

BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PUBLIC UTILITY	)	UM 1690
COMMISSION OF OREGON,	)	
	)	REPLY COMMENTS OF NOBLE
Voluntary Renewable Energy Tariffs for Non-	)	AMERICAS ENERGY SOLUTIONS
Residential Customers.	)	LLC

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**INTRODUCTION AND SUMMARY**

In accordance with the directives of the Staff of the Public Utility Commission of Oregon (“OPUC” or “Commission”), Noble Americas Energy Solutions LLC (“Noble Solutions”) hereby submits its reply comments. Noble Solutions’ initial comments thoroughly addressed the reasons why the utilities should not be permitted to use the voluntary renewable energy tariff (“VRET”) to gain a special advantage over direct access suppliers by providing generation alternatives that are not subject to the same restrictions applicable to direct access programs to protect non-participating customers. Those comments are applicable to PacifiCorp’s suggestions to the contrary and need not be repeated here. Noble Solutions files this reply for the limited purpose of addressing the newly proposed VRET models set forth in Portland General Electric Company’s (“PGE”) comments.

PGE’s comments begin to provide a description of its preferred VRET model. Yet PGE’s first proposal – titled “Subscription Model and Utility Owned” – is difficult to comment upon due to varying descriptions of it in PGE’s comments. The proposal is unclear on whether the VRET customer will be served by existing rate-based renewable resources or some newly

procured portfolio of rate-based renewable resources. However, each of these scenarios raises significant red flags and requires extensive further review to prevent cost shifts to non-participating customers and harm to the competitive market through the use of special contracts.

PGE's second proposal – titled “Power Purchase Agreement (‘PPA’) Model and Third Party/Customer Owned” – appears conceptually similar to existing direct access models utilizing the ongoing valuation methodology. While the benefit of replicating this little-used direct access model into a VRET is not entirely clear, it is not objectionable from the stand-point of non-participating customers and competitive suppliers so long as no unfair advantage is created in the process of calculating the avoided cost comparison.

## **REPLY COMMENTS**

### **A. PGE's Utility-Ownership Model**

PGE's first proposal for utility-ownership is unclear. On the one hand, PGE describes its utility-ownership option as a green resource that “would be built” and for which “PGE would rate base the equivalent of null power at avoided cost.” *PGE's Comments* at 1. This appears to describe a model where PGE procures a new portfolio of VRET-specific renewable generation. On the other hand, PGE explains: “Using *an existing resource* in a VRET would, by its very use, eliminate that project from use in compliance with the RPS and require utilities to acquire additional new resources to comply with the RPS.” *PGE's Comments* at 3 (emphasis added). It is therefore unclear whether PGE's proposal is: (1) to acquire a new portfolio of renewable resources to solely serve VRET customers, (2) to use existing PGE renewable resources to serve VRET load and to “backfill” its renewable portfolio standard (“RPS”) needs for non-VRET customers with new resources, or (3) to pick and choose on a case-by-case basis and thus use a

VRET “tariff” as a de facto special contract option. Each scenario carries a significant risk of violating HB 4126’s directives.

### **1. New Rate-Based Resources Serving VRET Load**

The proposal to rate-base newly acquired renewable resources for VRET customers raises significant problems. Rate-basing a new resource that is acquired outside of the least-cost planning process poses risks of under-subscription, departing customers who decide to leave the VRET or go out of business altogether, and complex accounting problems to ensure non-participating customers are held harmless. With regard to the obvious problem of a potential under-subscription, PGE states it “is not interested in taking on significant risk of under subscription.” *PGE’s Comments* at 8. This is hardly a solution that could be endorsed in the Commission’s Study under HB 4126. PGE also provides the conclusory explanation that everything will work out just fine because the VRET customers will still be paying cost-of-service rates plus an unspecified “premium.” But PGE fails to acknowledge that the “premium,” enrollment windows, and other restrictions must mirror the parameters of existing direct access options to comply with HB 4126 and protect non-participating customers.

PGE also explains that it “does not view VRET customers as ‘leaving its cost of service system.’” *PGE’s Comments* at 7. This over-simplifies PGE’s proposal. Instead of the least-cost portfolio developed through years of planning, PGE’s proposal would result in a portfolio that would likely contain VRET resources that are not a part of the least-cost plan. The VRET customers will opt out of PGE’s least-cost portfolio in a very similar manner to direct access customers. However, unlike direct access, these VRET alternative generation resources will be rate-based – creating a very real risk of cross subsidization and preferential treatment to VRET

customers to increase the utility's profit and/or create a competitive advantage over direct access suppliers. Precisely tracking and assigning the cost differential to VRET customers will present difficult accounting issues and could provide opportunities for cost-shifting and preferential treatment that the Commission should not allow.

## **2. Existing Resources Serving VRET Load**

PGE's proposal to use existing utility-owned renewable resources to serve VRET load likewise presents unreasonable difficulties. For example, PGE's existing renewable resources did not all cost the same – thus providing PGE with the opportunity to assign the renewable energy credits (“RECs”) from the cheapest existing resources to the VRET to keep VRET costs down to the disadvantage of non-VRET customers who will be left to back-fill with more expensive new renewable resources to meet the RPS needs. This risk is all the more pronounced with the recent and future expirations of various federal tax credits. Additionally, under-subscription or departing VRET customers could cause PGE to acquire additional renewable resources outside of the least-cost plan that are not needed for VRET and non-VRET loads. These and other problems must be resolved prior to any Study or Commission decision that would authorize a utility-ownership model.

## **3. De Facto Special Contract Tariff**

Nothing in HB 4126 exempts the VRET from the requirement that this special rate classification not harm remaining customers. *See* ORS 757.230; *Wah Chang v. Pub. Util. Commn.*, 256 Or.App. 151, 165, 301 P.3d 934, 942 (2013) (““ORS 757.230(1)(a) and (b) protect remaining customers by ensuring that special tariff rates do not become too low.”). Because the VRET will be a “rate classification primarily related to . . . a service alternative,” ORS 757.230,

it “*must protect—not harm—remaining customers.*” *Wah Chang* , 256 Or.App. at 166-67, 301 P.3d at 943 (emphasis added).

The Commission should ensure the ambiguity in existing utility-ownership proposals is not leveraged to turn the VRET into a de facto special contract option with the high likelihood of harming remaining customers. The unspecified “premium” charge, ambiguity as to whether existing or new resources will be used, and multiple other ambiguities in PGE’s proposal create loopholes that would result in a de facto special contract option that could change with each individual customer. Instead of endorsing this approach, the HB 4126 Study should conclude that a utility-ownership option should not be pursued because HB 4126 was not intended to be an end-run around the Commission’s prohibition against special contracts to the potential (and very likely) detriment of non-participating customers and the competitive market. At a bare minimum, utility-ownership models would require extensive further workshops and, even if the issues could be resolved, would create a major administrative burden on the Commission after their adoption.

**B. PPA Model and Third-Party/Customer Owned**

PGE’s non-utility-owned model does not rely on an ambiguous “premium” charge and instead requires the VRET customer to pay cost-of-service rates against which are credited the avoided cost of the new renewable energy supplied to PGE. This is conceptually similar to existing one-year and three-year direct access options under the ongoing valuation methodology where the customer perpetually pays cost-of-service rates with a credit or charge for the market value of the generation the utility would have supplied to the customer. *See* OAR 860-038-0005(41); PacifiCorp’s Schedule 294; PGE’s Schedule 128. PGE does not explain why an

ambiguous “premium” applies to its utility-owned model while its non-utility-owned model essentially tracks existing short-term direct access options. In any event, Noble Solutions does not find anything objectionable regarding PGE’s non-utility-owned model so long as the avoided cost valuation does not create an unfair advantage over direct access options.

DATED this 9th day of January, 2015.

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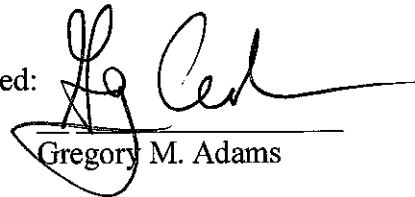
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