

BEFORE THE OREGON PUBLIC UTILITY 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)**

**Phase 3 Response
Testimony**

URP Exhibit 500

TESTIMONY OF JIM LAZAR

Phase 3

May 19, 2008

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1 **Q. Please state your name, address, and occupation.**

2
3 **A.** Jim Lazar, 1063 Capitol Way S. #202, Olympia, WA 98501. I am a consulting
4 economist specializing in utility rate and resource issues.
5

6 **Q. Please summarize your qualifications.**

7
8 **A.** I have been engaged in utility rate and resource analysis since 1975, and have
9 been working as a consultant in the field since 1979. I have appeared as an expert
10 witness on more than 80 occasions before state regulatory commissions in
11 Washington, Oregon, California, Arizona, Idaho, Montana, and Hawaii, including
12 several appearances before the Oregon Public Utility Commission (OPUC) involving
13 Portland General Electric Co. (PGE), including this case (UM 989) in 2001. In
14 addition to my individual practice, I am a Senior Advisor with the Regulatory
15 Assistance Project (RAP), based in Gardiner, Maine, which provides technical and
16 policy assistance to regulatory commissions throughout the United States and around
17 the world. My testimony in this proceeding is in my capacity as an independent
18 consultant.
19

20 **Q. What is the purpose of your testimony in this proceeding?**

21
22 **A.** I have been asked to address certain elements of OPUC Order No. 02-227,
23 which has been reversed and remanded to the Commission. The ultimate issue, of
24 course, is what treatment the Commission should have accorded to the remaining
25 Trojan investment, in light of the decision in ***Citizens' Utility Bd. of Oregon and***
26 ***Utility Reform Project v. Public Utility Com'n of Oregon***, 154 Or App 702, 962
27 P2d 744 (1998), *pet rev dis'd*, 355 Or 591, 158 P3d 822 (2002) ("***CUB/URP v.***
28 ***OPUC***"). I have also been asked to provide answers to 7 questions set forth by the
29 hearings officer.

30 The Scoping Order for this Phase 3 (Ruling and Notice of Conference, February
31 22, 2008) limits all testimony to issues that were "raised in prior proceedings" but not
32 "any issues that were not raised in prior proceedings before the Commission, the
33 circuit court, or the Court of Appeals." Also excluded is "whether the portion of rates
34 collected from customers from 1995 to 2000 that reflect a return on the Trojan
35 investment should be used to reduce or eliminate the Trojan balance."

1 Counsel has advised me that the "prior proceedings" means the UM 989
2 proceeding and appeals of the Commission's decisions in that docket to the courts.

3 The Scoping Order also limits evidence in Phase 3 to "the facts existing at the
4 time the rates went into effect. Any new evidence presented by any party must have
5 existed on or before October 1, 2000, to be properly considered."

6 I previously submitted testimony in the UM 989 docket in 2001 and hereby
7 incorporate that testimony by reference. It is possible that my 2001 testimony
8 includes information that did not exist on October 1, 2000. But the testimony in UM
9 989 from all parties was submitted throughout 2001, and the Commission issued
10 OPUC Order No. 02-227 in 2002. So I do not comprehend the basis for limiting
11 testimony to evidence that existed before October 1, 2000. I also incorporate by
12 reference my previous testimony filed in this DR 10 / UE 88 /UM 989 consolidated
13 remand docket. It becomes directly relevant at various points below.

14 The remainder of my testimony will address the overall subject of this docket
15 and the specific issues noted by the hearings officer. I note that PGE did not
16 correctly state the issues in its testimony filed April 11, 2008.

17
18 **Q. What rate treatment of the remaining Trojan investment should the**
19 **Commission have adopted in response to *CUB/URP v. OPUC*?**

20 The Scoping Order (p. 2) states that the rates adopted in OPUC Order No. 02-
21 227 were to implement a settlement among Staff, PGE, and CUB in 2000.

22 Phase III of these remand proceedings will address the Court of Appeal's
23 [sic] remand of Order No. 02-227 in docket UM 989. The rates adopted in
24 Order No. 02-227 implemented a settlement reached by Staff, PGE, and
25 the Citizens' Utility Board of Oregon (CUB) in 2000. That settlement was
26 intended to respond to the Court of Appeals' decision in Citizens' Utility
27 Board v. Commission by prospectively removing both the return on and
28 the return of PGE's remaining Trojan investment from rates.

29
30 Thus, the ultimate issue is what rate treatment of the remaining Trojan investment
31 should the Commission have adopted in response to *CUB/URP v. OPUC*? Another
32 way to express this would be: What rate treatment of the remaining Trojan
33 investment would have been just and reasonable? That then provides the baseline
34 for deciding whether the rates adopted in OPUC Order No. 02-227 were just and
35 reasonable, which is one of the subissues identified in the Scoping Order.

36 It seems strange that the Commission would wait for more than 2 years from
37 the Court of Appeals decision. But, if responding to that decision was indeed the

1 purpose of the UM 989 proceedings (and is the purpose of this remand), the answer
2 is simple. It does not involve manipulating over a dozen other accounts of funds
3 owed to ratepayers by PGE or diverting refunds on nuclear insurance premiums paid
4 for by ratepayers or creating a "regulatory asset" and charging ratepayers \$47 for
5 having done so.

6 Instead, the clear and simple answer would have been to remove from PGE
7 rates the charges for Trojan return on investment, as of October 1, 2000 (or any
8 other date). This would have left open the issue of returning to ratepayers the
9 unlawful Trojan return on investment charged pursuant to OPUC Order No. 95-322
10 prior to the effective date of the order in the UM 989 docket, and the Commission in
11 the Scoping Order now demands exactly that.

12 We have previously identified and documented the charges in PGE rates, as of
13 September 2000, for Trojan return on investment. Those charges were \$35.202
14 million per year. URP Exhibit 202, p. 2 (May 19, 2005). My testimony then explained
15 why \$35.202 million is the correct number. URP Exhibit 200, pp. 3-4. The proper
16 course for the Commission in September 2000 would have been to order PGE to
17 reduce its rates, on an annualized basis, by \$35.202 million. As the courts concluded
18 that PGE could lawfully charge ratepayers for its Trojan return of investment, the
19 charges to ratepayers representing amortization of the Trojan investment balance
20 itself would have continued, as set forth in OPUC Order No. 95-322. In sum, the
21 Commission would have removed and corrected via UM 989 the only defect in OPUC
22 Order No. 95-322, as decided by the courts--allowing PGE to charge ratepayers a
23 return on investment on its Trojan investment.

24 In the next following general rate case (which happened to have an effective
25 date of October 1, 2001), the Commission would have determined PGE rates,
26 without having removed the \$161.9 million (minimum) in return-bearing accounts,
27 without having diverted NEIL insurance premium rebates to PGE shareholders, and
28 without having created the \$36.7 million (present value) "regulatory asset." There
29 was also no need for the elaborate and flawed "net benefit analysis" addressed later
30 in my testimony.

31 Since the rates in the next general rate case took effect on October 1, 2001, the
32 UM 989 reduction of \$35.202 million annually would have lasted for one year. OPUC
33 Order No. 02-227 claims that, compared with OPUC Order No. 95-322, OPUC Order
34 No. 00-601 and OPUC Order No. 02-227 reduced PGE rates in the first year by
35 \$10.2 million. Thus, PGE today still owes ratepayers the difference for that first year,

1 which is \$24.002 million with an average incidence date of April 1, 2001 (6 months
2 after the effective date of OPUC Order No. 00-601). That amount must be scaled to
3 the present, using PGE's authorized rate of return on equity in the meantime, and
4 then be credited back to ratepayers. I calculate this amount to be **\$56.2 million** at
5 10/1/2008.

6 Instead of this simple and accurate response to *CUB/URP v. OPUC*, the
7 Commission approved a "stipulation" reached by only some of the parties that
8 involved dozens of transactions that had nothing to do with Trojan. In essence, the
9 Commission treated the UM 989 proceeding as if it were a remand of UE 88. But,
10 instead of addressing only the remanded issue, the Commission went far afield and
11 included a variety of unrelated matters. The Commission's decision in UM 989,
12 OPUC Order No. 02-227, would have transgressed its own Scoping Order for Phase
13 3 of this docket.

14 But the Commission in OPUC Order No. 02-227 took an approach that sought
15 to preserve for PGE the right to charge ratepayers for a Trojan return on investment.
16 The Commission took away from ratepayers:

- 17 1. interest bearing accounts containing at that time at least \$161.9
18 million (and probably more), as indicated in my testimony in 2001;
19
- 20 2. the \$15.4 million in NEIL insurance rebates diverted to shareholders.
21

22 And the Commission imposed upon ratepayers the \$36.7 million (present value)
23 "regulatory asset."

24 Each of these should be refunded, with interest, to ratepayers. These changes,
25 as of October 1, 2000, cannot be disregarded now, because all of them significantly
26 increased PGE's rates since that time. The Commission should now reinstate, as of
27 October 1, 2000, all of the accounts owed to ratepayers. It should credit the \$15.4
28 million in NEIL rebates to ratepayers, as of the date those rebates were received by
29 PGE (late 2000). And it should nullify the \$36.7 million (present value) "regulatory
30 asset." All of these amounts must be scaled to the present, using PGE's authorized
31 rates of return in the meantime, and then be credited back to ratepayers. I calculate
32 the present value of these amounts to be \$390 million, \$37.1 million, and \$85.9
33 million, respectively. The total amount due to ratepayers from these four factors is
34 \$569.2 million.

35 As part of the "stipulation," PGE stopped its amortization to ratepayers for its
36 Trojan return of investment. Thus, the above amount due to ratepayers should be

1 reduced by the present value of that halted amortization. Based on an assumed
2 amortization of this amount over the period 2000 - 2011, at \$14.7 million per year,
3 this would reduce the amount due to ratepayer by \$243.1 million (present value as of
4 October 1, 2008).

5
6 The total of these calculations, as shown in my exhibit, is an amount due to
7 electricity consumers as of October 1, 2008 of \$326.1 million.

8
9 Having addressed what the Commission should have done in UM 989, and
10 should do now to correct OPUC Order No. 02-227, I turn to the specific subissues in
11 the Scoping Order.

12
13 **2. Issue 1: What was PGE's remaining undepreciated investment in Trojan**
14 **as of October 1, 2000?**

15 Here, I am precluded by the scoping order from presenting any evidence on
16 how the Commission should have calculated the PGE's remaining undepreciated
17 investment in Trojan as of October 1, 2000. It prohibits the offering of any
18 "*hypothetical* balance premised on rate adjustments in Phase I." Instead, the scoping
19 order allows only "evidence regarding the actual Trojan balance as of October 1,
20 2000." Since the actual Trojan balance as of October 1, 2000, is a function of the
21 books kept by PGE, I am precluded by the scoping order from presenting any
22 contrary evidence on this subject.

23 I note, however, that PGE's testimony on this subject is beyond the scope of the
24 issue allowed by the scoping order, which asks for the Trojan investment balance "as
25 of October 1, 2007." The PGE testimony never addresses that question but instead
26 offers a balance of \$180.5 million as of "9/30/2000," which is the wrong date.

27 Further, PGE's testimony here is inconsistent and self-contradictory and reflects
28 a misunderstanding of utility ratemaking. PGE 7500 (p. 4) states:

29
30 PGE received what was owed to it on 9/30/2000 for the remaining
31 investment in Trojan and customers received what was owed to them for
32 the balance of the customer credits.
33

34 If "PGE received what was owed to it on 9/30/2000 for the remaining investment in
35 Trojan," then the remaining undepreciated investment in Trojan as of October 1,
36 2000" was zero.

1 **3. Issue 2: Do the rates approved in Order No. 02-227 provide PGE with the**
2 **functional equivalent of a "return on" the remaining undepreciated**
3 **investment in Trojan?**

4 Yes. This occurs because the "stipulation" approved by OPUC Order No. 02-
5 227 caused ratepayers to trade interest-earning assets which are due them for a
6 non-interest earning asset (Trojan) held by the Company.

7 PGE and Staff have agreed that the "offset" accounts shown in Staff-PGE
8 Exhibits 203-205 (AR 269-71) (totalling at least \$161.9 million) were interest- or
9 return-bearing accounts. The majority of the credits to ratepayers cancelled under
10 the "Stipulation" were those stemming from the Enron acquisition of PGE (M Credit)
11 and from the power sale contract settlement with Southern California Edison Co.
12 (SCE). These accounts and the others listed as "offsets" were credits to ratepayers
13 which accrued interest for the benefit of ratepayers at the company's post-tax
14 authorized return on investment.

15 The trading of a non-return bearing Trojan ratebase amount in exchange for the
16 cancellation of return-bearing credits that PGE owes to ratepayers produces the
17 functional equivalent of a "return on" the remaining undepreciated investment in
18 Trojan.

19 The entire trade is, from a ratepayer perspective, absurd. Imagine that I offer to
20 trade to you \$300 million in zero-coupon U.S. Treasury bonds due in 2012. In
21 exchange, I would receive from you \$300 million in U.S. Treasury bonds, also due in
22 2012, which carry a 7% rate of interest. Would anyone consider this a reasonable
23 exchange of value? Obviously not, because the zero-coupon bonds are worth far
24 less than the bonds which carry the 7% rate of interest. This is the utility-industry
25 equivalent of Wimpy's adage: "I will gladly pay you tomorrow for a hamburger today,"
26 except in this case Wimpy is offering to pay you that same hamburger more than 10
27 years from now.

28 This "offset" has exactly the same result as placing the remaining Trojan
29 investment into ratebase which earns a return on investment. OPUC Order No.
30 02-227 removed from PGE's rate calculations credits of at least \$161.9 million that
31 PGE admittedly owed to ratepayers, all of which were carried on PGE's books in
32 accounts which earned a return on investment for the ratepayers and credited to the
33 ratepayers on an annual basis. Cancelling these accounts is exactly equivalent to
34 placing a \$161.9 million item into return-bearing ratebase, which (counsel advises) is
35 what ORS 757.355 prohibits, whether such is accomplished directly or indirectly.

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

3 Here, the PGE testimony addresses something other than the question posed
4 by the hearing officer.

5 No, the FAS 109 liability was not *properly* considered part of PGE's return of its
6 Trojan investment. Instead, the creation of this liability by the Commission
7 constituted a means for allowing PGE to charge ratepayers more than the
8 depreciated investment balance of Trojan. Its creation merely allowed PGE to
9 charge ratepayers an extra \$47.4 million over approximately 6 years.

10 PGE claims that the "Trojan FAS 109 asset represents the value of accelerated
11 tax benefits previously flowed through to customers that are expected to reverse over
12 time through higher tax expense in future years." Missing from the evidence is any
13 statement that PGE thereupon experienced the higher tax expense. The Circuit
14 Court Opinion and Order (p. 6) reversing OPUC Order No. 02-227 highlighted this
15 lack of evidence.

16 Frankly, this Court would be inclined to agree with Plaintiffs as to some of
17 these additional claims, particularly with respect to the handling of the FAS
18 109 amounts and the final NEIL distribution. Charging rate payers for
19 purported increases in PGE taxes without requiring proof that those taxes
20 were ever actually paid is certainly questionable. Similarly, no persuasive
21 explanation was offered to justify the shift of much of the final NEIL
22 insurance refunds from the rate payers to PGE.
23

24 **5. Issue 4: Did the rates approved in Order No. 02-227 improperly transfer**
25 **the proceeds and/or premium refunds from PGE's NEIL policy from**
26 **ratepayers to PGE?**

27 Yes. PGE agreed that the premiums paid to NEIL have previously been
28 included in the test years upon which PGE rates have been based and that previous
29 NEIL distributions back to PGE have been credited to ratepayers. Thus, PGE agreed
30 that ratepayers have paid the NEIL insurance premiums and in the past have
31 received any refunds of those premiums from NEIL to PGE. Consequently, the
32 diversion of 45% of all future distributions by NEIL to PGE represents a new net cost
33 to ratepayers, because it removes from them money that has been credited to
34 ratepayers in the past. The record shows that this new OPUC Order No. 02-227
35 treatment of NEIL refunds has cost ratepayers at least \$15.4 million in NEIL refunds
36 diverted to PGE's shareholder (45% of the \$34.3 million payment by NEIL to PGE
37 that occurred in October 2000). Here again, the situation is quite simple: the

1 ratepayers paid the underlying premium that gives rise to the refund, and are entitled
2 to the refund.

3 Diverting NEIL distributions to PGE's shareholder contradicts the fundamental
4 tenets of ratemaking. Ratepayers paid the premiums. Over the years, NEIL found
5 that it was not necessary to use all of the premium revenue to pay claims and
6 administrative costs, so it has been returning the surplus funds to its members,
7 including PGE. Since the premiums were counted as a cost charged to ratepayers,
8 then return of surplus premiums should be credited to ratepayers.

9 Allowing shareholders to capture the premium rebates opens a hole through
10 which the utility can funnel tens of millions of ratepayer dollars into the pockets of its
11 shareholders. It is a "heads I win, tails you lose" system, where the costs are borne
12 by ratepayers but subsequent refunds are diverted to the shareholder.

13 I have said in many of the courses I teach in utility regulation: "**All regulation**
14 **is incentive regulation.**" The clear incentive of accepting PGE's position in this
15 docket would be for the Company to intentionally acquire excessive insurance, the
16 premiums for which could be included in test year operating expenses, knowing that
17 there was a likelihood of receiving future refunds that could be flowed to
18 shareholders.

19 In prior phases of this docket, PGE has argued that "PGE's shareholders were
20 subject to a variety of risks for these payments. For example, PGE's shareholders
21 bore the risk that premiums would increase between rate cases, that NEIL might
22 experience a greater number of claims than anticipated, and that the NEIL
23 investment strategies might fail." All this is true in the opposite direction. Ratepayers
24 were also subject to a variety of risks. Under the Commission's approach, they
25 would have continued to pay higher NEIL premiums between rate cases, even if the
26 actual NEIL premiums were reduced. As for NEIL investment strategies failing, NEIL
27 investment strategies could have been more successful, also. There is no evidence
28 as to the astuteness or success of those investment strategies. All the record shows
29 is that NEIL is distributing money back to the utilities from which they derived the
30 premiums but that it was PGE ratepayers who paid the premiums, not PGE's
31 stockholders.

32 The simpler solution to this concern is for the Commission (like nearby
33 commissions in Washington and Idaho) to cease using forecasted test years in
34 setting rates and to instead use actual historical test years to set rates. In that

1 manner, only actual payments made, not estimated payments that could change,
2 would form the basis of rates.

3 Further, there can be no credible suggestion that the NEIL rebates to PGE
4 would be considered unusual or non-recurring events that would be disregarded
5 when setting rates. PGE paid premiums to NEIL every year, until 1994. PGE
6 received NEIL "distributions" in every year between 1987 and 1999 (steadily
7 increasing from \$239,000 in 1987 to \$4.97 million in 1999), before PGE received the
8 \$34.3 million "settlement" in 2000. Distributions from NEIL were not unusual and
9 were not non-recurring. In addition, the \$34.3 million "settlement" money from NEIL
10 was not unexpected. PGE spent considerable time negotiating that settlement and
11 examined numerous "scenarios." It is outrageous for a regulator to allow a utility to
12 retain for shareholders a 45% share of a "settlement," when the fund at issue
13 consists of money paid in by ratepayers. It is beyond outrageous to suggest that this
14 can be fully planned by the utility and then disregarded as a non-recurring event.

15 The bottom line is that there is no dispute that the 100% of the NEIL premiums
16 had been forecasted and fully included in rates and were paid for by ratepayers. In
17 Phase 3 discovery, PGE has now refused to indicate which of its payments to NEIL it
18 has ever excluded when presenting its test year cost of service in every general rate
19 case since the beginning of transactions between PGE and NEIL. It has also refused
20 to state which of the payments it has received from NEIL it has previously excluded
21 when presenting its test year cost of service in general rate cases. Having refused to
22 provide the requested information, PGE cannot later claim that maybe those
23 premium payments were somehow not fully included in rates.

24 But OPUC Order No. 02-227 nevertheless diverted 45% of the premium refunds
25 away from PGE ratepayers. This is contrary to the principles of ratemaking and
26 opens the door to future abuse. Such abuse was recognized as a real problem by
27 the Circuit Court in its review of OPUC Order No. 02-227:

28 Clearly at least a potential source of mischief, adoption of the filed
29 rate doctrine in the form urged by PGE could well encourage increasingly
30 aggressive and perhaps even deceitful utility rate proposals. Once
31 approved by the OPUC, the full financial benefit of all rates collected, no
32 matter how poorly warranted and justified, would be permanently locked in
33 and would never become refundable even when finally determined to be
34 unlawful after years of successive court appeals. In short, Defendants'
35 version of the filed rate doctrine has more in keeping with the satiric
36 scenarios of Joseph Heller's *Catch 22* and Lewis Carroll's *Through the*
37 *Looking Glass* than with responsible utility rate regulation.
38

1 Allowing PGE shareholders to retain the NEIL distributions paid for by ratepayers
2 would fit nicely with the writings of Heller and Carrol.

3 Finally, in discovery PGE has provided no additional NEIL transactions. Thus, I
4 must assume that NEIL provided no further money to PGE. PGE is obligated to
5 negate that assumption, if it is not true.

6
7 **6. Issue 5: Were the rates approved in Order No. 02-227 just and**
8 **reasonable?**

9 Curiously, the PGE witnesses do not address this issue. In the original
10 Commission proceeding and on appeal, PGE's justification for the massive shifts of
11 costs onto ratepayers and massive shift of benefits to shareholders is that ratepayers
12 were still better off, under the "net benefit analysis" in the stipulation.

13 PGE and Staff admitted that, as of the end of the first year after implementation
14 of the OPUC Order No. 00-601 rates (also adopted by OPUC Order No 02-227 at the
15 culmination of the contested case proceeding), the result of adopting the "Stipulation"
16 was to **increase** rates by \$25.7 million in Year 2, to **increase** rates by \$15.7 million in
17 Year 3, and to **increase** rates by \$15.7 million in Year 4. Staff-PGE Exhibit 204 (AR
18 270), column 17; TR 115-18 (AR 429-32). And this is \$25.7 million on top of and in
19 addition to the level of rates that the Oregon courts declared unlawful in ***CUB/URP v.***
20 ***OPUC***, because those rates included Trojan return on investment (profit).

21 OPUC Order No. 02-227 is seriously misleading on this subject, stating that the
22 "Stipulation" results in a rate reduction of at least \$10.2 million over first 12 months
23 (October 1, 2000 - 2001) and an additional \$2.5 million reduction in the future. These
24 claimed "rate reductions" are in comparison to the assumed continuation of the
25 OPUC Order No. 95-322 rates regarding Trojan investment, which the Oregon courts
26 have found to have been unlawful due to inclusion of Trojan return on investment.

1 The amounts that PGE claims as a "benefit" for ratepayers in its net benefit
2 analysis include an unspecified amount of Trojan return on investment. When
3 specifically asked for the Trojan amortization amounts from past years, Staff and
4 PGE did not provide them. TR 42-43 (AR 356-57).

5 PGE witness Hager admitted that none of their testimony identified the amounts
6 of amortization, return on investment, or other elements of the Trojan
7 investment-related revenue requirement. TR 45. The PGE witness guessed that the
8 amount of amortization (return of investment) in the \$59 million alleged first year
9 benefit from removing the Trojan investment-related annual revenue requirement
10 (shown in Staff-PGE Exhibits 203, 204, 205) was \$24 million.

11 As shown above, it can easily be calculated that the Trojan profits authorized in
12 OPUC Order No. 95-322 were \$35.202 million per year. Thus, the net benefit
13 calculations offered by PGE are based upon the assumption that removing the very
14 charges found unlawful by the Court of Appeals is counted as a huge "benefit" for
15 ratepayers. So, PGE's alleged "\$16-18 million rate reductions," even if in any way
16 accurate, would represent a reduction from a baseline that itself is unlawful by easily
17 over \$125 million.

18 The "net benefit analysis" adopted by OPUC Order No. 02-227 was
19 conceptually and mathematically faulty for several reasons:

20 **1. It counted as a benefit not charging ratepayers for CWIP on Trojan.**

21 OPUC Order No. 02-227 contends that the \$10.3 million in construction work in
22 progress (CWIP) included in the Trojan balance as of September 30, 2000, was for
23 contracts "that would have been transferred to a plant in service account," if indeed
24 the fuel had been delivered and consumed. But it was not. "When Trojan closed
25 prematurely, these contracts and other projects were cancelled and remained in
26 accounts as CWIP." ER-15.

1 OPUC claimed that ORS 757.355 does not prohibit a utility from charging CWIP
2 to ratepayers. But, throughout the last 12 years of litigation, the OPUC has
3 consistently stated that CWIP is the only type of charge that ORS 757.355 does ban.
4 This is discussed at length at **CUB/URP v. OPUC**, 154 Or App at 708-11, 962 P2d at
5 747-49. For example:

6 PUC and PGE agree that the language of the statute and the history of
7 measure 9 demonstrate that the target of the measure and the concern of
8 the statutes are with rates for "construction work in progress" (CWIP), i.e.,
9 uncompleted facilities or those planned for prospective use that are not yet
10 in use. * * *

11
12 In the present case, there are at least two aspects of the surrounding
13 statutory language that are at odds with PUC's and PGE's understanding
14 that the word "presently" and the statute relate only to CWIP and do not
15 also apply to facilities and plant that are no longer in use.

16
17 *Id.*, 154 Or App at 708, 962 P2d at 747.

18
19 PUC argues further, however, that the "legislative history" of Measure 9
20 demonstrates that its concern, as communicated to the electorate, was
21 exclusively with CWIP.

22
23 OPUC does not explain why "ORS 757.355 does not encompass CWIP
24 attached to an operating plant." OPUC in its brief to the Court of Appeals in **Utility**
25 **Reform Project v. OPUC**, 215 Or App 360, 170 P3d 1074 (2007) [hereinafter "**URP**
26 **v. OPUC** (UM 989)"] (p. 28) further stated:

27 Had Trojan not closed, those contracts would have been included as part
28 of the Trojan investment base.

29
30 True, but Trojan **did** close. If Trojan had remained operating, there would not have
31 been a violation of ORS 757.355, as recognized in **CUB/URP v. OPUC**.

32 OPUC in that brief also stated that "the CWIP would have eventually become
33 plant in service in the future under the 'no closure' scenario." Yes, but the "no
34 closure" scenario did not come to pass. Whether or not including such costs in one
35 or both sides of an equation would cause the outcome of the equation to be different
36 is immaterial. Yes, it is true, as the OPUC brief (p. 28) stated, "The closure

1 alternative would always have the benefit of excluding CWIP costs that would be
2 included in the no closure alternative," because, in the "no closure alternative," there
3 is no ban on charging CWIP to ratepayers.

4 OPUC (pp. 28-29) then claimed that the CWIP was added to the Trojan
5 investment balance "at the time the closure decision was made in 1994," although
6 the closure decision was made in January 1993. In any event, OPUC Order No. 02-
7 227 applies to rates taking effect on October 1, 2000, and any failure to object to this
8 CWIP in earlier rate cases is not relevant. This \$10.3 million imposed upon
9 ratepayers by OPUC Order No. 02-227 constitutes additional charges banned by
10 ORS 757.355.

11 **2. It inflated the asserted benefit by a faulty assumption about future**
12 **rate changes.**

13 The entire case for the "Stipulation" rests upon the assertion that it somehow
14 produced a small net benefit for ratepayers, compared with the alternative scenario
15 of continuing to charge ratepayers both return of investment and return on
16 investment, regardless of the decision in *CUB/URP v. OPUC*.

17 The Staff-PGE net benefit analysis assumed that the \$59 million Trojan
18 investment-related annual revenue requirement would have continued for the full
19 calendar year of 2001, based on the mere assumption that there would be no general
20 rate revision effective prior to January 1, 2002. Their net benefit analysis assumed
21 that, as soon as a general rate revision became effective, the annual Trojan
22 investment-related charges would fall from \$59 million to \$33.3 million, which is \$25.7
23 million less. Staff-PGE Exhibits 203-205 (AR 269-71).

24 The reason for this huge drop in annual charges under the "no settlement"
25 scenario is that PGE had no general rate revision between 1995 and 2001, so the
26 amount set for annual Trojan investment-related charges to ratepayers stayed at \$59

1 million, even though on its books of account PGE was assuming that the charges
2 were going down each year (being based on a declining investment balance as each
3 year's depreciation was taken). With a new general rate case, the Trojan investment-
4 related charges would be reset so that ratepayers would be paying both depreciation
5 and return on investment on the new Trojan investment balance (although that
6 balance would remain artificially high).

7 In any event, the Staff-PGE net benefit analysis was not an annualized
8 analysis. It was an analysis that went at least 12 years into the future and then
9 reduced the expected costs and revenues to present value. Part of the stream of
10 "costs" that ratepayers were assumed to bear in the "no settlement" scenario was
11 payment of full return of investment and return on investment for Trojan, according to
12 the terms of OPUC Order No. 95-322 (despite its reversal by the courts) until January
13 1, 2002. After that, under the "no settlement" scenario, the cost of the Trojan
14 investment to ratepayers would sharply decline, because of the situation described in
15 the previous paragraph.

16 In reality, however, PGE did not want to wait until January 2002 to get new
17 rates under a new general rate case. The general rate case order that actually took
18 effect for PGE on October 1, 2001 (UE 115 docket) granted to PGE an overall rate
19 increase of 38%. OPUC Order No. 01-777 (August 31, 1997). The percentage
20 increase was noted in the order denying reconsideration, OPUC Order No. 01-988, p.
21 1. This amounted to an increase in revenue requirement of about \$400 million per
22 year. Getting this rate increase in place faster, however, had the effect of rendering
23 the Staff-PGE net benefit analysis in UM 989 incorrect by a sum of one quarter of the
24 difference between \$59 million and \$33.3 million. Thus, the Staff-PGE net benefit
25 analysis, simply by assuming that the \$59 million Trojan investment-related annual
26 revenue requirement would have continued for the entire calendar year of 2001, TR

1 30 (AR 344), overstated the alleged "benefit" to ratepayers by one-quarter of \$25.7
2 million, which equals \$6.425 million. All of the parties knew this, long before the
3 OPUC issued OPUC Order No. 02-227 in 2002, since the order increasing PGE's
4 rates on October 1, 2001, OPUC Order No. 01-177, issued on August 31, 2001.

5 This also illustrates the underlying illogic of the "net benefit analysis." Merely by
6 assuming that the unlawful rate treatment, allowing Trojan return on investment,
7 would continue for some future period, the OPUC could have inflated the alleged "net
8 benefit" for ratepayers to any desired level. This inflation of alleged benefit would
9 then have justified, according to the OPUC, PGE and Staff, any number of other
10 highly irregular transactions and adjustments to as to move money owed to
11 ratepayers out of their pockets and into the pockets of PGE shareholders.

12 **3. It appears that, even with the erroneous inflation and faulty**
13 **assumptions, the final calculation of the "net benefit" was only \$1.5**
14 **million.**

15 PGE provided in discovery a spreadsheet file named Net Benefit Analysis
16 Corrected Original.xls. It shows a corrected "Net benefit before NEIL split" of \$1.5
17 million. It then adds \$13.1 million to that for "55% of NEIL Value to Customers."
18 Thus, it counts as a "net benefit" to ratepayers the return to them of 55% of the
19 known NEIL distribution. But the principles of ratemaking would require that 100% of
20 the NEIL distributions be returned to ratepayers, because ratepayers paid 100% of
21 the premiums that are being re-distributed to PGE. Merely following ratemaking
22 principles does not confer a "net benefit" on ratepayers, merely because ratepayers
23 could indeed be made worse off by disregarding ratemaking principles and simply
24 allowing the utility any number of "heads-I-win--tails-you-lose" arrangements, with
25 ratepayers paying in amounts that shareholders then withdraw. A "net benefit" to
26 ratepayers from any scenario or proposed rate treatment must have a lawful and

1 principled rate treatment as the baseline for comparison. It is clear that the "net
2 benefit analysis" in this docket has neither.

3
4 **7. Issue 6: Was Order No. 02-227 supported by adequate findings of fact and**
5 **conclusions of law?**

6 This is a legal issue that counsel will address in briefing.

7
8 **8. Issue 7: Did the Commission deny URP due process in docket UM 989?**

9 This is a legal issue that counsel will address in briefing.

10

**Refund Calculation for PGE
From Date of Improper Collection to 10/1/2008**

UM 989 Overcharge			\$	56,185,596
Improper Regulatory Asset			\$	85,909,982
NEIL Rebate			\$	37,094,853
Interest Bearing Accounts			\$	389,977,712
Less Trojan Amortization PV			\$	(243,097,731)
Total Due at 10/1/2008			\$	326,070,413

Revenue Requirement for UM 989 Overcharge

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Apr-01	\$ 24,002,000	10.5%	\$ 1,890,158	\$ 25,892,158
1-Jan-02	\$ 25,892,158	10.5%	\$ 2,718,677	\$ 28,610,834
1-Jan-03	\$ 28,610,834	10.5%	\$ 3,004,138	\$ 31,614,972
1-Jan-04	\$ 31,614,972	10.5%	\$ 3,319,572	\$ 34,934,544
1-Jan-05	\$ 34,934,544	10.5%	\$ 3,668,127	\$ 38,602,671
1-Jan-06	\$ 38,602,671	10.5%	\$ 4,053,280	\$ 42,655,951
1-Jan-07	\$ 42,655,951	10.5%	\$ 4,478,875	\$ 47,134,826
1-Jan-08	\$ 47,134,826	10.5%	\$ 4,949,157	\$ 52,083,983
1-Oct-08	\$ 52,083,983	10.5%	\$ 4,101,614	\$ 56,185,596

Revenue Requirement for "Regulatory Asset"

Present Value from 10/1/2000

Amount of Regulatory Asset: \$ 36,700,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	\$ 36,700,000	11.6%	\$ 1,064,300	\$ 37,764,300
1-Apr-01	\$ 36,700,000	10.5%	\$ 2,890,125	\$ 39,590,125
1-Jan-02	\$ 39,590,125	10.5%	\$ 4,156,963	\$ 43,747,088
1-Jan-03	\$ 43,747,088	10.5%	\$ 4,593,444	\$ 48,340,532
1-Jan-04	\$ 48,340,532	10.5%	\$ 5,075,756	\$ 53,416,288
1-Jan-05	\$ 53,416,288	10.5%	\$ 5,608,710	\$ 59,024,999
1-Jan-06	\$ 59,024,999	10.5%	\$ 6,197,625	\$ 65,222,623
1-Jan-07	\$ 65,222,623	10.5%	\$ 6,848,375	\$ 72,070,999
1-Jan-08	\$ 72,070,999	10.5%	\$ 7,567,455	\$ 79,638,454
1-Oct-08	\$ 79,638,454	10.5%	\$ 6,271,528	\$ 85,909,982

Revenue Requirement for NEIL Rebate

Amount of NEIL Rebate \$ 15,400,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	\$ 15,400,000	11.6%	\$ 446,600	\$ 15,846,600
1-Apr-01	\$ 15,846,600	10.5%	\$ 1,247,920	\$ 17,094,520
1-Jan-02	\$ 17,094,520	10.5%	\$ 1,794,925	\$ 18,889,444
1-Jan-03	\$ 18,889,444	10.5%	\$ 1,983,392	\$ 20,872,836
1-Jan-04	\$ 20,872,836	10.5%	\$ 2,191,648	\$ 23,064,484
1-Jan-05	\$ 23,064,484	10.5%	\$ 2,421,771	\$ 25,486,255
1-Jan-06	\$ 25,486,255	10.5%	\$ 2,676,057	\$ 28,162,311
1-Jan-07	\$ 28,162,311	10.5%	\$ 2,957,043	\$ 31,119,354
1-Jan-08	\$ 31,119,354	10.5%	\$ 3,267,532	\$ 34,386,886
1-Oct-08	\$ 34,386,886	10.5%	\$ 2,707,967	\$ 37,094,853

Revenue Impact of Interest Bearing Accounts

Interest Bearing Accounts \$ 161,900,000

Date	Beginning of Period Amount	Interest Rate	Accrued Interest to End of Year	End of Year Amount
1-Oct-00	\$ 161,900,000	11.6%	\$ 4,695,100	\$ 166,595,100
1-Apr-01	\$ 166,595,100	10.5%	\$ 13,119,364	\$ 179,714,464
1-Jan-02	\$ 179,714,464	10.5%	\$ 18,870,019	\$ 198,584,483
1-Jan-03	\$ 198,584,483	10.5%	\$ 20,851,371	\$ 219,435,854
1-Jan-04	\$ 219,435,854	10.5%	\$ 23,040,765	\$ 242,476,618
1-Jan-05	\$ 242,476,618	10.5%	\$ 25,460,045	\$ 267,936,663
1-Jan-06	\$ 267,936,663	10.5%	\$ 28,133,350	\$ 296,070,013
1-Jan-07	\$ 296,070,013	10.5%	\$ 31,087,351	\$ 327,157,364
1-Jan-08	\$ 327,157,364	10.5%	\$ 34,351,523	\$ 361,508,887
1-Oct-08	\$ 361,508,887	10.5%	\$ 28,468,825	\$ 389,977,712
Total:				

Elimination of Trojan Amortization

Unamortized Balance at October 1, 2000 **\$ 161,900,000**

Date	Amount of Amortization Otherwise Allowable	Interest Rate	PV To 2008
2000	\$ 14,718,182	11.6%	\$ 35,413,408
2001	\$ 14,718,182	10.5%	\$ 29,606,707
2002	\$ 14,718,182	10.5%	\$ 26,793,400
2003	\$ 14,718,182	10.5%	\$ 24,247,421
2004	\$ 14,718,182	10.5%	\$ 21,943,367
2005	\$ 14,718,182	10.5%	\$ 19,858,251
2006	\$ 14,718,182	10.5%	\$ 17,971,268
2007	\$ 14,718,182	10.5%	\$ 16,263,591
2008	\$ 14,718,182	10.5%	\$ 14,718,182
2009	\$ 14,718,182	10.5%	\$ 13,319,622
2010	\$ 14,718,182	10.5%	\$ 12,053,956
2011	\$ 14,718,182	10.5%	\$ 10,908,558
Total:	\$ 176,618,182		\$ 243,097,731

CERTIFICATE OF SERVICE

I hereby certify that I filed by e-mail at the filing center (the original) and filed 8 copies of the foregoing TESTIMONY OF JIM LAZAR, RELATED EXHIBITS AND CERTIFICATE OF SERVICE to the Filing Center by mail, postmarked this date, and that I served a true copy of the foregoing TESTIMONY OF JIM LAZAR, RELATED EXHIBITS AND CERTIFICATE OF SERVICE by mail and email to the physical addresses 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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