 504. Fifth, the proposed energy rates are still below marginal costs except for in the spring, which would also be the case with PGE's proposal. *See* lines 12-15 of page 13 of Staff/500, Compton/13, lines 12-15; Staff Exhibit 504.

In the following discussion, Staff addresses four ICNU objections to Staff's pricing proposals.

"First, Dr. Compton's proposals are incomplete [insofar as they don't capture all of the price differentials among the seasons]." *See* ICNU/205, Rosenberg/2, beginning on line 22. Staff views that dealing with *one* significant and tractable problem (i.e., high summer peak period prices) should not await solutions to *all* related problems.

"Second, as even Dr. Compton acknowledges, his proposed rate design may encourage load shifting from summer months to the winter months….[some of which] are unquestionably peak *load* [emphasis added] months as well. Thus, Dr. Compton's proposal is sub-optimal if the goal is to dampen the need for capacity additions on PGE's system and to reduce the system's total energy costs. Moreover, September, which Dr. Compton classifies as a 'peak' month, has a lower system peak demand than any other month except May." *See* ICNU/205, Rosenberg/3, lines 4-10.

Staff notes that throughout Staff's testimony the focus has been on avoiding high marginal energy costs, which do not necessarily correlate fully with PGE's own loads. For example: while September may have relatively low loads, the average on-peak market *price* projected for that month for 2009 is higher than for all but two of the non-third-quarter months. *See* Exhibit PGE/2801. b) The "need to dampen capacity additions" is a function of the need to avoid high market purchase prices – hence PGE's use of average monthly market prices in the



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allocation of *all* its production costs (i.e., both energy and its own fixed generation costs) among the rate schedules. That again justifies the Staff's focus on prices, not loads. c) As regards "encourage[ing] load shifting," the following is a slightly augmented version (i.e., within brackets] of Dr. Compton's entire ICNU data response answer that underlay his "acknowledgement": "There could be a limited [emphasis in the original] amount of seasonal load shifting on the part of industrial customers who possessed the desire and ability to build up some additional production stockpile prior to the commencement of the summer peak season [i.e., during, most likely, the lowest-cost spring season]. Summer-period-pricing-induced conservation practices by residential and commercial customers (e.g., to increase their insulation in order to reduce their air-conditioning costs) will have the effect of reducing [emphasis added] non-summer loads as well as the summer loads." *See* Request 1.7, starting on page 2 of ICNU/209, Rosenberg/2, Request 1.7.

"Third, lacking data regarding the distribution of loads between the super-peak and shoulder periods in the summer, Dr. Compton was forced to make certain assumptions to assign loads to these respective time periods. Consequently, there is a question as to whether his proposed rates would collect the appropriate amount of revenue." *See* ICNU/205, Rosenberg/3, lines 11-14. Staff views that:: a) PGE already divides every schedule's 2009-projected monthly energy consumption into its on-peak and off-peak segments. Should the Commission decide in favor of a super-peak rate for Schedule 89, PGE will be able to further divide that schedule's on-peak energy consumption for the summer into its super-peak and shoulder-peak portions. b) As explained above, once the Commission establishes the revenue requirement for Schedule 89, rates will be constructed – regardless of whose approach is employed – so as to precisely yield that amount of revenue (given, that is, the accuracy of the load projections).

Fourth: "Furthermore, the policy objectives that he is trying to achieve may not be possible for industrial customers. The result may be to simply penalize the customers who are the least costly to serve." *See* ICNU/205, Rosenberg/3, lines 16-18. Staff views that Dr.



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Rosenberg is no doubt referring to extremely high-load-factor customers as those "penalized." Taking an extreme case, by definition a 100% load factor customer cannot shift load and still preserve its 100% load factor status. But consider that the Schedule 89 is constructed on the basis of *average* load distributions, which currently don't distinguish between the super- and the shoulder-peak in terms of the energy prices. Accordingly, and given the timing of the proposed summertime super-peak (i.e., from noon to 8 p.m.), the overwhelming expectation is that the average customer will use more energy during the eight-hour super-peak than during the other eight hours of the current on-peak period. *See* Staff/504, which generally shows higher loads during the summer super-peak than during the shoulder-peak of equal duration. That tendency to use more energy during the super-peak period than during the shoulder-peak is no doubt diminished insofar as a customer has an extremely high load factor (i.e., since the loads are more likely to already be close to equal between the two periods). But, by already having equivalently shifted his load from the super-peak to the shoulder-peak – thereby avoiding some of the load/price burden borne by the average customer in the schedule -- the extremely high load factor customer will automatically *benefit* from, and *not* be penalized by, the Staff proposal. An inability for those extremely high load factor customers to benefit *further* by shifting more of their load to the shoulder- or off-peak periods should not altogether preclude the enjoyment of benefits by lower-load-factor customers who are able to shift their loads away from the super-peak period. Staff's super-peak proposal would allow for those benefits.

8. PGE's proposed decoupling and revenue recovery mechanisms fail to offer demand system management customer benefits and, instead, offers PGE additional shareholder protections at the risk of customers.

PGE proposed three decoupling and revenue recovery mechanisms. First, PGE proposes a Sales Normalization Adjustment (SNA) decoupling mechanism, which is to be applicable to rate schedules 7 and 32. *See* PGE/100, Piro/17-24; PGE/1200, Kuns-Cody/28-29.

Second, PGE proposes a Lost Revenue Recovery (LRR) mechanism, which is to be applicable to "large nonresidential" customers having usage less than 1 average megawatt



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(MWa) in the previous calendar year. *See* PGE/100, Piro/ 21, line 11 and PGE/1200, Kuns-Cody/29 beginning at line 14. Third, PGE proposes a "load-based" decoupling mechanism as an alternative to their proposed LLR mechanism, with the former applicable to the same customers as the latter. *See* PGE/100, Piro/22, line 1; PGE/1200, Kuns-Cody/30 line19.

PGE's stated objectives for requesting a decoupling mechanism (i.e., the SNA) include: diminishing "the disincentives we confront when seeking to support and encourage innovative and effective programs to improve customer energy efficiency." (*see* PGE/100, Piro/17, line 19); reducing the inequity resulting from the existing regulatory structures which "leave utility shareholders absorbing costs while society and customers gain the long-term benefits of expanding energy efficiency efforts" (*see* PGE/100, Piro/18, line 21); and to "maintain existing price structures for customers, which give price signals that support energy efficiency efforts." *See* PGE/100, Piro/17, line 22.

Staff has five concerns regarding PGE's proposed SNA mechanism. First, PGE is likely to over-collect. *See* Staff/600, Storm/17, line 12 through Storm/21 and Staff/1300, Storm/11 line 9 through Storm/16 line 13. Second, the SNA mechanism shifts the burden of regulatory lag from shareholders to ratepayers. *See* Staff/600, Storm/22 through Storm/23, line 14. PGE's objective of reducing the inequity to shareholders due to energy efficiency efforts (see PGE/100, Piro/18 line 20 through Piro/19 line 6) is only an issue of equity (inequity) "for those years between new effective rates resulting from general rate cases." *See* Staff/600, Storm/22, line 5 through line 17 and Staff/1300, Storm/20. PGE testimony states the company anticipates "frequent rate filings." *See* PGE/2000 Kuns—Cody—Lynn/19 line 1. "Frequent rate filings" mitigate any potential inequity to PGE shareholders. Third, removal of PGE's "disincentive" likely results in limited changes in PGE actions. *See* Staff/600, Storm/23 line15 through Storm/24, line 14. Oregon has already achieved "structural separation" of energy efficiency/conservation from utilities by establishing the Energy Trust of Oregon. Fourth, Staff questions the efficacy of PGE's objective to "maintain existing pricing structures for customers,



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which give price signals that support energy efficiency efforts." *See* PGE/100 Piro/17 line 21; Staff/600, Storm/24, line 15 through Storm/25, line 10. Fifth, the SNA mechanism shifts risk historically borne by shareholders, with recourse in the form of a general rate case, to ratepayers. *See* Staff/600, Storm/27 line10 through line 18.

In rebuttal, PGE argues that Staff's example of potential "over-collection," where usage per residential customer declines while the number of residential customers simultaneously increases, "seems *implausible in the extreme.*" *See* PGE/2100, Cavanagh/16 lines 3 through 4. This is an odd argument for PGE to assert considering that "implausible in the extreme" seems more like the norm, having occurred in 15 of the last 22 years. *See* Staff/1300, Storm/13, lines 3 through 12 and Staff/1301 Storm/1 through Storm/4.

PGE also attempts to rebut Staff's concern regarding the "shift in the burden of regulatory lag" by concurring with Staff's recommendation that an order adopting a decoupling mechanism "be accompanied by a requirement that general rate cases will be filed on a basis that is no less frequent than every five years." *See* PGE/2100, Cavanagh/13 line 6 and PGE/2100 Cavanagh/16, line 20 *quoting* Staff/600, Storm/23 line 10. PGE, however, does not explain how Mr. Cavanagh's claim that "decoupling adjustments go both ways," (see PGE/2100 Cavanagh/6 line 22 and PGE/2100 Cavanagh/16 line 14) meshes with the fact that, based on PGE-provided data documenting PGE's experience in the 1986 through 2007 timeframe, adjustments under PGE's proposed SNA mechanism go mostly against ratepayers (in 15 of the 22 years of provided data, including a period of nine consecutive years from 1994 through 2002 inclusive). *See* Staff/1300 Storm/13 line 3 through Storm/15 line 5.

Additionally, PGE's "reasonably aggressive five-year energy efficiency investment programs" inflicting "some $60 million in cumulative losses on PGE's shareholders" (*see* PGE/2100 Cavanagh/3 lines 16 through 19 and PGE/2100 Cavanagh/7 line 18) seems an unlikely outcome, given PGE's anticipation of "frequent rate filings." *See* PGE/2000 Kuns-Cody-Lynn/19 line 1.



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Staff concurs with PGE's belief that the company's "rate structures should not change in ways that reduce customers' reward for reducing consumption." *See* PGE/2100, Cavanagh/18 line 9. Staff also potentially agrees that "(w)e would make a bad situation worse by reducing customers' rewards for conserving electricity…" *See* PGE/2100, Cavanagh/6, line 11. For an illustration of precisely how this change occurs: where PGE's rate structure is changed — the SNA mechanism is implemented, customers conserve electricity, which leads to a positive SNA balance and an SNA charge to customers, thereby modifying PGE's effective rate structure (with a now higher volumetric rate) — and customers' reward for conserving electricity *is reduced*, *see* Staff/1300, Storm/21 through Storm/23 line 7. If PGE is authorized to implement the SNA, the result in the illustration cited immediately above is the expected outcome, where customers' rewards for conserving electricity are cut in half; an outcome that Staff concurs is likely "a bad situation made worse."

PGE asserts that "Staff accords no weight whatever to incremental electricity savings *resulting from PGE's efforts*…" *See* PGE/2900, Cavanagh/5, line 17 (emphasis added). However, PGE has provided essentially no evidence of incremental electricity savings resulting from PGE's efforts as a result of implementation of the proposed SNA mechanism. *See* Staff/600, Storm/24, line 9 through line 14. In the absence of any material level of incremental electricity savings identified by PGE, Staff could not quantify any value associated with PGE's efforts.

While PGE argues "…savings show up in Staff's analysis solely as a potential source of decoupling adjustments to restore lost fixed cost recovery" (*see* PGE/2900 Cavanagh/5 line 19), Staff's analysis demonstrates that customers retain "approximately one-half of every dollar of savings…." *See* Staff/1300, Storm/22 line 12. The other one-half is returned to PGE through the workings of the SNA mechanism. In other words, savings go roughly one-half to customers and roughly one-half to PGE as "decoupling adjustments to restore lost fixed cost recovery." This



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certainly seems to reduce customers' rewards for conserving electricity in that customers' rewards are reduced by roughly one-half.

PGE responds to Staff's analysis by stating "this of course wholly overlooks fuel and capital costs avoided by the system as it substitutes cost-effective energy efficiency for more expensive alternative resources." *See* PGE/2900, Cavanagh/5, line 20. However, fuel costs incrementally avoided should be ignored ("overlooked"), as they are primarily captured in the workings of PGE's Net Variable Power Cost mechanism; i.e., fuel is a variable cost and PGE is proposing with the SNA mechanism to cover revenue shortfalls associated with coverage of fixed costs, not variable. On the other hand, avoided capital costs are a subtle issue. Remember, PGE is attempting to cover a portion of fixed costs with revenues produced volumetrically. *See* PGE/100 Piro/18 line 6 through line 9. As customer usage declines on a per customer basis, less of these revenues are available than would otherwise be the case. If, for simplicity, we assume PGE has no year-over-year customer growth, should usage per customer decline, total usage for the relevant customer class also declines. This implies PGE now has more available electricity than is required by customers. As PGE is a substantial net purchaser to meet load, it seems reasonable that, subject to contract terms and conditions, the company would decrease the net amount of purchased power, which is a primary component of PGE's Net Variable Power Cost mechanism. It is important to note that this result holds regardless of whether an SNA mechanism is in place.

In sum, the important consideration here is whether PGE's proposed SNA mechanism is incentive for customer reduction in usage. Staff contends it is far from clear that this would be the case, and considers implementation of the SNA mechanism may serve as a disincentive for energy efficiency efforts when viewed from the perspective of an individual ratepayer. *See* Staff/1300, Storm/21 through Storm/23 line 7.



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PGE proposes a Lost Revenue Recovery (LRR) mechanism for large nonresidential customers having usage less than 1 average megawatt (MWa) in the previous calendar year. *See* PGE/100, Piro/ 21, line 11; PGE/1200, Kuns-Cody/29, line 14 through Kuns-Cody/30 line 18.

Staff's first issue with the proposed LRR is that reduced revenues due to energy savings resulting from Schedule 109 funding are not linked back to the specific customer schedule having reduced usage. PGE uses a "weighted average" approach, with a Schedule 123 charge-back rate of 3.520 cents per kWh. *See* Staff/600, Storm/29, line 20 through Storm/30 line 7.

Staff's analysis on a less aggregated basis provides that Schedule 89-P has the lowest charge-back rate at 2.873 cents per kWh and Schedule 15 the highest rate at 13.904 cents per kWh. *See* Staff/600, Storm/ 30, line 8 through line 12. In the interests of equity and following cost causation, the recovery of "lost" revenues due to Schedule 109 energy efficiency savings should be on a less aggregated basis than has been proposed by PGE. *See* Staff/600, Storm/30 line 8 through line 15.

Staff's second issue with the LRR mechanism is the lack of breadth, in that PGE did not propose including rate schedules 7 and 32/532. *See* Staff/600, Storm/30, line 16. Staff's third issue concerned a lack of clarity in PGE's proposed tariff language. It is unclear whether balances in any LRR balancing accounts would be reduced to $0 and incorporated into rates in a general rate case. *See* Staff/600, Storm/31, line 1. Finally, Staff is unaware of any parties other than PGE supporting the proposed LRR mechanism.

In direct testimony, Staff proposed an Energy Efficiency Revenue Recovery (EERR) mechanism as an alternative to the LRR, largely due to the exclusion of rate schedules 7 and 32/532 in the PGE-proposed LRR. *See* Staff/600, Storm/31, line 19 through Storm/33, line 3. The EERR mechanism proposed by Staff is an alternative to PGE's proposed SNA decoupling mechanism for rate schedules 7 and 32. PGE's rebuttal testimony did not address Staff's proposed alternative revenue recovery mechanism (the EERR) and advocated PGE's self-provided alternative to the LRR, the proposed "load-based" decoupling mechanism. *See*



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PGE/2100, Cavanagh/13, line 2; and PGE/2100, Cavanagh/13 line 12 through Cavanagh/14 line 8.

Staff's assessment of PGE's load-based decoupling mechanism is that it has many of the disadvantages of PGE's SNA mechanism, including coverage of revenue losses associated with reduced load for causality other than energy efficiency measures, including, as understood by Staff, reductions due to weather. *See* Staff/1300, Storm/25, line 3.

The Commission should adopt Staff's recommendations presented in surrebuttal testimony and reject PGE's SNA and "load-based" decoupling proposals.

9. The Commission should adopt PGE's marginal cost-based rate spread.

Staff has endorsed PGE's general approach and method for basic inter-schedule revenue requirement/cost allocation in this rate case. *See* Exhibit Staff/600, Storm/7, lines 3-5. Stipulating Parties have also accepted the PGE cost allocation results. *See* Stipulating Parties' Stipulation Term 2. Accordingly, basic cost allocation is no longer an issue in this case.

10. Marginal cost docket versus workshops

In Term 4 of PGE's Stipulation regarding Rate Spread and Rate Design Issues, "the Stipulating Parties request that the Commission open a new docket to address cost allocation and rate design issues for PGE early in calendar year 2009…[with the] Stipulating Parties agree[ing] to cooperate to propose a schedule in the new docket that will allow the results of the new docket to be implemented in PGE's subsequent general rate case." As already discussed herein, sufficient knowledge is available now to make meaningful rate design reforms in the current case; i.e., without a separate docket and without having to await implementation until PGE's next general rate case.

Staff does support PGE holding workshops primarily on rate spread and also rate design issues. The purpose of these workshops is to share knowledge, disseminate information, and analyze the benefits and drawbacks of alternative methods by which to guide rate spread and rate design. Staff prefers a workshop approach to engage in this communication among parties over



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a formal docket for a number of reasons. First, Staff is not requesting direction from the Commission with respect to any specific rate spread or rate design policy. Rate spread and rate design methods need to be flexible in order to meet the circumstances facing the utility. Second, the purpose of Staff-proposed workshops is to informally share with other interested parties ideas and information on costs and rate spread concepts. Staff has no expectations regarding consensus among parties. Staff's perspective is that rate spread and design is as much art as it is science, and we question whether an established method would make sense and remain applicable over the long term. Only broad concepts would seem likely to remain sensible and meet changing circumstances and conditions. For example, costs, supply/demand, and load/resource balances change over time and, as they change, so could rate design and rate spread concepts. Finally, Staff discerns as the primary reason some parties propose opening a formal docket is to obtain funding for participation. While Staff is sympathetic, funding concerns should not determine whether or not a formal docket makes sense.

## CONCLUSION

For the foregoing reasons, Staff respectfully requests that the Commission adopt the Staff adjustments discussed herein.

DATED this 24th day of October 2008.

Respectfully submitted,

HARDY MYERS
Attorney General

/s/Jason W. Jones
Jason W. Jones, #00059
Assistant Attorney General
Of Attorneys for Staff of the Public Utility Commission of Oregon



Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6322 / Fax: (503) 378-5300

## CERTIFICATE OF SERVICE

I certify that on October 24, 2008, I served the foregoing Opening Brief upon all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

JIM DEASON - **CONFIDENTIAL**
ATTORNEY AT LAW
1 SW COLUMBIA ST, SUITE 1600
PORTLAND OR 97258-2014
jimdeason@comcast.net

G. CATRIONA MCCRACKEN – **CONFIDENTIAL**
LEGAL COUNSEL
1 SW COLUMBIA ST, SUITE 1600
PORTLAND OR 97258-2014
catriona@oregoncub.org

**BOEHM KURTZ & LOWRY**
KURT J BOEHM – **CONFIDENTIAL**
ATTORNEY
36 E SEVENTH ST - STE 1510
CINCINNATI OH 45202
kboehm@bkllawfirm.com

**BOEHM KURTZ & LOWRY**
MICHAEL L KURTZ - **CONFIDENTIAL**
36 E 7TH ST STE 1510
CINCINNATI OH 45202-4454
mkurtz@bkllawfirm.com

**W**
**CITIZENS' UTILITY BOARD OF OREGON**
OPUC DOCKETS
610 SW BROADWAY - STE 308
PORTLAND OR 97205
dockets@oregoncub.org

ROBERT JENKS - **CONFIDENTIAL**
610 SW BROADWAY STE 308
PORTLAND OR 97205
bob@oregoncub.org

**W**
**COMMUNITY ACTION DIRECTORS OF OR**
JIM ABRAHAMSON - **CONFIDENTIAL**
COORDINATOR
PO BOX 7964
SALEM OR 97301
jim@cado-oregon.org

**DAVISON VAN CLEVE PC**
S BRADLEY VAN CLEVE - **CONFIDENTIAL**
333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

**DEPARTMENT OF JUSTICE**
JANET L PREWITT - **CONFIDENTIAL**
NATURAL RESOURCES SECTION
1162 COURT STREET NE
SALEM OR 97301-4096
janet.prewitt@doj.state.or.us

**W**
**FISHER SHEEHAN & COLTON**
ROGER D. COLTON - **CONFIDENTIAL**
34 WARWICK RD
BELMONT MA 02478
roger@fsconline.com

**LEAGUE OF OREGON CITIES**
SCOTT WINKELS - **CONFIDENTIAL**
INTERGOVERNMENTAL RELATIONS ASSOC
PO BOX 928
SALEM OR 97308
swinkels@orcities.org

**W**
**OREGON DEPARTMENT OF ENERGY**
KIP PHEIL - **CONFIDENTIAL**
625 MARION ST NE - STE 1
SALEM OR 97301-3737
kip.pheil@state.or.us

**W**
**OREGON ENERGY COORDINATORS ASSOC**
JOAN COTE - **CONFIDENTIAL**
PRESIDENT
2585 STATE ST NE
SALEM OR 97301
cotej@mwvcaa.org

**PORTLAND GENERAL ELECTRIC**
PATRICK HAGER - **CONFIDENTIAL**
RATES & REGULATORY AFFAIRS -
121 SW SALMON ST 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com



Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6322

**PORTLAND GENERAL ELECTRIC**
DOUGLAS C TINGEY – **CONFIDENTIAL**
ASST GENERAL COUNSEL
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

**PUBLIC UTILITY COMMISSION**
JUDY JOHNSON - **CONFIDENTIAL**
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

Neoma Lane
Legal Secretary
Department of Justice
Regulated Utility & Business Section



Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6322