

**BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF OREGON**

**DR 10 / UE 88 / UM 989
REMAND**

PORTLAND GENERAL ELECTRIC COMPANY

Phase III Rebuttal Testimony of

*Jay Tinker
Stephen Schue
Patrick G. Hager*



Portland General Electric

June 13, 2008

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I. Introduction

1 **Q. Please state your names and positions.**

2 A. My name is Jay Tinker. My position is Project Manager in the Rates and Regulatory Affairs
3 Department of PGE. My qualifications are set forth in PGE/7500.

4 My name is Stephen Schue. My position is Senior Analyst in the Rates and Regulatory
5 Affairs Department of PGE. My qualifications are set forth in PGE/7500.

6 My name is Patrick G. Hager. My position is Manager, Regulatory Affairs of PGE.
7 My qualifications are set forth in PGE/7500.

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of our testimony is to respond to the direct testimony of Mr. Jim Lazar on
10 behalf of the Utility Reform Project and the Class Action Plaintiffs (collectively "URP"),
11 URP Exhibit 500, and the direct testimony of Ms. Judy Johnson on behalf of Commission
12 Staff, Commission Staff Exhibit 500. In summary, we agree with the Commission Staff
13 testimony, but not URP. We find that Mr. Lazar repeats the same arguments that were made
14 in the initial UM 989 docket, but has no new arguments or evidence in support.
15 Accordingly, as with our direct testimony, PGE/7500, we rely upon the evidence previously
16 provided in the initial UM 989 proceeding that supported the Commission's decisions in
17 Order No. 00-601 and Order No. 02-227, as supplemented in this phase of the proceedings.

18 **Q. How is your testimony organized?**

19 A. Our testimony is organized into the following sections:

- 20 • Section 2 addresses URP's methodological mistakes that pervade Mr. Lazar's
21 testimony;

- 1 • Section 3 responds to the matters relating to Issue No. 1 – the Trojan Balance as
2 of the effective date of the settlement;
- 3 • Section 4 concerns Issue No. 2 and shows that the settlement did not provide PGE
4 with an indirect return on Trojan;
- 5 • Section 5 addresses Issue No. 3 and demonstrates that the settlement's treatment
6 of the FAS 109 asset was reasonable and supported by the evidence;
- 7 • Section 6 responds to Mr. Lazar's testimony regarding Issue No. 4 and rebuts his
8 claim that the settlement deprived customers of the benefits of the final NEIL
9 distribution;
- 10 • Section 7 addresses a variety of claims Mr. Lazar makes under Issue No. 5 and
11 shows that the rates approved in UM 989 were just and reasonable.

II. URP's Methodological Mistakes

1 **Q. What are Mr. Lazar's assumptions about the context of the initial UM 989 proceeding?**

2 A. Mr. Lazar assumes that, in the UM 989 docket, the Commission was responding to the Court
3 of Appeals' decision in 1998 reviewing the Commission's final order in UE 88. Thus, he
4 states "[i]t seems strange that the Commission would wait for more than 2 years from the
5 Court of Appeals decision. But, if responding to that decision was indeed the purpose of the
6 UM 989 proceedings (and is the purpose of this remand), the answer is simple." URP/500,
7 Lazar/3-4. According to Mr. Lazar, the Commission therefore should have imposed an
8 immediate annual rate reduction of \$35.2 million, reflecting the alleged amount of "return
9 on" Trojan in rates at the time.

10 **Q. Is Mr. Lazar's understanding regarding the context of the UM 989 proceeding**
11 **accurate?**

12 A. No. The UM 989 proceeding concerned PGE's settlement agreements among PGE, CUB
13 and the Commission Staff (hereinafter referred to as the "settlement"), and the proposed
14 accounting application and rate change implementing the settlements. At no time during the
15 initial UM 989 proceeding was the UE 88 docket remanded to the Commission. In UM 989,
16 the Commission was not presented with the opportunity to address its decision in UE 88, as
17 the case was still in the courts. In fact, the question presented to the Commission in UM 989
18 was a relatively narrow one: Should the Commission approve the accounting application
19 and proposed rate change that implemented the settlement? The docket did not concern
20 UE 88 rates or proposed rate changes resulting from the remand of UE 88.

21 **Q. What would have happened if the Commission rejected the accounting application and**
22 **proposed rate change in UM 989?**

1 A. PGE would have continued to charge customers UE 100 rates.

2 **Q. Does Mr. Lazar limit his testimony to information that the Commission knew or**
3 **reasonably could have known at the time of its UM 989 decisions?**

4 A. No. Mr. Lazar repeatedly assumes that the Commission was omniscient during the UM 989
5 proceeding and knew everything that it knows now. For example, Mr. Lazar ignores the
6 uncertainty that prevailed over UE 88 rates, which were then pending in the Oregon
7 Supreme Court. He assumes the Commission should have known the ultimate outcome of
8 that litigation. But the ultimate outcome and timing of any remand to the Commission was
9 completely uncertain when PGE filed its accounting application and proposed rate change.

10 **Q. Is Mr. Lazar's position correct?**

11 A. No. His position rests on the wrong standard. As we understand it, in this remand
12 proceeding, the Commission should determine whether or not the settlement was reasonable
13 and generated rates that were just and reasonable based on the UM 989 record before the
14 Commission at the time, not based on what the Commission knows today.

III. Issue No. 1 – The Trojan Balance as of**Effective Date of the Settlement Was \$180.5 million**

1 **Q. Mr. Lazar claims URP is “precluded by the scoping order from presenting any**
2 **evidence on how the Commission should have calculated PGE’s remaining**
3 **undepreciated investment in Trojan as of October 1, 2000.” URP/500, Lazar/6. Do**
4 **you agree?**

5 A. No. We understand that the scoping order excluded evidence that concerned rate
6 adjustments that the Commission will consider in Phase I of this consolidated remand
7 proceeding. The scoping order afforded Mr. Lazar wide latitude to offer evidence on this
8 topic. Mr. Lazar elected not to present any evidence contesting PGE’s direct testimony on
9 this topic.

10 **Q. Mr. Lazar interprets this issue to concern the Trojan balance immediately following**
11 **the offset of the unamortized Trojan balance against the applicable customer credits.**
12 **Do you agree with his understanding?**

13 A. No. In Order No. 00-601, the Commission approved the accounting application that offset
14 the remaining Trojan balance against the applicable customer credits. Issue No. 1 concerns
15 the appropriate Trojan balance for purposes of the accounting application.

IV. Issue No. 2 – The Settlement Does Not

Provide PGE with an Indirect Return On Trojan

1 **Q. Mr. Lazar claims that the offset of the unamortized Trojan balance against customer**
2 **credits provided PGE with an indirect return on Trojan. URP/500, Lazar/3. What are**
3 **Mr. Lazar’s assumptions for this position?**

4 A. Mr. Lazar makes three essential assumptions: (1) PGE customers were entitled to delayed
5 payment for Trojan through 2011 without any return on or interest; (2) PGE customers were
6 entitled to receive the benefit of customer credits over time with interest; and (3) the
7 Commission lacked the ability to change the recovery or amortization periods for the assets
8 and liabilities that were the subject of PGE’s accounting application.

9 **Q. Is the first assumption reasonable?**

10 A. No; there is no support for this assumption. As noted above, during the UM 989 proceeding,
11 the litigation over the UE 88 rates was still in the courts. The Commission could only
12 speculate regarding the outcome of that litigation and the timing of any remand to the
13 Commission. While the Commission was uncertain regarding the courts' ultimate decision
14 regarding the lawfulness of including a return on Trojan in rates, it was certain regarding the
15 immediate impact of approving implementation of the settlement. It removed Trojan from
16 PGE’s books and ratebase. If the Commission rejected the UM 989 accounting application
17 and the proposed rate change, customers would continue to pay UE 100 rates.

18 Moreover, Mr. Lazar’s assumption is unreasonable because it would deny PGE
19 economic recovery of its investment by forcing PGE to accept a return of its investment over
20 time without any interest.

21 **Q. What do you mean by “economic recovery” of the investment?**

1 A. An extended recovery period of the investment without interest denies PGE full value of its
2 investment. In an economic sense, recovery of \$180.5 million over time through 2011 is not
3 the equivalent of recovery of \$180.5 million immediately.

4 **Q. Why, if PGE could not earn a return on Trojan, would shortening the recovery period
5 for the remaining Trojan investment reflect good regulatory policy?**

6 A. It is good regulatory policy because it recognizes that the full value of the remaining
7 investment is owed to PGE. The Commission had previously determined in UE 88 the
8 appropriate balance for recovery in UE 88 after considering appropriate disallowances for
9 prudence and the net benefit test. The Commission's approval of settlement is an example of
10 such good regulatory policy because it provided PGE with an immediate recovery of the
11 amounts it was owed and produced net benefits to customers in the process. This alignment
12 of the interests of the utility and its customers is one important hallmark of good regulatory
13 policy.

14 **Q. Wouldn't customers be better off if they could provide PGE recovery of its Trojan
15 investment over time rather than on a single day via the settlement?**

16 A. Absolutely. In fact, Mr. Lazar's analysis can generally be characterized as comparing the
17 benefits of the settlement to a hypothetical world in which customer benefits are increased
18 by an extended Trojan amortization period and the resultant opportunity cost imposed on
19 PGE of accepting such a scheme. In fact, customer benefits would be increased further if
20 the amortization period were 100 years or 1,000 years. However, such an approach has the
21 effect of imposing disallowances, in addition to the ones already imposed by the
22 Commission in Order No. 95-322, on the investment itself by denying PGE "economic
23 recovery" of the investment. The point of good regulatory policy is to balance the interests

1 of customers and the utility, not give every benefit to customers to the detriment of the
2 utility.

3 **Q. What does your analysis of Mr. Lazar's other two assumptions show?**

4 A. These other two assumptions are equally invalid and unsupported. The Commission has
5 broad discretion over the treatment of regulatory assets and liabilities. It has the authority to
6 shorten the amortization period of regulatory assets and liabilities alike. For example, in
7 UE 100, the Commission used the remaining regulatory liability (customer credit) from the
8 Boardman sale to retire and eliminate a portion of the unamortized Trojan balance.

9 **Q. Aside from its reliance on erroneous and unsupported assumptions, does Mr. Lazar's**
10 **testimony on this topic have any other errors?**

11 A. Yes. Mr. Lazar's position – that the settlement provides PGE with an indirect return on
12 Trojan – is fundamentally inconsistent with the notion of a “return on.” The notion of a
13 “return on” or interest requires payment over time. But the settlement eliminated the
14 balances at a single point in time. There is no such temporal element in the settlement and
15 therefore no “return on” the eliminated Trojan balance. It simply makes no sense to talk
16 about “return on” when an asset or liability has been paid off and eliminated. The closest
17 analogy is a homebuyer who pays off a mortgage balance with a single final payment. PGE
18 customers were in similar position as the homebuyer. The Trojan balance reflected the
19 amount customers owed PGE for the unamortized PGE investment in Trojan. Payment of
20 the mortgage or Trojan balance with a single final payment does not provide the bank or
21 PGE with interest or return on the mortgage or Trojan balance. It eliminates that balance
22 based on payment of the outstanding balance at the time.

V. Issue No. 3 – The Settlement’s Treatment of the**FAS 109 Asset Was Reasonable and Supported by the Evidence**

1 **Q. Mr. Lazar complains that the replacement of the FAS 109 asset with a regulatory asset**
2 **“merely allowed PGE to charge ratepayers an extra \$47.4 million over 6 years.”**
3 **URP/500, Lazar/8. Is Mr. Lazar’s criticism well founded?**

4 A. It is difficult to understand Mr. Lazar’s objection on this topic. He apparently believes that
5 the creation of the regulatory asset to replace the FAS 109 asset was illegitimate; however,
6 the basis for this opinion is unclear. He does not rebut our direct testimony, which
7 established that the FAS 109 asset was required under Generally Accepted Accounting
8 Principles, audited by independent auditors on an annual basis, and is part of standard cost-
9 of-service ratemaking. PGE presented journal entries that documented the amount of the
10 FAS 109 asset as of September 30, 2000. Because he does not take issue with this evidence,
11 it is unclear why he believes the treatment of the FAS 109 asset was inappropriate.

12 **Q. Does the settlement seek novel treatment of the FAS 109 asset?**

13 A. No. The settlement replaced the FAS 109 asset with a regulatory asset with the same
14 balance, which PGE recovered over six years. Both net benefit tests in UM 989 reflected
15 the treatment of the FAS 109 asset along with the offset of the remaining Trojan balance
16 against the customer credits involved in the settlement. Both net benefit analyses showed
17 that the settlement, including the treatment of the FAS 109 asset, resulted in substantial
18 customer benefit.

19 **Q. Mr. Lazar complains that “missing from the evidence is any statement that PGE**
20 **thereupon experienced the higher taxes” (URP/500, Lazar/8) as a result of flowing**

1 through to customers the accelerated tax benefits that give rise to the FAS 109 asset. Is
2 that a valid complaint?

3 A. No. Notably, URP does not dispute that customers previously received a rate benefit from
4 accelerated tax deductions in the early years of Trojan useful life. As those accelerated tax
5 deductions reverse in later years, the tax deductions associated with the investment are less
6 than they otherwise would have been absent the accelerated deductions. On a stand-alone
7 basis, PGE's tax expense in these later years of Trojan's useful life was higher than it
8 otherwise would have been.

VI. Issue No. 4 – The Settlement Did Not Deprive

Customers of the Benefits of the Final NEIL Distribution

1 **Q. Mr. Lazar takes great pains to argue that customers were entitled to 100% of the final**
2 **NEIL distributions and that this undermines the settlement. URP/500, Lazar/8-11. Is**
3 **that a valid objection?**

4 A. No. Both net benefit analyses adopted precisely the assumption Mr. Lazar advocates. Both
5 assumed that customers were entitled to 100% of the NEIL final distribution. They credited
6 customers with \$15.4 million in foregone benefit for transferring 45% of the final NEIL
7 distribution as part of the settlement. The net benefit analyses showed that with this most
8 conservative assumption, customers received a substantial overall net benefit from the
9 settlement. Mr. Lazar appears to focus on one aspect of the settlement – NEIL – without
10 recognizing the greater overall benefits that flowed to customers.

11 **Q. PGE and Staff have argued in UM 989 proceeding that in 2000 customers faced**
12 **uncertainty regarding the final NEIL distribution. What is the nature of that**
13 **uncertainty and how does it affect the net benefit analyses?**

14 A. The principal uncertainty for customers at the time was that, absent the settlement, they
15 might not receive 100% of the final NEIL distribution. A number of factors created that
16 risk: (1) PGE bore the risk that forecasted premiums would be insufficient to cover actual
17 premiums (Staff-PGE/200, Busch-Hager-Tinker/16-17); (2) PGE bore the risk of NEIL's
18 claims performance (*id.*); (3) the final NEIL distribution was a one-time event between rate
19 cases which might not be captured and returned to customers (Staff/500, Johnson/4-5); and
20 (4) the Commission had considerable discretion regarding distribution of the final NEIL
21 settlement payment. The settlement removed that risk by allowing customers to use a

1 portion of the final NEIL distribution along with the other customer credits in the settlement
2 to eliminate the Trojan balance and to retain the remainder (55%) of the final NEIL
3 distribution. By removing that risk, the settlement provided customers with an additional
4 benefit above and beyond the substantial benefit reflected in the net benefit analyses.

**VII. Issue No. 5 -- Mr. Lazar Fails to Show That the
Rates Approved in UM 989 Were Not Just and Reasonable**

A. The Net Benefit Analyses Are Based on Reasonable Assumptions

1 **Q. Mr. Lazar suggests that the net benefit analyses performed by PGE and Staff, which**
2 **the Commission adopted in the UM 989 final orders, are invalid because they allegedly**
3 **assume a “return on” Trojan through 2011. URP/500, Lazar/11-12. Is that correct?**

4 A. No. PGE and Staff presented two different net benefit analyses in UM 989 to provide a
5 range of benefits under the settlement. The first analysis was based on projected revenue
6 requirements of the various components of the settlement. The second analysis was based
7 on the existing balances of the components of the settlement as of September 30, 2000. The
8 analyses complemented one another and provided alternative viewpoints, which served as
9 independent checks on one another. While the revenue requirement net benefit analysis did
10 assume a return on Trojan in the absence of the settlement, the asset balance net benefit
11 analysis did not. Both approaches yielded similar results, with customers receiving a net
12 benefit from the settlement of between \$16.4 and \$18.5 million.

13 **Q. Is one of the net benefit analyses more certain?**

14 A. Yes. The asset balance net benefit test relies solely on the actual balances of the various
15 components of the settlement as of the effective date, September 30, 2000. It therefore
16 includes no forecasts about what would have occurred absent the settlement. For this
17 reason, it is more certain and less dependent upon future contingencies than the revenue
18 requirement net benefit test. Nevertheless, the revenue requirement net benefit test serves as
19 further confirmation of the benefits that flowed to customers from the settlement.

1 **Q. At the time of the settlement, what assumptions were reasonable regarding the future**
2 **ratemaking treatment of Trojan absent the settlement?**

3 A. Absent the settlement, either (1) PGE would earn a return on Trojan through 2011 or (2) the
4 Commission would have authorized PGE to recover its Trojan investment over a truncated
5 amortization period. At the time of the settlement, the UE 88 litigation was pending in the
6 Oregon Supreme Court so the ultimate outcome was uncertain. UE 100 rates, which were
7 the lawful rates at the time were set with Trojan included in ratebase, making it reasonable
8 to assume for the foreseeable future that, absent the settlement, customers would be paying
9 for a return on Trojan. If the Oregon Supreme Court determined that rates could include a
10 return on Trojan, then that rate treatment would have continued through 2011. If the Oregon
11 Supreme Court decided otherwise, then the Commission, upon receiving the remand, would
12 need to determine the appropriate recovery period for Trojan. Under those circumstances as
13 we discussed earlier, we believe the Commission would have followed good regulatory
14 policy and authorized PGE to recover the unamortized Trojan balance over a very short
15 period.

16 **Q. Does Mr. Lazar offer a competing assumption that is reasonable?**

17 A. No. As mentioned above, Mr. Lazar makes that unreasonable assumption that absent
18 approval of the settlement, the Commission would have required PGE to recover the
19 unamortized Trojan balance through 2011 without any interest. The problems with that
20 assumption highlight the reasonableness of the assumptions underlying the net benefit
21 analyses and the Commission's Order No. 02-227.

B. Mr. Lazar's CWIP Objection Is Unfounded

1 **Q. Mr. Lazar suggests that \$10.3 million in construction work in progress (CWIP) was**
2 **included in the Trojan balance as of September 30, 2000. URP/500, Lazar/12-14. Is**
3 **that true?**

4 A. No. The CWIP account at issue reflects the balance as of April 1995 in connection with the
5 net benefit test performed in UE 88. *See* URP 305. It does not reflect a CWIP balance as of
6 September 30, 2000. Most important, we understand Mr. Lazar's objection to be that
7 ORS 757.355 bars a "return on" that portion of the Trojan balance he believes constituted
8 CWIP. This is primarily a legal issue we will address in briefs, but Mr. Lazar's argument
9 here relies on his overarching and incorrect assumption that the settlement provided a
10 "return on" the Trojan balance. As addressed earlier, the settlement eliminated the Trojan
11 balance in an instant. The Trojan balance (and any part of that balance) earned no "return
12 on," making Mr. Lazar's ORS 757.355 argument irrelevant.

13 **Q. Are there any other problems with Mr. Lazar's CWIP argument?**

14 A. Yes. First, he overstates the amount of the CWIP balance at issue. Even if you accept his
15 assumption that \$10.3 million was included in the Trojan balance in UE 88, which is
16 incorrect, that does not mean that \$10.3 million remains in the Trojan balance as of
17 September 30, 2000. A significant portion of the CWIP would have been amortized by that
18 time. Second, the CWIP at issue is immaterial. Whatever amount of CWIP that might have
19 remained at the time of the settlement is dwarfed by the \$16.4 to \$18.5 million net benefit
20 the settlement provides.

21 **Q. URP's position appears to be that the Trojan balance in 1995 included some CWIP**
22 **which was carried forward to 2000. Do you agree with Mr. Lazar's position?**

1 A. No. There is no evidence that the Trojan balance resulting from the UE 88 final order
2 included any CWIP. In 1995, PGE had an unamortized investment balance in Trojan of
3 \$393.9 million. See URP 305. The Commission order disallowed \$27 million for plugging
4 and sleeving costs and \$26.8 million based solely on the net benefit test applied in UE 88.
5 As a result of these disallowances, PGE's unamortized balance was reduced to
6 \$340.2 million for ratemaking purposes.

7 **Q. Why then do you say that the \$340.2 million balance did not include CWIP?**

8 A. UE 88 did not address the issue directly because no party raised it in UE 88. URP made this
9 argument for the first time in UM 989, at least five years after the final order. The
10 Commission in UM 989 gave the most cogent explanation why the Trojan balance after UE
11 88 included no CWIP. PGE's unamortized investment balance before the UE 88 write-offs
12 was \$393.9 million. Even after subtracting \$10.3 million for CWIP, the unamortized
13 balance (\$83.6 million) was well above the final Trojan balance after the UE 88 write-offs.
14 If the Commission had been presented in UE 88 with URP's argument and agreed that \$10.3
15 million of the Trojan investment balance reflected CWIP, it would have eliminated the
16 CWIP balance as part of its ordered write-off of \$53.8 million from the Trojan balance. The
17 Commission would not have ordered disallowance of the CWIP on top of these regulatory
18 write-offs.

19 **Q. Why not?**

20 A. Such an independent and cumulative CWIP disallowance would inherently skew the results
21 of the net benefit test the Commission performed in UE 88. The point of the test was to
22 "identify the point at which ratepayers were indifferent between the options of continued
23 operation of Trojan and shutdown." Order No. 95-322 at 2. This test was designed to strike

1 a balance between PGE and its customers. The test held customers harmless for any costs
2 PGE incurred that were above the cost of keeping Trojan in service. Eliminating CWIP
3 from the net benefit test would bias the results in favor of closure because the closure
4 scenario could not include CWIP while the continued operation scenario could. As the
5 Commission concluded in Order No. 02-227, “this form of the net benefit test is not the one
6 the Commission used in Order No. 95-322, nor is it an appropriate test from a regulatory
7 perspective.” *Id.* at 17.

C. The Revenue Requirement Net Benefit Test

Made Reasonable Assumptions About UE 100 Rates

8 **Q. Mr. Lazar also claims that the revenue requirement net benefit analysis was invalid**
9 **because it included an entire year of UE 100 revenue requirement figures when UE 115**
10 **rates became effective on October 1, 2001. URP/500, Lazar/14-15. Is this a valid**
11 **criticism?**

12 A. No. It was reasonable for the Commission to assume that UE 100 rates would stay in place
13 for all of 2001. At the time the Commission initially approved implementation of the
14 settlement (September 30, 2000), the effective date for the rates the Commission would
15 establish in PGE’s next general rate case was not certain. An effective date of January 1,
16 2002, was a reasonable assumption under the circumstances. Moreover, Mr. Lazar fails to
17 show that the three months at issue would cause a material difference. His objection has no
18 impact on the asset balance net benefit test, which showed that customers received a \$16.4
19 million net benefit from the settlement.

20 **Q. Does that conclude your testimony?**

21 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing **Phase III Rebuttal Testimony of Jay Tinker, Stephen Schue and Patrick G. Hager** by e-mail and/or mailing a copy thereof, to each party that has not waived paper service, in a sealed, first-class postage prepaid envelope, addressed to each party listed below and depositing in the US mail at Portland, Oregon.

(Waives Paper Service)

David J. Meyer
Vice President & Chief Counsel
Avista Corporation
PO Box 3727
Spokane, WA 99220-3727
david.meyer@avistacorp.com

Stephanie S. Andrus
Assistant Attorney General
Department of Justice
Regulated Utility and Business Section
1162 Court Street NE
Salem, OR 97301-4096
stephanie.andrus@state.or.us

Paul A. Graham
Department of Justice
Regulated Utility & Business Section
1162 Court Street, N.E.
Salem, OR 97301-4096
paul.graham@state.or.us

(Waives Paper Service)

Lowrey R. Brown, Utility Analyst
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
lowrey@oregoncub.org

(Waives Paper Service)

Jason Eisdorfer
Energy Program Director
Citizen's Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
jason@oregoncub.org

(Waives Paper Service)

Robert Jenks
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
bob@oregoncub.org

Daniel W. Meek
Daniel W. Meek, Attorney At Law
10949 S.W. Fourth Avenue
Portland, OR 97219
dan@meek.net

Linda K. Williams
Kafoury & McDougal
10266 S.W. Lancaster Road
Portland, OR 97219-6305
linda@lindawilliams.net

(Waives Paper Service)

Ric Gale
Idaho Power Company
1221 West Idaho Street
P. O. Box 70
Boise, ID 83707-0070
rgale@idahopower.com

(Waives Paper Service)

Barton L. Kline, Senior Attorney
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
bkline@idahopower.com

(Waives Paper Service)
Monica B. Moen
Idaho Power Company
1221 West Idaho Street
PO Box 70
Boise, ID 83707-0070
mmoen@idahopower.com

(Waives Paper Service)
Michael Youngblood
Senior Pricing Analyst
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
myoungblood@idahopower.com

(Waives Paper Service)
Lisa D. Nordstrom
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
lnordstrom@idahopower.com

(Waives Paper Service)
Lisa F. Rackner
McDowell & Rackner PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204
lisa@mcd-law.com

(Waives Paper Service)
Katherine A. McDowell
McDowell & Associates PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204-1268
katherine@mcd-law.com

(Waives Paper Service)
Wendy McIndoo
McDowell & Rackner PC
520 SW Sixth Avenue, Suite 830
Portland, OR 97204
wendy@mcd-law.com

(Waives Paper Service)
Richard H. Williams
Lane Powell Spears Lubersky LLP
2100 ODS Tower
601 S.W. Second Avenue
Portland, OR 97204-3158
williamsr@lanepowell.com

(Waives Paper Service)
Portland Docketing Specialist
Lane Powell Spears Lubersky LLP
2100 ODS Tower
601 S.W. Second Avenue
Portland, OR 97204-3158
docketing-pdx@lanepowell.com

(Waives Paper Service)
Natalie L. Hocken
Assistant General Counsel
PacifiCorp
Office of the General Counsel
825 NE Multnomah St., Suite 1800
Portland, OR 97232
natalie.hocken@pacificorp.com

(Waives Paper Service)
Oregon Dockets
PacifiCorp
Office of the General Counsel
825 NE Multnomah St., Suite 1800
Portland, OR 97232
oregondockets@pacificorp.com

J. Jeffrey Dudley
Portland General Electric Company
121 SW Salmon, 1WTC1300
Portland, OR 97204
jay.dudley@pgn.com

Patrick G. Hager, III
Manager, Regulatory Affairs
Portland General Electric Company
121 SW Salmon, 1WTC0702
Portland, OR 97204
patrick.hager@pgn.com

Rates & Regulatory Affairs
Portland General Electric Company
121 SW Salmon Street, 1WTC0702
Portland, OR 97204
pge.opuc.filings@pgn.com

DATED this 13th day of June, 2008.

TONKON TORP LLP

By 

DAVID F. WHITE, OSB No. 01138
Attorneys for Portland General Electric Company

001991\00226\1020093 V001