

ISSUED: June 6, 2007

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

DR 10/UE 88/UM 989  
(Phase II)

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) )

RULING

**DISPOSITION: ISSUES LIST ADOPTED**

On April 19, 2007, in Order No. 07-157, the Public Utility Commission of Oregon (Commission) held the first phase of the remand proceedings in the above-captioned dockets in abeyance, and announced that a new phase would be commenced to investigate, pursuant to directions by the Court of Appeals and Supreme Court of Oregon, the Commission's authority to engage in retroactive ratemaking.

On May 10, 2007, a schedule for this investigation was established at a prehearing conference. The schedule called for parties and potential parties to discuss issues for briefing, and to submit proposed issues list by May 17, 2007.

On May 17, 2007, a joint submission was made by all of the participants at the prehearing conference regarding the proposed issues in this case. The participants agreed to brief one question, as follows:

What, if any, remedy can the Commission determine and provide to PGE ratepayers, through rate reductions or refunds, for the amounts that PGE collected in violation of ORS 757.355 between April 1995 and October 2000.

I find this question appropriate, as it directly links the Commission's investigation of its authority to engage in retroactive ratemaking to these remand proceedings, and adopt it.

I remind parties, however, that the question is still very broad in nature, and requires that parties explore a number of underlying questions. Indeed, parties must fundamentally consider the nature of ratemaking, and discuss the scope of the legislature's delegated authority to the Commission, as well as general principles such as the rule against retroactive ratemaking (and the related, but separately filed, rate doctrine), the prohibition against single issue rulemaking and the ratemaking equation used to determine bottom line just and reasonable rates. Parties should carefully consider and discuss relevant Oregon and United States Supreme Court statutory and case law. As there is considerable precedent across the nation regarding recovery for cancelled or delayed nuclear plants, parties may also want to consider whether some approach is consistent with Oregon law.

Dated at Salem, Oregon, this 6<sup>th</sup> day of June, 2007.

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Traci A. G. Kirkpatrick  
Administrative Law Judge