

## HOUSE COMMITTEE ON COMMERCE

March 29, 1999 Hearing Room 350

3:00 p.m. Tapes 30 - 31

**MEMBERS PRESENT:** Rep. Jim Hill, Chair

Rep. Al King

Rep. Jerry Krummel

Rep. Mark Simmons

Rep. Bill Witt

**MEMBER EXCUSED:** Rep. Ryan Deckert, Vice Chair

Rep. Bob Montgomery

Rep. Anitra Rasmussen

Rep. Diane Rosenbaum

**STAFF PRESENT:** Jason Cody, Administrator

Annetta Mullins, Administrative Support

**MEASURE/ISSUES HEARD:**

**HB 3220 ñ Public Hearing and Work Session**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 30, A		
004	Chair Hill	Calls meeting to order at 3:10 p.m. and opens the public hearing on HB 3220.

**HB 3220 n PUBLIC HEARING**

008	Jason Cody	Administrator. Explains HB 3220.
041	John DeLorenzo	Representing Portland General Electric (PGE). Introduces Jay Dudley, Assistant General Counsel for PGE and Patrick Hager, Manager of Regulatory Affairs, PGE.
050	DeLorenzo	Submits book of information ( <b>EXHIBIT A</b> ). Reads statement ( <b>EXHIBIT A, pages 3 - 12</b> ).
091	DeLorenzo	Reads "Description of the Bill" ( <b>EXHIBIT A, page 4</b> ).
109	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 5</b> ).
129	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 6</b> ).
160	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 7</b> ).
202	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 8</b> ).
238	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 9</b> ).
278	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 10</b> ).
309	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 11</b> ).
337	DeLorenzo	Continues reading statement ( <b>EXHIBIT A, page 12</b> ).
359	Rep. Witt	Asks who makes the determination of the time period of the depreciation.
368	DeLorenzo	Responds that the PUC ultimately makes the decision. Suggests Mr. Dudley can give details.
373	Jay Dudley	PGE. Refers the committee to ORS 757.140 ( <b>EXHIBIT A, page 18</b> ). Explains that (1) is the authority of the commission to set depreciation rates for recovery of public utility property. Adds that the time recovery for utility plan and property is done by the PUC.
390	Dudley	Explains how the determination is made on useful life.

402	Rep. Witt	Asks whether a public utility, when looking at making a major investment, goes to the PUC to get consent or some determination of what the useful life of the asset will be before investing in the asset.
410	Dudley	Responds there is a planning process that the electric utilities embark on called the least cost planning process. In that process the utility looks thoroughly at the major assets they may put in service for the benefit of the customers. Adds there is no explicit approval of the project; there is an acknowledgment of the plan by the PUC. Adds there is no decision at that time about the useful life or depreciation. Gives example of a coal plant that may last 30 years. After the plant is put in service, there is an opportunity to revisit the life the plant may operate. The lengths of time may be adjusted.
<b>TAPE 31, A</b>		
015	Bob Jenks	Executive Director, Citizens Utility Board of Oregon (CUB). Testifies in opposition to HB 3220 and proposes amendments ( <b>EXHIBIT B</b> ).
075	Rep. Witt	Asks if Mr. Jenks can speak about the 1979 ballot measure.
	Jenks	Explains the ballot measure was in 1978 and said utilities cannot include equipment and a long list of items in their rate base that are not presently used to provide service to customers. Adds that people have argued that only applied to construction work in progress, but construction is only one of several categories. CUB believes that at the time PGE retired Trojan the ballot measure applied.
115	Rep. Witt	Asks if it is the opinion of CUB that the 1978 ballot measure speaks specifically to not being able to get a rate of return on an asset that is not in service, and the 1989 statute specifies that the public utility can depreciate the cost of an asset even it is not used in service but cannot get a rate on return. Asks if that is how they reconcile the two.
122	Jenks	Believes the language of the ballot measure went beyond the rate of return. The 1989 act dealt with the depreciation and allowed for recovery of cost. There is no evidence profits were authorized on those facilities. Thinks the 1978 act, by saying you cannot put it in the rate base, clearly did allow profits.
134	Rep. Witt	Asks if they did not put something in the rate base not just to get a return, but also to get their investment back.
141	Jenks	Responds affirmatively.
142	Rep. Witt	Asks how they would interpret the language in the 1978 ballot measure to say that it applies specifically to a return on investment but not recovery of the investment itself.
148	Jenks	Responds that the title of the law, "Excluded from Rate Base" specifically would prohibit earning a return.

159	Rep. Witt	Asks if it is true they do not get their investment back either.
161	Jenks.	Agrees.
163	Rep. Witt	Asks what language leads Mr. Jenks to the conclusion that the 1978 act, in conjunction with the 1989 act, is now being interpreted in such a way as to deny a rate of return, but still allows a payback for the investment.
171	Jenks	Responds that the language, by prohibiting it from the rate base would also prohibit recovering the investment. The 1989 law specifically says the investment can be recovered, but does not allow a return on that. The court would harmonize the two laws by saying one is very specific about rate of return and the other is very specific about recovering the investment. To harmonize the two, one allows for them to recover their investment but does not allow them to make a profit on the investment. Adds that the Court of Appeals decision specifies how they came to that conclusion.
186	Rep. Krummel	Refers to Sen. Jolin's statement on the Senate Floor in materials submitted by Mr. DeLorenzo ( <b>EXHIBIT A, page 25</b> ). Asks if they don't agree the intent of the 1989 act was to try to protect the customers and to protect the ability of the utility to recover their cost. Asks if the court should not also look at the intent.
205	Jenks	Responds that the intent is they could recover their own investments. The Court of Appeals decision allows them to recover their investment. The issue is can they make an additional profit on that. Adds that Trojan was taken out of service because it did not work.
222	Jenks	Adds that Trojan was not replaced because technology changed and it was obsolete; it was replaced because it did not work. It was a failed investment. Enron bought the failed investment from PGE. The question is whether Enron should be allowed to change customers the lost profits. CUB believes Enron bought the plant under a set of rules that applied when they purchased PGE and they should be asked to live by the set of rules that the courts had already articulated.
266	Rep. King	Comments there were various dates during the consideration of closing Trojan. Adds that Trojan could have operated longer but it would have been a more expensive closure that would have been borne by the ratepayers.
276	Jenks	Explains PGE customer rates went up more than 7 percent because Trojan was closed.
300	Rep. King	Comments again that a longer term for closure would have driven rates up more.
315		Discussion continues on closure dates and cost to ratepayers.
344	Dan Meek	Portland attorney. Explains he has represented ratepayer groups at the Oregon PUC and elsewhere since 1983 and on occasion has represented CUB but not

		here. Submits statement and speaks in opposition to HB 3220 ( <b>EXHIBIT C</b> ).
400	Meek	Notes his position is somewhat different than CUB. Calls attention to the table ( <b>EXHIBIT C, page 3</b> ). Comments that PUC authorized PGE to charge ratepayers the amounts indicated for Trojan. Adds that it adds up to annual depreciation of \$251 million over 17 years. The annual return on investment, if you assume the authorized rate of return stays the same as it was then, adds up to \$304 million, totaling over \$555 million over 17 years. Notes that the charges do not include any of the decommissioning costs for Trojan.
424	Meek	Explains that the Court of Appeals stated the \$304 million amount was unlawful under the 1978 ballot measure and was not made legal by any of the 1989 legislation. Adds that the 1989 legislation dealt with retired plants and Trojan was not retired.
<b>TAPE 30, B</b>		
015	Meek	Adds that PGE, near the end of 1992, put out a report that indicated the immediate termination of Trojan was unacceptable and would cost ratepayers an additional \$400 million. Reviews problems with Trojan in November 1992 and closure of the plant.
044	Meek	Comments that Mr. DeLorenzo's testimony goes back to the 1989 legislation; the words "return on investment" do not appear in the quotations starting ( <b>EXHIBIT A, page 9</b> ). His quotation refers to "allowing recovery of undepreciated plant investments". HB 3220 allows "return on investment" and is completely different from the 1989 bill.
054	Meek	Reviews history of SB 78 of 1989 on utility depreciation noting the language in SB 78 that would have overrode Ballot Measure 9 was removed from the bill.
100	Meek	Comments that this committee is being asked to do something completely different than the legislature did in 1989. The committee is being asked to reverse a decision by the Oregon Court of Appeals that saved Oregon ratepayers a minimum \$304 million.
116	Rep. Witt	Asks why a "breaking" cannot be wear and tear.
120	Meek	Comments he would like to give the committee a copy of a memorandum he has written on the subject. Adds there is a legal distinction, in utility regulation law, between ordinary wear and tear, which can lead to retirement and an unusual event that causes an investment to suddenly lose its value.
128	Rep. Witt	Asks if a return on an investment is not a cost, the cost of capital.
140	Meek	Responds it is in economic theory, but not in the 1989 law because the 1989 law does not use the term in that manner. Adds that the word "cost" is not used in ORS 757.140.

141	Chair Witt	Asks if it is not implicit when ORS 757.140 says "may allow in rates".
145	Jenks	Responds he does not think it is and the Circuit Court and the Court of Appeals have ruled they don't believe it is.
167	Meek	Adds that the law itself does not refer to costs but refers to "amounts on the utility's books of account" referring to a rate base amount or an undepreciated balance amount, which does not include a calculated profit.
212	Chair Hill	Asks why the PUC erred according to the Court of appeals.
209	Ron Eachus	Chair, PUC. Introduces Paul Graham, Attorney General's (AG) office. Submits a prepared statement ( <b>EXHIBIT D</b> ) and comments that the PUC is not taking a position on HB 3220.
230	Chair Hill	Asks if PGE walked into the commission office and said they were closing Trojan, or whether it was a collaborative process.
247	Eachus	Responds that his testimony ( <b>EXHIBIT D</b> ) goes through some of the history. Summarizes history:
		<ul style="list-style-type: none"> <li>The commission does not have the authority to tell a utility what to build or the authority to tell a utility to shut down a plant.</li> </ul>
		<ul style="list-style-type: none"> <li>The commission has the authority to decide whether or not a plant will go into a rate base upon construction and the authority to determine, when doing a rate case, how much of the cost of the plant will be included in rates.</li> </ul>
		<ul style="list-style-type: none"> <li>There are two elements to costs: the fixed costs of a plant, which would be the return of those fixed costs and the return on the investment according to the rate of return the commission determines to apply in the rate case.</li> </ul>
		<ul style="list-style-type: none"> <li>Also there are variable costs of running the plant.</li> </ul>
		<ul style="list-style-type: none"> <li>Once a plant goes into rate base, as long as it is part of the rates (it is being used to provide power), the utility is entitled to the recovery of the fixed costs of the plant and the return on investment.</li> </ul>
		<ul style="list-style-type: none"> <li>It was put into the rate case in the late 70s; every commission, including the one he has served on, up until the time it was closed, had included it into rates.</li> </ul>
		<ul style="list-style-type: none"> <li>The issue was not should the plant have been built in the first place.</li> </ul>

		<ul style="list-style-type: none"> <li>In part, because of Trojan and because of other plant costs, in 1989 the commission established a least-cost planning process designed to look at all the resources and all the costs over a long-term planning period and to decide what was the most optimum mix, the least-cost mix of resources taking into account a number of risks and a range of uncertainties.</li> </ul>
		<ul style="list-style-type: none"> <li>That process provided the framework for consideration of the Trojan nuclear plant, its continued operation or its shut down.</li> </ul>
		<ul style="list-style-type: none"> <li>The analysis was driven in large part by things which Mr. Meek referred to: problems Trojan had with continued operation, when it was operating not operating at the expected capacity factor, shut down because of problems at the plant, identification of a \$200 million new investment that would be needed in order to reopen the plant and continue its operation.</li> </ul>
301		<ul style="list-style-type: none"> <li>The commission went through an extensive process in the least-cost planning process comparing the cost of continuing to operate Trojan with the cost of closing it down and replacing it with other resources.</li> </ul>
306	Eachus	<ul style="list-style-type: none"> <li>Refers to chart (<b>EXHIBIT D, page 6</b>) on Trojan analysis. Explains that in order to do the analysis correctly one has to assume that in the "Operate" and "Shutdown" scenarios the fixed costs of the plan, including "return on" and "return of" are constants for the purposes of this analysis of whether the best economical alternative is to close the plant or operate the plant.</li> </ul>
330		<ul style="list-style-type: none"> <li>Regardless of what the reasons are, regardless of the economics, once it is rate base if the utility continues to operate the plant, it will be entitled to the fixed costs.</li> </ul>
		<ul style="list-style-type: none"> <li>An imbalance is created in the equation if those are not considered.</li> </ul>
		<ul style="list-style-type: none"> <li>In the process of doing the analysis, PGE would say it came out a close call on whether it was economic to shut it down or not.</li> </ul>
340		<ul style="list-style-type: none"> <li>Conceptually, shutdown was the most economical alternative. When given fixed costs recovery in both scenarios, the variable costs of operating the plant actually exceeded the cost of replacing the plant.</li> </ul>
352		<ul style="list-style-type: none"> <li>PGE had to make a decision on whether to close the plant or continue operating the plant which involved some new investment</li> </ul>
		<ul style="list-style-type: none"> <li>Given the least-cost analysis, PGE had to consider what would be the likely treatment. PGE would say if you took Mr. Meek's interpretation that says once the plant is closed you don't get anything, even though they have new investment to make, there is no incentive for the utility to close it down.</li> </ul>
371	Paul Graham	Attorney General's office. Explains that in 1993 PGE asked the commission if

		they could get "return of" and "return on" Trojan if they could show that customers would be better off by retiring the plan and replacing with other resources. The commission responded yes. The case was appealed to the Circuit Court in Marion County and Judge Barber upheld the PUC. In 1995 the actual rate case came out and was appealed to the Marion County Circuit Court. Judge Lipscomb disagreed with Judge Barber. There are three opinions from the courts.
390	Chair Hill	Asks if it is fair to say that when PGE made the decision they relied on the Circuit Court decision.
392	Eachus	Responds he is not sure of the timing of it being upheld. Adds that he believes when the commission did the least-cost planning process, the commission did a declaratory ruling which was the commission's interpretation of what PGE was entitled to. PGE then closed the plant. The commission did the rate case. In the rate case, the commission also decided that PGE was not entitled to 100 percent because of a number of the reasons Mr. Meek mentioned. The commission did a different analysis in the rate case. The commission did a benefits analysis to determine whether it was in the public interest to close the plant. The commission determined PGE was not entitled to 100, but only 87 percent because the commission believed there was some culpability in the reasons why the plant was in this position.
409	Eachus	Had the utility decided to make investments and to continue operating the plant, the commission would have had no choice but to give them "return on" and "return of" investment because it had been in rate base and it would be continuing even though it might not be operating as efficiently. The commission would have changed the amount of variable costs that would have been put in rates.
425	Eachus	Comments this has been his recollection of the sequence of events. The case was then appealed to the court. The commission believed the existing law gave them the authority to do what they did. The commission was upheld on the declaratory ruling in one court. The other parties were upheld at the Circuit Court and the Court of Appeals, although for different reasons. CUB is saying the "return of" was okay, but "return on" is not. Mr. Meek is saying PGE should not get anything.
445	Eachus	Adds that on the issue of whether or not the plant was closed because it was "broke" -- for the commission was a decision of whether or not it was voluntarily shut down. The company could have voluntarily put the plant back in operation and incurred some investments but probably would not have gotten 100 percent recovery of the new investments, but would have gotten 100 percent recovery of the fixed cost of the initial plant.
<b>EXHIBIT 31, B</b>		
021	Eachus	The issue from the commission's point of view is what is the best public policy. Trojan was an issue in 1989 when the bill was introduced. The scope of Trojan was far larger in magnitude.
030	Rep. Rosenbaum	Asks if other rate cases would be impacted if HB 3220 should pass.



034	Eachus	Responds no, because there is no rate case on appeal. Adds that if HB 3220 were not to pass and the Circuit Court continued to rule that there cannot be "return of" investment but there can be "return on" investment, it would require a remedy in the future.
057	Rep. Witt	Comments that testimony was that the rate of return was roughly 13.5 percent and was given in the view that this makes this a speculative or risky investment. Asks Mr. Eachus to comment on how the rate of return was set. Asks if that rate of return would reflect some kind of high level risk.
066	Eachus	Explains the rate of return was set at the time the commission set the rate case. Adds that the rate of return will change as the commission does further rate cases and would reflect the risk assessment at the time.
077	Rep. Witt	Asks if it is Mr. Eachus' conclusion, based on the chart ( <b>EXHIBIT D, page 6</b> ), that PGE ultimately saved ratepayers dollars by shutting down the facility when they did.
082	Eachus	Responds it is the conclusion of the commission that over the period of the life of Trojan, its remaining life, the ratepayers will be paying less by closing Trojan down and continuing to pay the fixed cost than if the additional investments were made and Trojan continued to operate.
090	Rep. Witt	Asks if that conclusion includes "rate of return" on those fixed costs.
090	Eachus	Responds that is correct. Adds that in both analyses they assumed fixed costs of and return on as constants.
093	Chair Hill	Asks if the attorney general gave the commission an opinion on "return of" and "return of".
092	Graham	Responds affirmatively. Explains the opinion was given before the declaratory was filed with the commission. The opinion of the AG was and still is that the law allows both "return of" and "return on" investments at a prematurely retired plant.
100	Tom Lenhares	Columbia County Tax Assessor. Comments he is representing the Columbia County Board of Commissioners and the taxing districts of Columbia County. Comments on loss of jobs in Columbia County when Trojan was closed. Adds that PGE and the Trojan facility represent about 11 percent of the total value in Columbia County. Adds that nobody can give him a value of the facility; PGE's Corporate Tax Manager, feels he will request a zero value from the Department of Revenue. Columbia County has the potential for losing if not all the \$368 million in assessed value, a large amount. It is about one-half of the tax collections for the Rainier School District and over half for the Rainier Rural Fire District.
168	Lenhares	Adds that PGE has been very good to the county. Comments this is not just a Trojan bill, but will encourage investments the proponents of another bill say

		will be made.
202	Katherine McDowell	Council to PacifiCorp. Submits and reads a prepared statement in support of HB 3220 ( <b>EXHIBIT E</b> ).
242	Lloyd Marbett	Representing himself. Testifies in opposition to HB 3220. Presents his views of PUC's handling of PGE's responsibilities for Trojan and problems being encountered at Trojan at the time of closure.
290	Marbett	Continues his explanation of events surrounding the closure of Trojan.
340	Marbett	Comments the legislature is being asked to make a decision retroactively to let the company off the hook for an economic decision which, he believes, belongs in the hands of the stockholders who were warned year after year that these problems existed at Trojan.
354	Chair Hill	Closes the public hearing and opens the work session on HB 3220.
<b><u>HB 3220 n WORK SESSION</u></b>		
360	Rep. Witt	Comments on testimony and explains why he will support HB 3220 as written.
391	Rep. King	Presents his view on the handling of the Trojan plant failure.
417	Rep. Krummel	Explains his yes vote on HB 3220.
461	Rep. Simmons	Explains why he will support HB 3220.
<b>469</b>	<b>Rep. Simmons</b>	<b>MOTION: Moves HB 3220 to the floor with a DO PASS recommendation.</b>
<b>477</b>		<b>VOTE: 5-0</b>  <b>AYE: In a roll call vote, all members present vote Aye.</b>  <b>EXCUSED: 4 - Reps. Deckert, Montgomery, Rasmussen, Rosenbaum</b>
	<b>Chair Hill</b>	<b>The motion CARRIES.</b>  <b>REP. WITT will lead discussion on the floor.</b>

493	Chair Hill	Adjourns meeting at 5:02 p.m.

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

#### **EXHIBIT SUMMARY**

**A ñ HB 3220, book of information including prepared statement, John DeLorenzo, 38 pp**

**B ñ HB 3220, prepared statement, Bob Jenks, 3 pp**

**C ñ HB 3220, prepared statement, Daniel Meek, 4 pp**

**D ñ HB 3220, prepared statement, Ron Eachus, 7 pp**

**E ñ HB 3220, prepared statement, Katherine McDowell, 1 p**