



## Northwest and Intermountain Power Producers Coalition

### COMMENTS ON STAFF RECOMMENDATION ON VOLUNTARY RENEWABLE ENERGY TARIFF And PROPOSED VRET MODEL Docket UM 1690

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully provides the following comments on the Commission’ Staff’s November 20, 2015 recommendation in Docket UM 1690 (the “**Recommendation**”). Our comments address whether the Commission should authorize utilities (*i.e.*, Portland General Electric and PacifiCorp) to offer a Voluntary Renewable Energy Tariff (“**VRET**”). NIPPC greatly appreciates the effort Staff has made in this docket, and concurs with most (but not all) of its recommendations.

Along with our comments on Staff’s Recommendation, NIPPC has included a proposed form of a VRET (henceforth an “**Eligible Renewable Energy VRET mechanism**” or an “**ERE-VRET**”) that meets the criteria set forth both in HB 4126 and in the Staff’s Recommendation. This ERE-VRET is built on the Commission’s existing Direct Access framework (Division 38 of the Commission’s Regulations,<sup>1</sup>) but differs from existing Direct Access offerings currently available. The proposed ERE-VRET provides a mechanism to ensure, as required by the statute, that there are no cost or risk shifts to other market participants, without creating excessive new regulatory burdens, while encouraging development of new renewable energy capacity.

Our comments are presented in three sections. First, we ask the Commission to consider whether continuing with this proceeding is advisable. Next, NIPPC describes its proposed ERE-VRET Model, and explains how its terms and condition comply with the statutory framework underlying this proceeding. Last, we provide specific comments on certain elements of the Staff Recommendations.

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<sup>1</sup>Oregon Public Utility Commission Regulations, Division 38, Direct Access Regulations, OAR 860-038-0001 through 860-038-0640, available at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_038.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_038.html). See also related statutory sections found in ORS 757.600 through ORS 757.691 (<http://www.oregonlaws.org/ors/757.600> *et seq.*)

## **SECTION I: Is a VRET in the Public Interest?**

In evaluating whether a VRET is in the public interest, it is important to keep at the forefront the five statutory factors set forth in HB 4126. The Legislature requires the Commission to determine whether, and under what conditions, it is reasonable and in the public interest to allow electric companies to provide voluntary renewable energy tariffs to nonresidential customers. The factors it instructs the Commission to consider are:

- (1) Whether allowing electric companies to provide VRETs to nonresidential customers promotes the further development of significant renewable energy resources;
- (2) The effect of allowing electric companies to offer VRETs on the development of a competitive retail market;
- (3) Any direct or indirect impact, including any potential cost-shifting, on other customers of any electric company offering a VRET;
- (4) Whether the VRETs provided by electric companies to nonresidential customers rely on electricity supplied through a competitive procurement process; and
- (5) Any other reasonable consideration related to allowing electric companies to offer VRETs to their nonresidential customers.<sup>2</sup>

In addition, HB 4126 includes an overarching requirement that a VRET not trigger any shifting of costs or benefits onto non-participating ratepayers.

The Commission's directive in this proceeding is not to find ways to approve a VRET; rather, it is to evaluate the need for a VRET, given specified statutory standards and alternatives available, and determine whether, and under what conditions, it is reasonable and in the public interest to allow utilities to file a VRET – always with the caveat that both all of the *costs* and all of the *benefits* of any such program be exclusively borne by the customers receiving such service.

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<sup>2</sup> Within the final “catchall” categories, one clearly relevant consideration is the costs and burdens that would be placed on the Commission, its Staff, and other market participants in participating in regulatory proceedings related to any VRET matters, including evidentiary hearings on matters related to cost-shifting.

This docket has been proceeding for 18 months, and we have yet to see a concrete proposal from the utilities. Any further proceedings will take additional Commission time and resources, not to mention significant time and resources of participating parties.

As described below, NIPPC is offering for the Commission's consideration a specific proposal demonstrating how a VRET could meet all the statutory requirements of HB 4126. Prior to addressing specifics our proposal, though, we ask the Commission to take a step back and consider following stripped-down analysis on whether it is worthwhile moving to yet another phase of this proceeding. We start with five common sense observations:

- A. HB 4126 forbids any cost shifting related to a VRET: "All costs and all benefits associated with a voluntary renewable energy tariff shall be borne by the nonresidential customers receiving service under the voluntary renewable energy tariff." This limitation on cost shifting is even more stringent than in the extant Direct Access regulations.<sup>3</sup>
- B. Any mechanism that insures no cost shifting will require Commission review, and use of extensive Commission resources (not to mention resources of other interested parties).
- C. Oregon already has a mechanism in place under which a non-residential customer can purchase renewable power: Direct Access. Under Direct Access, commercial and industrial customers can purchase renewable power from a specified resource or set of resources, under terms and conditions that meet their commercial objectives, including fixed-rate options for a variety of terms.
- D. The primary reason given as to why Direct Access does not have higher utilization is due to the high transition costs placed on Direct Access rates to eliminate cost shifts related to stranded costs from load leaving the system.
- E. The cost shift that must be mitigated from a customer electing to leave a utility's system and to receive power from a VRET product and the cost shift from a customer electing to leave a utility's system receive power from an ESS through Direct Access will be very similar, if not identical. As Commission Staff has noted, there is

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<sup>3</sup> The Direct Access regulations expressly contemplate allowing for cost shifting provided it is not "unwarranted," ORS 757.607(1), whereas HB 4126 contains an express prohibition on cost shifting.

simply no way for a VRET product to be a “better deal” than Direct Access given the prohibition on cost shifting.<sup>4</sup>

The inescapable conclusion is that, as long as containment of VRET cost shifts will approximate Direct Access – and no party has offered any rational basis for arguing that they would not – a VRET will not offer any material benefit over and above what is currently available. What its implementation will do, however, is place a not-insignificant financial and workload burden on the Commission and stakeholders.

To the extent there is any credible disagreement among the participants in this proceeding on the accuracy of the statements made above, NIPPC welcomes the opportunity to address such issues of fact in an appropriate forum, where parties may challenge unsupported contentions.<sup>5</sup> But absent such evidentiary finding, NIPPC submits that moving forward with yet another phase of this protracted proceeding is not a worthwhile expenditure of the Commission’s resources.

Notwithstanding our assessment, NIPPC believes a VRET consistent with HB 4126 and the Staff Recommendation can be implemented reasonably expeditiously and with minimal ongoing oversight, as set forth below, by using the existing Direct Access framework as the basis for such a program. We address that in Section II below.

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<sup>4</sup> Staff Recommendation at p. 5 (“Not listed above is the possible perceived customer benefit that a VRET could provide a lower cost option to specific renewable resource products than direct access because the customer load is not leaving the utility system, and therefore, transition charges would not apply. ***It is important to clarify that this perception is not a viable option for a VRET design because any design would need to follow the statute and not allow any cost-shifting to nonparticipants. Cost shifting is the only way a VRET could be a “better deal” than direct access.***”) (Emphasis supplied.)

<sup>5</sup> NIPPC believes that a number of other issues raised by various parties in this proceeding would benefit from an evidentiary hearing, including an opportunity for discovery and cross examination. As just one example, some parties appear to suggest customers have a desire to purchase VRET service from the utilities. NIPPC believes that this is patently untrue – in fact, the various customer representatives have repeatedly indicated that they do not care whether they are purchasing from the utility or a third party, and have expressed a direct preference for a “retail choice” (*i.e.*, a Direct Access) model. The Commission should place no credence on suggestions that the ability to purchase renewable energy from the utility (as opposed to anyone else) is important to prospective customers without a record on which to base its conclusion.

<sup>6</sup> *Division 38, Section 860-038-0001 (53)* "Renewable energy resources" means:

## **SECTION II: NIPPC's Proposed ERE-VRET Model.**

To the extent the Commission chooses to press ahead and authorize a VRET, NIPPC respectfully submits for the Commission's consideration an "Eligible Renewable Energy VRET" mechanism (or an "**ERE-VRET**"), based on existing Direct Access regulations, but which *is distinct and separate from* service offerings currently available under Direct Access. The basic structure of the ERE-VRET is described below.

- A. New Tariff.** Utilities will file a new tariff service(s) (separate and apart from existing direct access offerings) under which customers may purchase some or all of their energy requirements in the form of eligible renewable energy from a registered Electricity Service Supplier ("**ESS**"). The tariff will be designed to meet the requirements of ORS 860-038-0260(6) and (7).
- B. Renewable Energy Sources:** Eligible Renewable Energy, or "**ERE**" will be as defined in Chapter 469A - Renewable Portfolio Standards, Section 469A.025. We note that this is a more expansive definition of "renewable energy sources"<sup>6</sup> and a different definition of "new renewable energy sources"<sup>7</sup> than referenced in the Direct Access regulations, which specify "new" resources include facilities that entered service after July 23, 1999. However, references to renewable energy sources and new renewable energy sources as used in the Division 38 Regulations relate to portfolio options to residential customers and use of public purpose charge funds (*see* ORS 757.603(2) and 757.612), which are in no way determinative of the appropriate definition or renewable energy sources for purposes of achieving the

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<sup>6</sup> Division 38, Section 860-038-0001 (53) "Renewable energy resources" means:

- (a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power, or by low-emission nontoxic biomass based on solid organic fuels from wood, forest, and field residues;
- (b) Dedicated energy crops available on a renewable basis;
- (c) Landfill gas and digester gas; and
- (d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

<sup>7</sup> Division 38 of the Commission's Regulations define a "New Renewable Energy Resource" as "A New renewable energy resource as used in ORS 757.612(3)(b)(B), has the meaning provided in 757.600(21) and references a specifically identified project that has, or is planned to have after construction, a nominal electric generating capacity, as defined in 469.300, of 20 megawatts or less." Section 757.600(21), in turn, defines a New Renewable Energy Resource as "a renewable energy resource project, or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that is not in operation on July 23, 1999. New renewable energy resource does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999." NIPPC does not believe the size limitation or the 1999 operation date is appropriate for this circumstance.

subsequent legislative goals of the VRET bill.<sup>8</sup>

**C. Provision of ERE-VRET Service by Utilities/Third Parties** ERE-VRET service will be a service provided by the utility through a tariff filed with the Commission; however, a regulated utility will not be permitted to own the generating assets that serve ERE-VRET load. Ownership of generation assets can be provided by any entity that qualifies as an ESS under the existing direct access rules.<sup>9</sup> These rules expressly allow the utilities to provide power as an ESS, provided they act through affiliates, and maintain proper accounting and separation requirements.<sup>10</sup> By allowing any entity to participate on an equal basis, this structure generally removes any concern that an ERE-VRET would harm the ongoing development of a competitive retail market. At the same time, it allows customers the opportunity to purchase additional renewable energy from multiple suppliers, encouraging robust competition.

**D. Separate Customer Class/Eligibility to Receive ERE-VRET Service** Customers electing ERE-VRET Service shall be defined as a class of customer separate and apart from other customer classes, and would include both small and large commercial customers as defined in Division 38 Sections 860-038-0005(30) and 860-038-0005(60), respectively. ERE-VRET service will be available to any non-residential customer subject to the following:

- a. Any non-residential customer shall be eligible for ERE-VRET service at any meter under which it receives at least 250 aKW of load.
- b. Eligibility is meter specific: A customer may elect ERE-VRET service at one or more meter(s), and traditional service at other meter(s).
- c. A customer selecting ERE-VRET Service may also select standard direct access service for portions of its load, with either product designated as “first through the meter.”
- d. Aggregation permissible: two or more customers at any given meter can aggregate load to qualify for ERE-VRET Service.

**E. Full or Partial Service/Default Supply.** Customers shall have the option, but not the obligation, to purchase ERE for all or a portion of their existing service, at all or a portion of their meters. In essence, customers taking ERE-VRET Service could be deemed to be “self-

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<sup>8</sup> As addressed in greater detail in Section 3 below, Staff recommends ERE for a VRET be limited to capacity placed in service in 2015. While NIPPC’s proposal could be implemented with that limitation, we believe it could harm functioning of the market by creating yet another striation of renewable capacity, without significantly changing the demand for construction of new capacity. In particular, we note that the Federal Clean Power Plan proposes a demarcation of January 8, 2014 as a demarcation between old and new power plants, and believes it would be administratively efficient to adopt that date for the VRET as well.

<sup>9</sup> See, e.g., Division 38, Section 860-038-0400 (Electricity Service Supplier Certification Requirements (requiring detailed review and approval by the Commission of any entity seeking to act as an ESS)); 860-038-0420 (Electricity Service Supplier Consumer Protection), etc.

<sup>10</sup> See, e.g., Division 38, 860-038-0500 (Code of Conduct); 860-038-0560 (Treatment of Competitors); 860-038-0580 (Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations), etc.

generating” for purposes of a utility’s various partial requirements services; *i.e.*, the utilities currently have tariffs on file under which a customer with self-generation facilities is eligible to take partial service. Customers taking partial service must identify load to be served by ERE-VRET, and the maximum load to be provided under existing utility tariffs.<sup>11</sup> The Utility shall offer Default supply governed by the same requirements and obligations as set forth in Division 38 of the Commission’s Regulations (860-038-0280), subject to certain modifications. In addition to standard offer default service (860-038-0005; 860-038-0280(1)), which will apply to the portion of a customer’s load that remains with the utility, and emergency default supply ((860-038-0005; 860-038-0280(3)(a)), which is only available for up to 5 days, to be used in the event of force majeure or similar disruptions of a temporary nature, the utility shall offer “Spot Purchase” default supply, under which the utility purchases supplies for such customer at spot market pricing, plus any administrative costs. Such Spot Purchase default supply, rather than standard offer default service, shall be provided to the extent disruption of ERE-VRET service extend beyond the 5-day limitation for Emergency default service. Because the utility will provide this Spot Purchase default service based on available market rates, whatever they may be, such option will not create any cost shifting or cause the utility to incur up-front expenses. This spot market approach will ensure that there is no cost shifting from ERE-VRET customers to remaining bundled and will prevent gaming by ERE-VRET customers, while at the same time allowing the utilities to meet their statutory obligation as suppliers of last resort.

**F. Service Term Length for ERE-VRET.** The term length for ERE-VRET service will be a minimum of five years.<sup>12</sup> Customers may return to a standard cost of service tariff at any time after provision of three years notice to the utility. In other words, a customer would first be eligible to could notify the utility of its intent to return to standard service beginning in year two, and return at the conclusion of year 5, or could continue on ERE-VRET service for a longer duration.

**G. Ancillary services.** An ERE-VRET provider shall offer ancillary services; however, an ERE-VRET customer shall have the option to purchase ancillary services from the utility, the ESS providing ERE-VRET Service, or a different ESS, governed by the same requirements and obligations as set forth in Division 38 of the Commission’s Regulations, which expressly require utilities to offer ancillary services in conjunction with Direct Access. Ancillary Services requiring energy or capacity availability can be provided via Eligible Renewable Energy sources or standard energy sources.

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<sup>11</sup> NIPPC notes that Staff’s Recommendation proposed that a VRET specifically be limited to less than 100 percent service. While NIPPC does not believe such a limitation is necessary, such limitation would not undermine the framework provided herein.

<sup>12</sup> Staff’s Recommendation proposes a minimum term of 10-years, apparently based on an effort to distinguish the service from Direct Access. As discussed in Section 3 below, 10-year terms are already available under the existing Direct Access program, and NIPPC believes this distinction is unnecessary and could artificially reduce market participation. However, the specific minimum term chosen will not change the viability of NIPPC’s ERE-VRET proposal.

**H. Participation Caps.** The ERE-VRET Program size would initially be limited to 300 aMW for PGE and 175 aMW for PacifiCorp, as proposed by the Staff Recommendation. The program cap would be increased by 15 percent each year.

**I. Prevention of Cost Shifting from ERE-VRET Service.** Any customer selecting ERE-VRET service will pay a surcharge, inclusive of transition costs, to insure that ERE-VRET customers appropriately compensate the utility for costs incurred on that customer's behalf prior to their departure and that costs, risks, and benefits are not otherwise shifted. The VRET Surcharge will be developed in accordance with the Division 38 Regulations, with each utility creating its own VRET Surcharge based on the facts and circumstances of its system, and for administrative efficiency in the same docket that the utility develops its Direct Access surcharge. Transition Surcharges shall not apply beyond five years. In addition to rates and surcharges applicable for the annual election period, the utilities shall establish an inter-period rate surcharge that will apply for customers that elect to start ERE-VRET service outside of the standard election windows, with such inter-period rate trued up after the fact.

**J. Rolling Election Window.** ERE-VRET Service elections will take place along with the Direct Access Annual Announcement and Election Period, governed by the same requirements and obligations as set forth in Division 38 of the Commission's Regulations (860-038-0275). In addition, in recognition of the benefits of encouraging additional renewable energy, elections to start or increase ERE-VRET service may be made at any time, on 30 Calendar days' notice. Surcharges and transition fees for service elections made outside of the annual window will be based on extrapolated data (the inter-period rate surcharge referenced in Section I above) until the next annual election period, with such rates trued up upon determination in the annual review.

**K. Other Terms and Conditions.** In creating the VRET surcharge, the utility shall apply the following principles whether or not such principles are also applied to the Direct Access surcharge. |

- (i) New Load. New load shall not be subject to transition surcharges related to costs from prior capacity purchases by the utility for general system services.<sup>13</sup> New load shall be defined as any load coming online after the utility acquired its last major resource over 100 MW. Subjecting new load to surcharges for cost of facilities that pre-existed the load would cause improper cost shifting and stifle economic development.
- (ii) Depreciation. Carrying costs from any facilities in rate base, including return on equity and related taxes that are included within a surcharge shall be reduced to reflect depreciation of such facilities. Requiring VRET

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<sup>13</sup> NIPPC does not believe that new load should be subject to a surcharge under the existing Direct Access regulations, but recognizes that this issue has not been fully vetted at the Commission.



customers to pay surcharges based on a static capital account while actual costs are reduced would result in inappropriate cost-shifting.<sup>14</sup>

(iii) Transition Surcharge Term. The Transition Surcharge Term and included costs shall be capped at 5 years.

NIPPC believes that the model we propose demonstrates how a VRET could meet all statutory terms and conditions – as well as the Staff’s Recommendations – and be implemented expeditiously. While based on the Commission’s Direct Access rules, the service we have described differs in meaningful ways from Direct Access, and offers significant benefits to current or prospective utility ratepayers seeking a high level of renewable power by enabling them to contract for new supply on commitment terms that meet their commercial objectives. To the extent the Commission decides to go forward with Phase 3 of this proceeding, the NIPPC urges the Commission to adopt this model.

### **SECTION III: *Comments on the Staff Recommendations.***

NIPPC provides the following additional comments on the Staff Recommendation.

1. ***The Staff correctly recommends that Commission should not allow Utility Ownership of VRET Resources.***

HB 4126 expressly requires that the Commission consider “[t]he effect of allowing electric companies to offer voluntary renewable energy tariffs on the development of a competitive retail market.”<sup>15</sup> Any mechanism that allows utilities to offer a specialized service under terms and conditions not available to ESS competitors harms the development of the competitive retail market. NIPPC strongly supports the Staff’s recommendation prohibiting the utilities from owning generation used for a VRET.

Allowing a utility to own generation resources to be used for a VRET also would greatly complicate the ability to ensure no cost shifting from VRET customers to bundled customers. A utility affiliate, functioning as an ESS, could own a VRET resource, but the utility itself should not.

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<sup>14</sup> NIPPC believes that this must be applied to standard Direct Access as well, but recognizes that this issue has not been fully vetted at the Commission.

<sup>15</sup> HB4126 3(b).

**2. The Staff correctly notes that a VRET must have the same transition cost structure as Direct Access.**

In its Recommendation, Staff summarizes the perceived potential benefits of a VRET program based on comments in Staff's Phase 1 study. Of note, Staff dismisses out of hand the possibility that a VRET could provide a lower-cost option than Direct Access given the express prohibition on cost shifting contained in HB 4126. NIPPC wholeheartedly agrees. If a customer leaves a utility's general system, and remaining customers would otherwise be required to bear the costs of capacity added to rate base prior to their departure, it makes no difference whether the departure is due to standard Direct Access or ERE-VRET service – the costs will be the same.

**3. The Staff's suggested benefits of a VRET as compared to existing programs is illusory.**

NIPPC submits that the perceived benefits of a VRET noted by Staff in the Recommendation are illusory when considering existing alternatives. For example, the Staff Recommendation notes that a VRET may *“meet a need no other existing option is fully able to address for them. This need could include, for example, purchasing renewable energy from a specific resource, not just unbundled RECS.”* However, the Staff Recommendation did not identify any need of any kind not available under the existing regulations. Indeed, the specific example used, under which a customer could purchase renewable energy from a specific resource, *is fully available through the Direct Access program.*

Similarly, the Staff Recommendation notes that a VRET could *“offer[] the ability to lock in long term energy prices for price stability purposes.”* Again, this perceived need is readily available under Direct Access.

The Staff Recommendation also suggests as a potential benefit that *“Utilities may see benefit in being able to offer additional choice to their customers.”* Benefits to the utilities is not relevant in this docket – indeed, they are statutorily constrained: HB 4126 states that *“All costs and benefits associated with a voluntary renewable energy tariff shall be borne by the nonresidential customer receiving service under the voluntary renewable energy tariff.”*

Finally, the Staff Recommendation notes “customers not interested in Direct Access may want to stay with their utility for this service.” This perceived “benefit” is directly contrary to the statement made by customers participating in this docket. Rather than desiring to stay with the utility, customers desiring a VRET have made it clear that they do not care from whom they purchase their power.<sup>16</sup> This topic has been raised in this proceeding time and time again. Despite repeated urgings, and repeated opportunities before Staff and the full Commission, no prospective VRET customer has indicated that they desire to be exclusively served by the utility. This perceived “benefit” simply has no merit.

**4. *There is a distinction between what the Direct Access Regulations allow and what the utilities offer.***

The Staff Recommendation suggests that the impact on Direct Access could be minimized by creating a VRET product that is “clearly differentiated from Direct Access.” In doing so, however, Staff cited two examples that only represent differentiations in a very limited sense: term length and eligibility for partial-load service. Specifically, the Staff Recommendation suggests that “Direct Access is designed to have the ESS supply 100 percent of the energy needs with one, three and five year opt out terms and return conditions.” Therefore, Staff suggests that “a VRET that only covers 75 percent of load and is a long term fixed price contract could attract a very different customer who is hedging energy costs over the long term yet would like to stay with the utility.”

Contrary to the Staff’s assertions, however, neither of these options is prohibited under the current Direct Access Regulations. While it is true that the current tariffs offered by the utilities include one, three and five-year opt out terms, nothing in the *Regulations* prevents them

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<sup>16</sup> See “*Above and Beyond: Green Tariff Design For Traditional Utilities*,” January 2014 (“WRI/WWF Working Paper”), previously filed in this docket by the World Resources Institute:

“To date, the models that give companies the broadest access to these energy services and hedges are primarily available in markets with some retail choice and flexible net metering approaches. In 17 states, for example, large customers can sign direct power purchase agreements (PPAs) with suppliers other than the utility managing the wires to their facilities.”

*The report adds:*

“In many states, however, companies cannot pursue these strategies. They have to find other options that fit within a traditional utility model—or, as some are doing, seek to open the markets to allow third parties and the approaches they have found so useful.”

from offering a 10-year term. Right now, a customer can take direct access on PGE's system for the "permanent option," sign a 10 year (or longer) agreement with an ESS, and then return to the PGE system at the end of the term. Similarly, although the utilities do not currently appear to offer partial requirements service for Direct Access customers, such service is permitted under the Regulations, and has been offered by the utilities in the past.<sup>17</sup>

Simply stated, there is a distinction between what the regulations allow under Direct Access and what the utilities *choose* to offer. NIPPC is well aware that potential VRET customers are dissatisfied with existing limitations on Direct Access offerings currently available from the utilities. As long as the Commission adopts a VRET with a completely level playing field, *i.e.*, where the utility cannot own or aggregate the generation for VRET service, differentiation between the terms of a VRET and Direct Access service can be a reasonable tool to encourage purchase of renewable energy. But, to the extent the utility stands to have financial benefit from participating in a VRET contrary to HB 4126, their ability to exercise monopoly power by offering more favorable VRET terms than otherwise offered by ESS providers would severely compromise the retail market, and should not be allowed.

Assuming a level playing field, and as more fully outlined in our ERE-VRET proposal, NIPPC believes that there are a variety of adjustments to current Direct Access offerings that would incent customers to choose a VRET and spur further renewable energy development. For example, the utilities do not currently *offer* permanent opt out for customers with smaller load, but the existing regulations allow for it. As a result, there are many prospective customers that may be interested in a permanent opt out that simply don't qualify under their utility's current

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<sup>17</sup> See, e.g., Portland General's former Schedule 84, Split Load Service. As described in OPUC Order No. 06-528, "In its Schedule 84, PGE proposes a new, optional service that offers eligible large, non-residential customers the option to receive a portion of their service from an Electric Service Supplier (ESS) with the remaining load served by PGE. This so-called "Split Load Option" is expected to increase the viability of the direct access market by providing the customer and ESS with another service option. The offering of this option was included as a condition to the Commission's approval of PGE's stock distribution request in Docket UM 1206." Despite being required to offer this service in return for favorable treatment in UM 1206, Portland General later withdrew this offering and it is no longer available. See also Portland General's current Schedule 575, "*Partial Requirements Service Direct Access Service*," nominally applicable to "Large Nonresidential Customers who receive Electricity Service from an Electricity Service Supplier (ESS) and who supply all or some portion of their load by self generation operating on a regular basis, where the self-generation has a total nameplate rating of 2 MW or greater. A Large Nonresidential Customer is a Customer that has exceeded 30 kW at least twice within the preceding 13 months, or with seven months or less of service has had a Demand exceeding 30 kW."

tariff, despite the fact that such service is fully consistent with the Direct Access Regulations. Increased ability to aggregate loads, or for a customer to select a VRET service at one of its facilities, but not another, could similarly expand the pool of prospective VRET customers. Whether these changes would outweigh the detrimental effect of the transition charge obligation is unclear.

In short, NIPPC would not agree with the Staff recommendation that contract duration or partial load service is an appropriate distinguishing characteristic for VRET service. Instead, NIPPC would recommend that the distinction for VRET service be tied to the customers achieving a level of service for which the renewable power usage exceeds the existing mandated levels of renewable service, since that this the fundamental purpose of a VRET program – to provide customers with programs that allow them to increase their use of renewable power beyond what is current required.

#### **5. Utilities' must bear the burden of demonstrating no cost-shift from a VRET Proposal.**

The Staff Recommendation proposes the utilities bear the burden of demonstrating that any proposed VRET program does not create risk or cost shifts to ratepayers remaining on Cost of Service. NIPPC believes this is an extremely important criterion, and one that directly follows from the HB 4126 requirement that there be no cost shifting as a result of a VRET.

Any VRET of any kind will impose costs. To the extent a utility voluntarily desires to file a VRET, it should be incumbent on that utility – and not on the Commission Staff or intervenors – to demonstrate that such costs are incurred only by VRET customers taking such service. NIPPC submits that the only realistic mechanism to ensure no cost shifts is a full evidentiary hearing in which parties have the opportunity to challenge assumptions and evaluate data presented. One mechanism for doing so is the existing mechanism for evaluating transition costs currently in place for Direct Access.<sup>18</sup> Moreover, the cost of participation in such dockets – whether by the Commission, the utility, NIPPC, or other intervenor groups such as the Citizen's Utility Board -- are themselves costs that must be borne as part of the VRET to ensure that costs

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<sup>18</sup> As the Commission is aware, NIPPC and other parties do not believe that the Commission adequately has addressed some of the fact issues in recent Direct Access Transition cost proceedings, and reserves the right to contest and/or appeal such issues. Nonetheless, a framework for review of costs is available.

of any VRET proposal are not shifted to others. To that end, NIPPC expressly asks that the Commission (1) find that the costs incurred by a utility in proposing and/or defending a VRET proposal may not be covered in rates for non-participating customers; (2) that the Commission's costs for reviewing and evaluating any VRET proposal be absorbed by the utility; and (3) that third party participants, such as NIPPC should be entitled to reimbursement for participating as intervenors in any VRET cost allocation docket. Absent such reimbursement, the utilities will have succeeded in shifting costs of a VRET program from participants to non-participants, contrary to the statute.

**6. *The Commission should consider maintain a consistent approach to the definition of a “new” eligible renewable resource.***

Staff recommends that the year in which a VRET- eligible renewable resource became operational should be no earlier than 2015. NIPPC believes that creating yet another striation of “new” renewable resources would needlessly complicate the market without any significant advantage.

Oregon is already faced with multiple definitions of what defines a “new” renewable resource. This issue will be further exacerbated by the Clean Power Plan, which provides a bright-line new and old definition of January 8, 2014. Creating yet another iteration of “new” not applicable across other programs will make program participation more confusing, complicated, and costly to implement. On the flip side, because most renewable energy capacity built prior to 2015 is under contract, allowing such participation will have little impact on demand for creation of new renewable projects to meet VRET demand. As such, the Commission should harmonize the definition of a “new” renewable resource with definitions already in existence, streamlining VRET customers' ability to purchase renewable resources.

**7. *VRET Program Size***

Staff recommends that the VRET program size initially be capped in a manner identical to the Direct Access program; *e.g.*, 300 aMW for Portland General Electric and 175 aMW for PacifiCorp. To the extent a VRET program is otherwise consistent with the statutory requirements, and does not negatively impact the retail market, NIPPC does not oppose this approach. However, NIPPC asks that the Commission expressly clarify that the cap applied to

VRET be in addition to and distinct from the cap applied to Direct Access. If such an adjustment is not made, inclusion of VRET within the Direct Access cap would negatively affect the retail market and be contrary to the public interest.

#### **8. *Role of ESS as Suppliers and Aggregators.***

The Staff Recommendation includes a variety of statements related to the potential roles of the utility, ESS and IPPs and customers. Stated generally, these are:

- The VRET customer remains retail load of the utility, and the utility retains the obligation to serve such load. (Recommendation at p.22)
- The Utility should not be permitted to own generation assets used to provide VRET service. (Recommendation at pp. 11-14 and specific recommendation #6)
- Potential VRET customers may negotiated directly with ESSs or IPPs to establish negotiated costs and attributes of renewable resources. (Recommendation at p. 18.)

NIPPC believes that these statements all work in harmony, but may need to be further clarified by the Commission. Specifically, while the VRET service itself will be provided by the utility, pursuant to a utility tariff, customers taking such service will negotiate directly with capacity providers (i.e., an ESS) to select the applicable ERE resource and set the terms of purchase. The ESS will deliver power to the utility, which will redeliver to such power to the applicable customer. The utility will remain responsible for providing service as provider of last resort to the extent the ESS fails to deliver such power. The utility will further be responsible for billing the customer. The rate for such bill will include any appropriate surcharge necessary to ensure the VRET customer bears all costs of its service; as well as a past through of costs for power.

To the extent the Commission elects to move forward with Phase 3 of this docket, NIPPC requests that the Commission confirm the that NIPPC's understanding of the relationship of the parties is accurate and appropriate for any VRET model that may be adopted.

## **SECTION IV: Conclusion**

In closing, NIPPC reiterates our appreciation for the work that has gone into this process to date. At the same time, we recognize that we are more than 18 months into this process, with little agreement as to whether a VRET is in the public interest, and, if so, under what conditions.

NIPPC respectfully asks the Commission to give careful consideration to the question of whether – given the common-sense observations set forth in Section I of these comments – it makes sense to continue to proceed with this docket. To the extent that the Commission disagrees with – or is otherwise unsure of the veracity of – any the observations set forth, NIPPC submits that there are issues of fact that need to be addressed, and parties should have an appropriate opportunity to present facts subject to proper scrutiny before the Commission can make an adequate determination.

To the extent the Commission elects to move forward with this Docket, NIPPC urges it to adopt the proposed ERE-VRET model as the best mechanism for moving forward. This ERE-VRET proposal is consistent with the statutory mandate and Staff's Recommendation, and can be implemented without the creation of extensive new and time consuming procedures. This model provides a mechanism for ensuring no cost or risks are shifted to non-participating customers; expands options available to customers; provides an opportunity for development of significant new renewable resources; does not harm the development of a retail market; avoids complicated issues with respect to competitive procurement; and leaves the utility as provider of service, with an obligation to serve retail load. And, all of this can be done without creating significant new procedures, reviews and hearings that can add to the Commission's workload and that of industry participants. NIPPC believes this model is the *only* credible model that can offer these benefits and meet the statutory test.



