BEFORE THE OREGON PUBLIC UTILITIES 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)**	**REPLY BRIEF OF UTILITY REFORM PROJECT, ET AL. AND CLASS ACTION PLAINTIFFS** **REQUEST FOR ORAL ARGUMENT**

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The Utility Reform Project (URP), et al., and the Class Action Plaintiffs (Gearhart, Morgan, Kafoury Brothers, Inc.) [hereinafter URP/CAP or "we"] file this Reply Brief.

References to "PGE" with page numbers are to the PGE Opening Brief, Phase III (July 21, 2008). References to "Staff" with page numbers are to Staff Opening Brief (July 21, 2008).

We note that the Staff Opening Brief misstates Issue 1, Issue 3, Issue 4, Issue 5, and Issue 6. Staff did not address the issues as stated in the final issue list adopted by the ALJ but instead used an earlier list that the ALJ subsequently revised.

We request oral argument on this matter. This case is certainly a "major proceeding" under OAR 860-014-0023. Thus, oral argument is required. The Lazar testimony shows that a legal treatment of Trojan investment would result in a credit to ratepayers of $436,491,924 as of October 1, 2008.

I. THE SPECIFIC SUB-ISSUES.

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

1. The Phase 3 Scoping Order prohibited URP from developing the relevant evidence.

Here, the Phase 3 Scoping Order prohibits any evidence on how the Commission should have calculated the PGE's remaining undepreciated investment in Trojan as of October 1, 2000. It allows only "evidence regarding the actual Trojan balance as of October 1, 2000." PGE (p. 2) claims that the Phase 3 Scoping Order allows URP to submit evidence "regarding the undepreciated Trojan balance as of September 30, 2000, except for claims that the Trojan balance should have been

reduced by that portion of rates collected from customers from 1995 to 2000 that reflects a return on Trojan investment." PGE's argument ignores the word "actual" in the Phase 3 Scoping Order.

2. PGE unlawfully failed to adjust the Trojan balance to account for the Trojan return of investment actually charged to ratepayers during the 5.5-year period.

As witness Lazar demonstrated, without contradiction, the amount actually charged to ratepayers for Trojan return on investment and return of investment did not decline during the 5.5-year period. Instead, the amount charged to ratepayers for Trojan return on investment and return of investment stayed the same in each year. That means, in part, that ratepayers were apparently not credited with all of the $20.5 million of Boardman account that was wiped out by OPUC Order No. 95-1216. Instead, the rates during the entire 5.5-year period continued to amortize the Trojan investment at the annual amount set as before OPUC Order No. 95-1216, instead of amortizing the Trojan investment reduced by the Boardman account. Further, as noted in the URP/CAP Opening Brief, PGE actually collected more in Trojan amortization than was specified in OPUC Order No. 95-322, because PGE's annual sales to customers during the 5.5-year period were higher than had been projected in that order.

The difference between the PGE approach and our approach is that PGE relies solely upon the Trojan balance on its books. We, on the other hand, examine how much of Trojan return of investment was actually charged to ratepayers during the 5.5-year period. The question of the Trojan balance as of October 1, 2000, is a rates

issue, because it forms the basis for future rates. PGE wants to make it purely an accounting question, even though ORS 757.140(1) requires:

> Each public utility shall conform its depreciation accounts to the rates so ascertained and determined by the commission.

Instead, PGE kept its Trojan investment account separate from rates. It did not reduce the investment balance by the actual amount ratepayers paid each year for Trojan depreciation or amortization. It did not adjust the charge to ratepayers, after OPUC Order No. 95-1216 reduced the Trojan balance by the amount of the Boardman account.

This is illustrated by Exhibit URP 605, a spreadsheet produced by PGE. The bottom table there shows "Forecast Amortization Amounts in the Absence of the Stipulation." For Trojan, it shows $31.2 million of amortization in 2001, falling dramatically to $16.3 million in 2002. There would be no dramatic reduction, except that PGE continued to charge $31.2 million for Trojan amortization (return of investment) in each year of the 5.5-year period governed by OPUC Order No. 95-322. The reason for the fall is that PGE assumed that a new general rate case decision would reset the Trojan balance as of January 1, 2002 (as is described in detail in the URP/CAP Opening Brief). The problem is that, in asserting that the Trojan investment balance is $180.5 million, PGE did not subtract the $31.2 million of annual amortization for that period. Instead, PGE subtracted far less, as is illustrated the table reproduced in the URP/CAP Opening Brief.

Thus, as we argue in the URP/CAP Opening Brief, the Commission should countermand the Phase 3 Scoping Order issued by the ALJ and require PGE to

produce the monthly detailed information of how much was charged to ratepayers for Trojan return of investment during the 5.5-year period. PGE has not produced that information, despite our repeated discovery requests for it, as the ALJ refused to allow the discovery of this information (Phase 3 Scoping Order, p. 7).

3. PGE Used a Trojan Investment Balance Higher than $180.5.

PGE claims that the Trojan Investment Balance as of September 30, 2000, was $180.5 million. But that is not the number used in the Net Benefit Analysis or in the "asset based test." The Net Benefit Analysis instead quantified the future Trojan revenue requirement (with continued full return on investment) as $203.4 million (NPV). The "asset based test" used $209,120,011 as the "Net Abandoned Plant." Further, the "asset based test" then added another $10,461,145 to this $209.1 million under the heading "USDOE D&D Debit." So the "asset based test" actually used a Trojan investment balance equal to $219.6 million. Since PGE now claims that the Trojan investment balance was only $180.5 million, then the "asset based test" would have to be adjusted downward by $39.1 million.

4. PGE Used Other Erroneous Balances.

PGE touts the "asset based test" as showing that OPUC Order No. 00-601 and OPUC Order No. 02-227 did not harm ratepayers. First, neither PGE nor Staff cites any legal authority for the proposition that trading the face value of assets, regardless of their status as interest-bearing or non-interest bearing, is a valid test of the

legitimacy of proposed rates. We have been unable to locate even one single public utility commission case or court case so holding.

Second, there are huge discrepancies between the numbers used in the Net Benefit Analysis v. numbers used in the "asset based test." Probably the largest discrepancy is the fact that the "asset based test" completely leaves out the diversion of NEIL refunds to PGE, as is discussed in the NEIL section of this brief, below. Also, the "asset based test" lists the $10.5 million. But the Net Benefit Analysis lists it as only $6 million Sum and $5 million NPV. The "Deferred Litigation Credit" is listed at $4.6 million in the "asset based test" but only $4 million NPV in the Net Benefit Analysis.

In addition, the "asset based test" is not consistent in using only "assets" and not streams of money brought to NPV. Staff-PGE Exhibit 206 (the only depiction of the "asset based test"), line 20, for example, shows an amount of $28,634,202 for "Collect New Reg Asset - No 'Return on'". But $28,634,202 is not an "asset" number. It is the result of calculating the NPV of a future stream of payment. So the bottom line of the "asset based test" was a "Residual" that did not constitute a comparison of merely "assets," as PGE asserted. Where convenient for PGE, the "asset based test" transformed future streams of money into present value, which is precisely what PGE denied during cross-examination. TR 57-58.

B. 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?

First, the rates provide the functional equivalent of a "return on" the remaining undepreciated investment in Trojan, because the "net benefit analysis" which formed the basis for OPUC Order No. 02-227, assumed that the baseline for measuring "net benefit" would be the continued, unabated collection by PGE of a return on investment for Trojan through 2011. It is based on the assumption that anything better for ratepayers than wholly unlawful rates is good enough, with no reference to any lawful baseline. The "net benefit analysis" did not compare the rate treatments proposed in UM 989 with a legal baseline, which would certainly not include continued return on investment for Trojan. The Commission then concluded that the rate treatments adopted in OPUC Order No. 00-601 and OPUC Order No. 02-227 were just and reasonable, because they would be better for ratepayers than the only alternative considered by the Commission--the continued, the unabated collection by PGE of a return on investment for Trojan through 2011.

The PGE witnesses admitted that the "net benefit analysis" assumed continued return on Trojan. Exhibit URP 600, prepared by PGE, quantified the amount of return on Trojan they assumed each year through 2011 and the assumed income tax liability that would accompany that return on investment. TR 16-17. Although this shows that PGE recognized that the "No Offset Case" (status quo, without OPUC Order No. 00-601 and OPUC Order No. 02-227) included significant Trojan return on investment

($62.9 million), we do not necessarily agree with PGE's numbers.[1] But even PGE's numbers demonstrate the invalidity of justifying new proposed rates by comparing them to the assumed continuation of rates which have been determined, conclusively, by the Oregon courts to have been unlawful due to inclusion of Trojan return on investment. The valid and legal approach would be to compare the proposed rates to a legal rate treatment of the Trojan investment.

The second reason is that the "stipulation" approved by OPUC Order No. 02-227 caused ratepayers to trade interest-earning assets which are due them for a non-interest earning asset (Trojan) held by PGE. Even Staff witness Judy Johnson recognized agreed that a reasonable person, such as herself, would not agree to such a trade. TR 73-76. Yet, it is exactly this trade that OPUC Order No. 02-227 imposed on PGE ratepayers, and the "net benefit analysis" treats the face value of interest-bearing accounts as exactly equivalent, and tradeable one-for-one, with the face value of the non-interest bearing account, the Trojan investment balance. The same is true of the so-called "asset based test" (or "asset balance net benefit test, says Staff), which is discussed later.

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1. For example, the $62.910 million figure on Exhibit URP 600, p. 2, quantified Trojan return on investment only for the period beginning with 2002. The Net Benefit Analysis "No Offset Case" assumed that PGE would continue to receive full Trojan return on investment during the remaining last quarter of 2000 and all of 2001. That would add another $44.0 million for 5 continued quarters of Trojan return on investment at the OPUC Order No. 95-322 level, which was $35.202 million. Exhibit URP 202, p. 3. This means that the Net Benefit Analysis was flawed by a minimum of $106.9 million, because the "No Offset Case" included at least that amount in NPV Trojan return on investment, which the Oregon courts have concluded, with finality, was not allowed by law.

The forced trading of interest-bearing accounts due to ratepayers in exchange for an account which by law must be non-interest bearing has exactly the same result as placing the remaining Trojan investment into ratebase which earns a return on investment.

But OPUC Order No. 02-227 granted PGE a continued Trojan profit in other ways as well. It was not enough to cancel out the interest-bearing accounts owed to ratepayers. In order to provide to PGE the financial equivalent of a continuing full return on Trojan, OPUC Order No. 02-227 also diverted from ratepayers the NEIL insurance rebates and created the FAS 109 asset and required ratepayers to pay for it. But for trying to keep PGE in the position of earning a return on investment on Trojan, these additional steps would not have been necessary.

PGE (p. 4) relies on URP's economist witness for a legal conclusion about the length of amortization or recovery periods. The recovery period for Trojan was established in OPUC Order No. 95-322 at 17 years. Absent some lawful proposal to change that, the URP testimony assumed that to constitute the status quo. That part of OPUC Order No. 95-322 was not overturned by the courts. In fact, the Court of Appeals noted that it was not addressing the conclusion of the trial judge that immediate recovery may itself be unlawful.

> The trial judge in the ratemaking case did not agree with the premise that the "immediate recovery" of the entire amount was permissible, because "rate shock" would have resulted. *See* ORS 756.040(1). That question is not before us.

Citizens' Utility Bd. of Oregon v. Public Utility Com'n of Oregon, 154 Or App 702, 713, 962 P2d 744 (1998), *pet rev dis'd*, 355 Or 591, 158 P3d 822 (November 19,

2002) [hereinafter ***CUB/URP v. OPUC***]. We agree with the trial court's opinion and do assert that accelerating recovery of a major asset to a single day is inconsistent with the duties of the Commission under ORS 756.040. As witness Lazar stated, he has never seen any regulator ever allow such rapid amortization of a major asset by means of "trading" assets or any other way. TR 114.

PGE (p. 5) then incorrectly claims that ***CUB/URP v. OPUC*** found "that PGE was entitled to recovery of the undepreciated Trojan balance." The decision did not state that PGE had any such entitlement. It merely stated that it was not unlawful for the Commission to grant such recovery.

C. Issue 3: Was the FAS 109 liability properly considered part of PGE's return of its Trojan investment?

PGE (pp. 6-7) claims that ratepayers enjoyed "the benefit of PGE's lower taxes resulting from accelerated depreciation of Trojan flowed directly through to customers." But there remains no evidence that any PGE was paying income taxes at the time.[2] More important, there is no evidence that the FAS 109 cost PGE anything in taxes during the amortization period (2000-2005). PGE (p. 7) claims that the FAS 109 asset was "an actual liability faced by PGE in the form of higher tax expense." But we have documented that PGE paid essentially zero federal and state income taxes during the period of this "liability."

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2. Staff (p. 3) claims that "URP does not dispute that customers previously received a rate benefit from accelerated tax deductions in the early years of Trojan's useful life." URP does dispute that, as there is no evidence to support it.

Staff (p. 3) attempted to justify charging the FAS 109 "asset" to ratepayers by stating:

> As explained by PGE, the Trojan FAS 109 asset represents the value of accelerated tax benefits previously flowed through to customers that are expected to reverse over time through higher tax expense in future years."

Missing from the evidence is any statement that PGE thereupon experienced the higher tax expense or had any expectation of a higher tax expense "in future years." At the time of the stipulation, PGE had been owed by Enron for more than 3 years. In order to have any valid expectation about its future "higher tax expense," PGE would have needed to inquire into the actual income tax payments being made to the government on its behalf. If PGE had so inquired, it would have found that the payments were essentially zero. So, either PGE had no basis for its "expectation" or it maintained a studied ignorance. In either event, there was no factual basis for its "expectation."

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

The diversion of 45% of all future distributions by NEIL to PGE represents a new net cost to ratepayers, because it removes from them money that has been credited to ratepayers in the past and would be credited to them under any non-corrupt regime of ratemaking.

1. NEIL in The Net Benefit Analysis.

PGE (pp. 7-9) argues that the net benefit analysis "assumed that 100% of those refunded premiums were owing to customers and, accordingly, treated the 45% transfer to PGE as a credit that customers gave up in the settlement."[3] This is not the case. In both the original Net Benefit Analysis - Original cited in Order 00-601 and the Net Benefit Analysis - Original Version Corrected, the "NPV Benefit of Offset" is listed at $15.7 million. That is then reduced by $14.2 million identified as "Decrease to Reflect NEIL Value." That $14.2 million value is hard-coded (-(23.8-9.6) and is not the result of a formula. The $23.8 million was PGE's estimate of the probable NEIL refund, which turned out to be a huge underestimate (PGE received a $34.3 million NEIL refund only weeks later). The $9.6 million corresponds to the $9.6 million of "NEIL Rev. Req" NPV shown in column 7 of these exhibits. The columns surrounding column 7 are other streams of money owed to ratepayers, prior to OPUC Order No. 00-601 and OPUC Order No. 02-227, so we assume that is true also of column 7, which is further identified in a footnote as the "continuation of credit currently in rates." That indicates it is separate from rate treatment for the $34.3 million NEIL refund PGE received later, after it obtained OPUC Order No. 00-601 in September 2000.[4]

Crediting ratepayers with assumed future NEIL refunds of only $1.4 million per was itself without any rational basis. The NEIL spreadsheet (Exhibit URP 602) shows

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3. Staff (pp. 6, 8) repeats this incorrect statement.

4. PGE characterizes the NEIL diversion as something ratepayers "agreed to." "[T]hey agreed to forego 45% of the NEIL premiums." PGE, p. 8. There was no such agreement by ratepayers.

that, after having paid NEIL premiums for decades (and having charged them to ratepayers by including amounts in test years), PGE had paid zero NEIL premiums since 1994 and that net NEIL refunds to PGE during 1993-99 was $18.2 million, equal to $2.6 million per year average and growing throughout the period (to $4.97 million per year by 1999). Any honest and rational ratemaking would have included a much greater credit to ratepayers for anticipated NEIL refunds. Consequently, the Net Benefit Analysis should also have recognized that cashing out the NEIL refunds would cost ratepayers far more than $1.4 million per year in lost rate credits. Instead, OPUC Order No. 00-601 also confiscated the accumulated balance of the NEIL refunds that PGE had not returned to ratepayers during at least the 1993-1999 period. This confiscation was never quantified in the Net Benefit Analysis or in the "asset based test." This amount can easily be calculated from Exhibit URP 602 at $8,767,810, even if no interest is added (and it should be).[5] As noted below, this amount should have been part of the offset of the Trojan investment balance but was totally disregarded.[6]

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5. This calculation from Exhibit URP 602 assumes that ratepayers were being credited with $1.4 million for NEIL refunds per year during the 1995-99 period. This would be consistent with PGE's assertions that the Net Benefit Analysis "No Offset Case" assumed continuation of the existing ratemaking regime. If ratepayers were not receiving the $1.4 million annual NEIL credit in rates during the period prior to October 1, 2000, then the NEIL credit balance owed to ratepayers would be much larger (by $1.4 million per year).

   Note that URP sought these details in discovery requests, but PGE failed to provide the information.

6. Staff (p. 5) claims that "the Commission scrutinizes costs associated with insurance premiums before allowing utilities to recover such costs in rates." This is apparently not true. PGE for several years, beginning in 1995, was enjoying

(continued...)

The exhibits (Staff-PGE Ex. 203, 205) then show as $1.5 million the "Net benefit before NEIL split." Clearly, this refers to the alleged net benefit to ratepayers, not the net benefit to PGE. But to that number is then added $13.1 million for "55% of NEIL Value to Customers." Obviously, the spreadsheet considered ratepayers' retention of 55% of the "NEIL Value" to be a net benefit to ratepayers. To the contrary, that 55% most certainly belonged to ratepayers anyway, under normal ratemaking methodologies. PGE and Staff most definitely counted this retention of 55% of the "NEIL Value" as a net benefit to ratepayers, when it was no benefit whatever. This contradicts PGE's narrative and incorrect assertion (PGE, p. 9) that "PGE's net benefit analyses acknowledged that customers relinquished a benefit to which they were entitled when they gave up 45% of the NEIL credits in the settlement."

Staff-PGE Exhibit 204, interjected literally one hour before the original UM 989 hearing, was another version of the Net Billing Agreement handed out during a workshop. Its analysis of NEIL is erroneous on its face. It first calculates a "NPV Rev. Req. of No Offset" at $58.2 million. "No Offset" means without the changes

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6.(...continued)

the exact equivalent of negative insurance premiums, yet there is no evidence that the Commission ever scrutinized the NEIL account or required PGE to properly account for these negative premiums in rates.

Staff (p. 5) also claims that the Commission would not allow a utility "to include excessive insurance premiums in rates." That misses the point. PGE's premiums to NEIL, which were included in rates, were not necessarily excessive. But part of the deal with any mutual insurance pool is that, if claims experience shows that the premiums have been higher than needed, then the insurer refunds money to the policyholders. The insurer agrees to maintain reserves needed to pay expected claims, with a margin of safety, but not more.

adopted in OPUC Order No. 00-601. Then it adds to that $9.9 million for "Remove NEIL from No Offset case." But the NEIL stream in the "No Offset Case" was negative to begin with; it was the anticipated continuation of a credit to ratepayers, not a cost or charge to ratepayers. If you "Remove NEIL from the No Offset case," that means that you are not taking away the NEIL credit from ratepayers in the "No Offset Case." That means that the NPV Revenue Requirement of the "No Offset Case" would go down, not up. This is an error equal to a false net $18.9 million credit for PGE. Further, as noted above, the assumption that ratepayers would have continued to receive only $1.4 million in annual NEIL credits is not credible. Any honest examination of the NEIL refunds received by PGE during 1995-2000 would have led a regulator to significantly increase the NEIL credits to ratepayers, regardless of OPUC Order No. 00-601. The reasonable approach would have been to require PGE to keep an account of the refunds and to have paid them back to ratepayers. In the context of OPUC Order No. 00-601, however, the Commission should have considered those accumulated NEIL refunds to be money owned by ratepayers. Part of OPUC Order No. 00-601 and OPUC Order No. 02-227 was the seizure of all NEIL funds by PGE, except the $15.4 million one-time credit. At a minimum, the accumulated balance of NEIL refunds should have been considered one of the assets or accounts taken away from ratepayers in the "stipulation," but this was never accounted for.[7]

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7. Staff-PGE Exhibit 204 also has a large discrepancy. While both Staff-PGE Exhibit 203 and 205 show the FAS 109 Revenue Requirement in the "Offset"

(continued...)

2. NEIL in the Asset Based Test.

When confronted with the numerous defects of the Net Benefit Analysis, PGE and Staff have retreated to what they now call the "asset based test," which was shown in Staff-PGE Exhibit 206. Note that this test did not account at all for the diversion of NEIL refunds from ratepayers to PGE shareholder(s). Even if the rest of the "asset based test" were valid or accurate, this alone converts the alleged $5.084 million benefit into a large detriment to ratepayers of at least $19.13 million, even if the accumulated NEIL account owed to ratepayers as of October 1, 2000 (documented above) is disregarded.

This net $19.13 million detriment is easily quantified with the evidence in the record. First, PGE seized for itself 45% of the $34.3 million October 2000 payment from NEIL, when all of the payment rightfully belonged to ratepayers. That itself had a present value as of October 1, 2000, of essentially 45% of $34.3 million, which is $15.44 million. In addition, as noted above, the NEIL account itself should have been considered as having a balance of $18.2 million (plus accumulated interest 1993-99). Thus, cancelling out the NEIL account, in the manner accomplished by OPUC Order No. 00-601 and OPUC Order No. 02-227, was the equivalent to ratepayers of losing

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7.(...continued)
case (i.e., the "stipulation") to be 6 annual charges of $9.6 million, Staff-PGE Exhibit 204 shows only 4 annual payments of $9.6 million and one of $9 million. It is not possible from the record to determine which series of numbers is correct, as Staff and PGE used the Exhibit 203 analysis in arriving at the original stipulation and offering the "deal" embodied in OPUC Order No. 00-601 and later OPUC Order No. 02-227.

an asset with a minimum present value (as of October 1, 2000) of $24.21 million. The "asset based test" omits this completely.

Thus, a corrected "asset based test"--that accounts for the NEIL diversion--shows a net detriment to ratepayers of $19.126 million (24.21 - 5.084 = 19.126).

E. Staff's Claims about NEIL Investments.

Staff (pp. 5-6) now claims that the NEIL refunds "were not entirely due to premiums that were not needed to cover claims, but were also due to successful investments by NEIL." There is utterly no evidence in the record about NEIL's success or lack of success in investing. Where is the evidence? What did NEIL invest in? What return did NEIL earn? Was that better or worse than average? Staff's assertion is utterly devoid of evidence.

Further, investing premiums is what insurance companies do. Like State Farm Insurance, NEIL is a mutual insurance pool. When such an entity accumulates funds in excess of those projected as necessary to pay future claims, it returns those funds to the policyholders. The funds accumulated always include not only premiums paid in but also the returns, if any, on the firm's investment of those premiums. To say that this normal operation of an insurance company warrants PGE's retention of the NEIL refunds for shareholders is absurd. And such an approach to ratemaking would encourage all utilities to agree to pay high insurance premiums with the expectation of getting back refunds that can then be kept for shareholders. As noted above, part of the ordinary deal for a policyholder of mutual insurance is getting refunds, when the insurer finds that it holds reserves in excess of those necessary to pay expected

future claims. Staff's approach would allow utility shareholders to profit, in the millions of dollars, merely because of the nature of mutual insurance.

F. Issue 5: Were the rates approved in Order No. 02-227 just and reasonable?

PGE (p. 9) now claims that OPUC Order No. 02-227 "had no rate impact whatsoever." We should not need to respond to such sophistry. OPUC Order No. 00-601 was adopted prior to the time for ratepayers to request and obtain a mandatory contested case hearing for any rate change, pursuant to ORS 757.210. URP and various ratepayers did exactly that. Thus, OPUC Order No. 00-601 was not a final order in the UM 989 docket. OPUC Order No. 02-227 adopted exactly the same rate treatment as did OPUC Order No. 00-601, but OPUC Order No. 02-227 was the appealable final order, because it followed the mandatory contested case hearing.

To the extent PGE claims that there is no substance to the remand (because the rate change adopted in OPUC Order No. 00-601 and OPUC Order No. 02-227 was later "superseded by numerous later rate orders," the Oregon Supreme Court has already rejected this precise line of reasoning in ***Dreyer v. Portland General Electric Co.***, 341 Or 262, 280-81, 142 P3d 1010 (2006). ***Dreyer*** concluded that the presence of the later rate orders which did not change the ratemaking treatment for the Trojan investment itself did not nullify the claims of ratepayers.

PGE (p. 10) repeatedly asserts that OPUC Order No. 00-601 reduced rates by $10.2 million in the first year, never mentioning the $25.7 million increase in Year 2, or the $15.7 million increases in Year 3 and Year 4. Staff-PGE Exhibit 204 (AR 270),

column 17; TR 115-18 (AR 429-32). And these rate changes assume that the Net Benefit Analysis was correct; we have documented that it was not.

II. ADDITIONAL ISSUES.

A. PGE MISUSES THE NET BENEFIT ANALYSIS AND ASSET BASED TEST.

PGE repeatedly conflates the Net Benefit Analysis and the "asset based test." For example, PGE, pp. 3-4) discusses the authority of the Commission to determine amortization periods. PGE (p. 4) then shifts to a claim that OPUC Order No. 00-601 "immediately reduced rates by $10.2 million." PGE's only support for that claim is the Net Benefit Analysis, not the "asset based test". And, as noted above, PGE fails to note (1) the subsequent rate increases caused by OPUC Order No. 00-601 and OPUC Order No. 02-227 or (2) their overall huge detriment to ratepayers, documented by witness Jim Lazar, who quantified the benefit from reversing the changes wrought by OPUC Order No. 00-601 and OPUC Order No. 02-227.

B. STAFF AND PGE SEEK TO DENY TEMPORAL REALITY.

The URP/CAP Opening Brief (pp. 31-32) pointed out a $6.425 million error in the Net Benefit Analysis resulting from its erroneous assumption that the "No Offsets Case" would include the undiminished OPUC Order No. 95-322 level of Trojan return on investment for the entire year of 2001, when in fact OPUC Order No. 95-322 was replaced by another general rate case order as of October 1, 2001.

Staff (pp. 7-8) claims that this error does not infect the "asset based test," but we have shown above the gross defects in the "asset based test," including its complete

omission of the NEIL arrangements. Further, PGE and Staff claim that "it was reasonable for the Commission to assume that the effective date of the rates under review in Docket No. UE 115 would be January 1, 2002." This is absurd. At the time of the issuance of the final order in March 2002, the Commission knew for a fact that the effective date of that change had been October 1, 2001. The final order in UM 989 was issued in March 2002, not in September 2000. PGE and Staff merely wish to deny reality. This error further renders the "asset based test" invalid, because the "asset based test" failed to account for it at all. Along with the NEIL adjustments discussed earlier, it also means that the Net Benefit Analysis produces an even larger net detriment for ratepayers, even when the outcome in OPUC Order No. 00-601 and OPUC Order No. 02-227 is compared with an unlawful "No Offsets Case."

Staff;s further response (p. 8) is equally irrational. The Oregon courts did not conclude that Trojan return on investment was unlawful, only after the courts had rendered their final decision in the matter. They concluded that Trojan return on investment after the plant's closure was unlawful under ORS 757.355, period. The fact that ***CUB/URP v. OPUC*** remained under review at the Oregon Supreme Court as of March 2002 is irrelevant, because the unlawfulness of rates containing Trojan return on investment did not commence as of the date of the final court decision. It commenced as of the effective date of ORS 757.355, which was in 1979.

III. URP/CAP RECOMMENDATION.

The Commission should adopt this number, $436,491,924, as the amount charged to ratepayers under OPUC Order No. 00-601 and OPUC Order No. 02-227

(current to October 1, 2008) in excess of a lawful revision to rates as of October 1, 2000, to halt additional return on Trojan investment as of that date.

Our further examination of the evidence shows that this is an underestimate of the impact upon ratepayers of OPUC Order No. 00-601 and OPUC Order No. 02-227, because those orders also confiscated the balance of NEIL refunds that PGE should have been accumulating in an account for ratepayers.

Dated: August 4, 2008

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the original and 8 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 REPLY BRIEF OF UTILITY REFORM PROJECT, ET AL. AND CLASS ACTION PLAINTIFFS 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: August 4, 2008

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