BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1953 – Phase II

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY Investigation into Proposed Green Tariff.	STAFF'S OPENING BRIEF

I. INTRODUCTION

Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Opening Brief in the above-captioned proceeding. Staff recommends that the Commission adopt its proposed updated VRET Conditions, as described below, which would be applicable to all VRET programs. Staff also recommends the Commission adopt specific program design elements for Portland General Electric's (PGE's) specific VRET program – its Green Energy Affinity Rider (GEAR) – as described below. These recommendations relate only to PGE's GEAR, and may not necessarily be Staff's recommendations for other VRET programs.

II. BACKGROUND

House Bill (HB) 2146 passed during the 2014 regular session and directed the Commission to study the impact of allowing utilities to offer VRETs to utility customers.[1] The Commission opened its investigation in OPUC Docket No. UM 1690, and in Phase I, directed Staff to conduct a study that considers the impact of allowing electric companies to offer VRETs to their non-residential customers.[2] The Commission ultimately adopted nine conditions for any VRET to be considered in the public interest:

1. Renewable Portfolio Standard (RPS) definitions for resource type, location, and bundled Renewable Energy Certificates (RECs) must apply to VRET products.

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[1] HB 2146 at Section 3(2).

[2] *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-258 at 1 (Aug. 26, 2015).

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2. VRET options should only include bundled REC products. Any RECs associated with serving participants must be retired on or on behalf of participants, unless the participants consent to RECs being retired by the utility or the developer.
3. The year in which a VRET eligible renewable resource became operational should be no earlier than 2015.
4. The VRET program size is limited to 300 aMW for PGE and 175 aMW for PacifiCorp.
5. VRET product design should be sufficiently differentiated from existing direct access programs.
6. VRET terms and conditions (including the timing and frequency of VRET offerings), as well as transition costs, must mirror those for direct access. PGE and PacifiCorp may propose VRET terms and conditions that differ from current direct access provisions but most propose changes to their respective direct access programs to match those changes.
7. The regulated utility may own a VRET resource, but may not include any VRET resource in its general rate base. It may recover return on and return of its investment in the VRET resource from the VRET customers; however, the utility must share some of the return on with other utility customers for ratepayer-funded assets used to assist the VRET offering.
8. All direct and indirect costs and risks are borne by the VRET customers, shareholders of the utility, or third-party developers and suppliers with provisions allowing independent review and verification by the Commission Staff of all utility costs. Costs include but are not limited to ancillary services and stranded costs of the existing cost of service rate based system.

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9. All VRET offerings must be made publicly available and subject to review by the Commission to ensure they are fair, just and reasonable.[3]

However, the Commission stopped short of determining whether, and under what conditions, VRETs would be appropriately offered to Oregon non-residential electric customers in Phase I.[4] Rather, the Commission encouraged PGE and PacifiCorp to make specific filings and indicated that it would make a final determination in Phase II of the proceeding about whether a VRET was in the public interest based on utility filings.[5] PacifiCorp and PGE initially declined to make specific VRET proposals,[6] and the Commission closed OPUC Docket UM 1690 at its July 5, 2016 regular public meeting.[7]

On April 13, 2018, PGE filed to reopen OPUC Docket UM 1690 with an application for a VRET that included design elements requested by the Commission in order for the Commission to determine that it was in the public interest for PGE to offer a VRET. The Commission opened this docket, UM 1953, to consider PGE's application its GEAR, approving Phase I of the program in Order No. 19-075.

In Phase I, PGE was permitted to procure up to 300 MW of new nameplate resources through PPAs, with consideration of a second phase at a future time.[8] The initial offering was divided into two customer options – the Customer Supply Option (CSO) and the PGE Supply Option (PSO). The CSO was capped at 200 MW, and available to customers with demand in excess of 10 aMW. The PSO was capped at 100 MW, without a similar size limitation. PGE

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[3] *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-405 at 1-2 (Dec. 15, 2015).

[4] *Id.* at 1.

[5] *Id.*

[6] UM 1690 – PGE's Response to Commission Order No. 15-405 (Apr. 14, 2016); UM 1690 – PacifiCorp's Response to Commission Order No. 15-405 (Apr. 14, 2016).

[7] *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 16-251 (July 15, 2016).

[8] *In re Portland General Electric*, OPUC Docket No. UM 1953, Order No. 19-075 at 4 (Mar. 5, 2019).

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opened enrollment for Phase I of its GEAR on May 31, 2019, which garnered significant customer interest. The PSO was subscribed in a matter of minutes. More complex policy issues, such as long-term credit calculation, applicability of the VRET conditions and interactions with Oregon's Direct Access (or DA) laws were deferred until Phase II of this proceeding. The parties in Phase II of this proceeding seek Commission determinations on changes, if any, to the existing nine VRET conditions, and on specific program design elements of PGE's GEAR program.

III. ARGUMENT

Staff's primary concern in Phase II of this proceeding is to ensure that VRET programs, generally, and PGE's GEAR program specifically, do not result in unwarranted cost-shifting between program participants and cost of service (COS) customers.[9] Achieving this goal requires a sound theoretical framework for a VRET program, and continued review of any specific program's performance with empirical evidence.[10] In order to ensure that VRET programs, generally, and PGE's GEAR program in particular, are consistent with the public interest, Staff urges the Commission to adopt its recommendations as set forth below.

(A) VRET Conditions.

The Commission tasked the parties with this case to review the VRET Conditions adopted in Order No. 15-405 in Phase II of this proceeding. Although this review is occurring simultaneously with specific proposals for PGE's GEAR program design, Staff finds that any changes to the current conditions should be based on sound policy and legal considerations, and not the specifics of any one program in particular.[11]

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[9] Staff/300, Gibbens/4-5.

[10] Staff/300, Gibbens/5.

[11] *Id*.

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1. The Commission should retain VRET conditions, rather than converting them to VRET guidelines.

In this case, PGE seeks to change the current VRET conditions to VRET guidelines,[12] which Renewable Northwest (Renewable NW) supports.[13] PGE has not explained the implications for a change in terminology; Renewable NW equates the shift in terminology with a shift in flexibility for compliance.[14] To the extent that the intent would be to shift from requirements to suggestions, Staff does not support this change.[15] The Commission initially found that a VRET could be in the public interest based on specific conditions. Eroding the strength of the conditions calls into question whether offering a VRET remains in the public interest.[16]

2. Condition 1

Currently, Condition 1 provides "Renewable Portfolio Standard (RPS) definitions for resource type, location, and bundled Renewable Energy Certificates (RECs) must apply to VRET products." PGE, Renewable NW, PacifiCorp and the Northwest Intermountain Power Producers Coalition (NIPPC) all support that the original condition remain unchanged.[17] Citizens' Utility Board of Oregon (CUB) suggests a modification to allow energy storage to be included in VRET applications.[18] In response to CUB's proposal, Staff expressed reservations about how pricing with a storage option would be calculated, affirmed that a VRET should not be used primarily as a means to reduce overall power costs, and should not be used to directly compete with Direct

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[12] *See* PGE/500, Sims – Tinker/4.

[13] RNW/300, O'Brien/9.

[14] RNW/300, O'Brien/9.

[15] Staff/400, Gibbens/5-6.

[16] *Id*.

[17] *See* PAC/200, Lockey/1-2; PGE/800, Wenzel – Faist/12-13; RNW/300, O'Brien/12; NIPPC/300, Gray/8.

[18] CUB/200, Jenks/11-12.

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Access offerings.[19] However, Staff ultimately supported CUB's position, suggesting that the Commission adopt the following language for Condition 1:

> *Renewable Portfolio Standard (RPS) definition that must apply to voluntary renewable energy products are for resource types, location and bundled renewable energy certificates (RECs). Non-carbon emitting energy storage resources may be included but only in conjunction with RPS compliant resources.*[20]

PGE opposes the inclusion of energy storage in the definition of qualifying resources on substantive grounds, arguing that the enabling statute does not include it.[21] PGE cites to ORS 469A.020 and ORS 469A.025 in support of its assertion.[22] NIPPC generally opposes any change to the VRET conditions, in favor of instituting a waiver requirement if current conditions cannot or should not be met.[23]

PGE's argument is not completely clear, but nevertheless, unsupported. There is no statute that requires the Commission to approve VRETs that contain only RPS-eligible resources; rather, the restriction on the Commission is that it must find that a VRET offering is in the public interest. PGE may be arguing that the addition of energy storage is in contravention to current Condition 1, which applies RPS definitions for resource type,[24] but the Commission has the discretion to change VRET conditions. PGE also ignores that fact that energy storage is contemplated elsewhere in the RPS Statutes (ORS Chapter 469A). Specifically, ORS 469A.120(2)(a) provides for cost recovery of "facilities that generate electricity from renewable energy sources, costs related to associated electricity transmission and costs related to associated

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[19] Staff/400, Gibbens/7.

[20] Staff/400, Gibbens/7.

[21] PGE/800, Wenzel – Faist/12-13.

[22] PGE/800, Wenzel – Faist/13, fns 59 and 60.

[23] NIPPC/300, Gray/8.

[24] ORS 469A.025 sets forth renewable energy sources for purposes of RPS compliance. Energy storage is not included on the statutory list of sources eligible for RPS compliance.

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energy storage." The Commission could conclude from this that the legislature finds value in energy storage associated with RPS-eligible resources, and that including energy storage in a VRET offering is consistent with the public interest.

3. Condition 2

Currently, Condition 2 provides "VRET options should only include bundled REC products. Any RECs associated with serving participants must be retired on or on behalf of participants, unless the participants consent to RECs being retired by the utility or the developer."

PGE proposed to change Condition 2 to remove the ability of RECs associated with a VRET to be gifted to the utility or the developer.[25] Staff, PacifiCorp, Renewable NW, and CUB all support this change.[26] NIPPC generally opposes any changes to the VRET conditions.[27]

CUB also proposed to modify the condition to state that any load served by the renewable project eligible for a green tariff should be reduced from the utility's RPS requirements, due to concerns that load served by green tariff renewables would be "double served" by RPS compliance.[28] Staff concluded that CUB's concern may have merit if the load subscribed to VRET programs were increased substantially, but that under the current size of VRET resources, CUB's modification only serves to reduce the additionality of the program.[29] For that reason, Staff does not find that additional modification to Condition 2 is necessary at this time. Staff also notes that its proposed addition to Condition 8 also considers this type of potential cost shift. Staff recommends the Commission adopt the following language for Condition 2:

[25] PGE/800, Wenzel – Faist/3-4.
[26] Staff/400, Gibbens/8; CUB/200, Jenks/12; PAC/200, Lockey/2; RNW/300, O'Brien/12.
[27] NIPPC/300, Gray/11.
[28] CUB/200, Jenks/12-13.
[29] Staff/400, Gibbens/8.

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Voluntary renewable energy options include only bundled REC products. Any RECs associated with serving participants must be retired by or on behalf of participants.

4. Condition 3

Currently, Condition 3 provides "The year in which a VRET eligible renewable resource became operational should be no earlier than 2015." PGE proposes to change the condition to amend the operational timing to no earlier than one year prior to enrollment.[30] CUB, PacifiCorp, Renewable NW and Staff all support this proposed change.[31] Staff also recommends that the Commission clarify that "program enrollment" is defined as when the customers signs a binding agreement to participate in the program.[32] PGE supports Staff's proposed clarification on the definition of program enrollment.[33]

Staff recommends the Commission adopt the following language for Condition 3:

The year that a VRET-eligible resource becomes operational should be no earlier than one year prior to the program enrollment.[34]

5. Condition 4

Currently, Condition 4 states "The VRET program size is limited to 300 aMW for PGE and 175 aMW for PacifiCorp." PGE, Staff and Renewable NW support changing the cap's unit of measure from average megawatt to megawatt, or resource nameplate.[35] However, total program size for PGE is unresolved, and is discussed further below. No party proposed changes to PacifiCorp's VRET program size, as PacifiCorp does not currently offer a VRET product.

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[30] PGE/800, Wenzel – Faist/4.

[31] CUB/200, Jenks/13; PAC/200, Lockey/1; RNW/300, O'Brien/12; Staff/400, Gibbens/9.

[32] Staff/400, Gibbens/9.

[33] PGE/800, Wenzel – Faist/4.

[34] Staff/400, Gibbens/9.

[35] PGE/800, Wenzel – Faist/4; Staff/400, Gibbens/10; RNW/400, Ramsey/4.

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6. *Condition 5*

Currently, Condition 5 states "VRET product design should be sufficiently differentiated from existing direct access programs." PGE, PacifiCorp, CUB, Renewable NW, NIPPC and Staff all agree that this language should remain unchanged. However, Staff agrees with PGE that there is general disagreement around the meaning of "sufficiently differentiated" and how the condition interacts with Condition 6, discussed further below.[36]

7. Condition 6

Currently, Condition 6 states "VRET terms and conditions (including the timing and frequency of VRET offerings), as well as transition costs, must mirror those for direct access. PGE and PacifiCorp may propose VRET terms and conditions that differ from current direct access provisions but most propose changes to their respective direct access programs to match those changes."

PGE's primary recommendation is to eliminate Condition 6, arguing that it seemingly contradicts Condition 5.[37] PGE argues that it is inconsistent to require sufficient differentiation from Direct Access programs in Condition 5, but then to require mirroring of Direct Access programs in Condition 6.[38] PGE further argues that Condition 4 sets the cap for the VRET and that Condition 9 allows for evaluation of impacts to Direct Access programs.[39] PGE states that there is general disagreement as to the meaning of "sufficiently differentiated" and how Condition 6 is then applied—specifically whether it means that VRET and Direct Access customers cannot directly compete for the same customers.[40] Finally, PGE states that it does not believe the Commission intended to give the utility the ability to modify the terms of the Direct Access program to reduce that cap to match a significantly lower cap of the VRET program.[41]

[36] PGE/800, Wenzel – Faist/5.

[37] PGE/800, Wenzel – Faist/13.

[38] *Id.*

[39] *Id.*

[40] PGE/800, Wenzel – Faist/14.

[41] *Id.*

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Should the Commission be inclined to retain Condition 6, PGE and PacifiCorp proposes the following language:

> *If a utility seeks to offer a VRET outside of or in lieu of cost-of-service, the following guidelines applies: Such VRET terms and conditions must fairly account for the differences from Direct Access programs. The Utility may propose terms and conditions that differ from current Direct Access provisions but must provide evidentiary support for those differences and must consider changes to their direct access programs to match such VRET terms and conditions, as appropriate.*[42]

PGE argues that Condition 6 should be applicable regardless of VRET design (i.e. whether the VRET is a COS rider or in lieu of COS), but does not provide an overarching rationale other than to state that it "would agree that Condition 6 be applied to minimize the impact to the competitive market as the design encourages participation beyond the current update of DA."[43] CUB supports elimination of Condition 6.[44] PacifiCorp encourages the Commission to adopt PGE's revised Condition 6.[45]

Renewable NW neither supports nor opposes the removal of Condition 6, as it concludes that VRET programs and Direct Access programs are fundamentally different programs (though may compete for the same customers).[46] Renewable NW favors an annual reporting requirement, as opposed to a prescriptive process, which could show whether there is a reason to undertake additional analysis but without the risk that process barriers may restrict innovation and slow system transformation from greenhouse gas-emission reduction.[47] Renewable NW recommends the Commission require an annual report showing customer interest and actual

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[42] PGE/800, Wenzel – Faist/14; PAC/200, Lockey/2.
[43] PGE/800, Wenzel – Faist/15.
[44] CUB/200, Jenks/15; PAC/200, Lockey/1-2.
[45] PAC/200, Lockey/2.
[46] RNW/400, Ramsey/5.
[47] RNW/400, Ramsey/6.

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subscriptions to the green tariff and Direct Access programs, and that the report include a narrative section demonstrating that both programs are truly available to interested customers and explain how the green tariff product is affecting or otherwise interacting with the competitive marketplace.[48]

NIPPC urges the Commission to retain Condition 6,[49] but acknowledges that the application of Condition 6 should take into account material differences between the applicable VRET program and Direct Access programs and terms for each program should remain comparable.[50] For example, NIPPC argues that requirements such as customer size, similar program caps, etc., should be comparable among programs, and criticizes PGE's failure to respond with obvious, rational solutions that could be implemented.[51]

Staff recommends the Commission retain an updated version Condition 6 and find PGE's and CUB's reading of the current language unnecessarily narrow. Staff finds that Condition 6 is sufficiently distinct from Condition 5,[52] and the other conditions do not provide an adequate substitute for the issues included in Condition 6.[53] Accordingly, Staff does not support PGE's alternative argument to make changes to Condition 6.[54] Staff finds Condition 6 to be necessary to finding a VRET to be in the public interest, as the Oregon legislature made it clear that the protection of the competitive energy retail market is a duty of the Commission.[55] Condition 6 ensures that neither Direct Access programs or VRET programs have an unfair advantage over one another. Staff's proposed language ensures that while Direct Access programs and VRET programs will be differentiated under Condition 5, the differences are not inappropriately

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[48] RNW/400, Ramsey/7.
[49] NIPPC/300, Gray/15.
[50] NIPPC/300, Gray/15-16.
[51] NIPPC/300, Gray/17-18.
[52] Staff/400, Gibbens/18-19.
[53] *Id.*
[54] Staff/400, Gibbens/18.
[55] *Id.*

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favoring each other because of the requirements of its proposed Condition 6.[56] Thus, Staff supports its originally proposed Condition 6:

VRET terms and conditions must fairly account for differences from Direct Access programs. The Utility may propose terms and conditions that differ from current Direct Access provisions, but must provide evidentiary support for those differences and must consider changes to their direct access programs to match such VRET terms and conditions, as appropriate.

Alternatively, Staff supports the following Condition 6 language:

Voluntary renewable product offering terms and conditions (including the timing and frequency of offerings), as well as transition costs must match terms and conditions of direct access to the extent practicable. The Utility may propose terms and conditions that differ from Direct Access provisions, but must demonstrate that the different terms and conditions are reasonable, in the public interest, and consistent with the Commission's legal authority. The Utility maintains the burden of proof with regard to the difference between direct access offering terms and conditions and proposed VRET offering terms and conditions.

8. Condition 7

Currently, Condition 7 states "The regulated utility may own a VRET resource, but may not include any VRET resource in its general rate base. It may recover return on and return of its investment in the VRET resource from the VRET customers; however, the utility must share some of the return on with other utility customers for ratepayer-funded assets used to assist the VRET offering."

PGE proposes to modify this condition to allow inclusion of VRET resources in rate base, so long as when it does, there is no cost-shifting to non-participants.[57] PGE argues that

[56] Staff/400, Gibbens/19-20.
[57] PGE/800, Wenzel – Faist/22.

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prohibiting inclusion of VRET resources in rate base is unduly prescriptive, and that the core concerns of cost-shifting can be addressed in other ways.[58] CUB, PacifiCorp and Renewable NW support PGE's proposed modification. CUB notes that transactions that include a utility-built resource need to undergo enhanced scrutiny at the Commission in order to ensure that the risks associated with the resource are well managed and will not affect participants.[59]

NIPPC vehemently opposes utility ownership of VRET resources.[60] NIPPC argues that the Commission's removal of the utility incentive to own a resource (i.e. inclusion in rate base) and requirement that the utility share some of the return it receives from participants with other utility customers effectively equates to a prohibition on utility ownership, at least with regard to utility incentives.[61] NIPPC argues that this effectively eliminated the utility competitive advantage, and effectively required the utility to own a resource through an affiliate, rather than outright, which would mean that the utility would be required to follow additional regulatory requirements, to ensure separation of functions and to eliminate cost shifting.[62] NIPPC states that nothing has changed in the power markets in the Pacific NW or Oregon that should fundamentally change the Commission's concerns regarding utility ownership.[63] NIPPC also asserts that utility ownership for a VRET resource would be impermissible under the legislative directive that Commission policies must eliminate barriers to the development of the retail market,[64] would improperly inflate the level of transition costs for Direct Access customers,[65] and could potentially overcompensate the utility for risk if a risk premium is assessed.[66]

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[58] *Id.*

[59] CUB/200, Jenks/16.

[60] *See* NIPPC/300, Gray/22-28; NIPPC/200, Kahn/18, 25-26.

[61] NIPPC/300, Gray/23-24.

[62] NIPPC/300, Gray/24.

[63] *Id*.

[64] NIPPC/300, Gray/26.

[65] NIPPC/300, Gray/27.

[66] NIPPC/300, Gray/27-28.

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Staff does not oppose utility ownership of a resource, generally, but finds that PGE's proposal stops short of addressing a key legal concern – which is that the Commission is statutorily required to eliminate barriers to the competitive retail market.[67] Staff testifies that Condition 7 "needs to ensure that utility ownership does not create a barrier to the competitiveness of the retail market."[68] In order to ensure that this is the case, Staff notes that the Commission must consider whether or not the utility's size, access to cheaper capital, and regulated utility status results in an unfair competitive advantage.[69] PGE's proposed language simply does not take this into account, and therefore, should not be adopted. However, Staff agrees with PGE's critique that Staff's proposed Condition 7 language would shift a Commission obligation onto the utility.[70]

Although Staff's initial analysis in UM 1953 regarding utility ownership was to oppose utility ownership, as NIPPC points out, the Commission did not adopt Staff's recommendation for a full prohibition when adopting the nine VRET Conditions.[71] Though Staff shares some of NIPPC's concern regarding utility ownership, as discussed above, Staff finds that the Commission could nevertheless conclude that utility ownership could be in the public interest so long as there is no cost-shifting to non-participants, and so long as the structure of the program does not create an undue barrier to retail competition. As such, Staff recommends the Commission adopt the following language for Condition 7:

> *The regulated utility may own a voluntary renewable energy resource. When it does, it must continue to ensure that there is no cost shifting to non-participants.*

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[67] Staff/400, Gibbens/22-23; ORS 757.646(1) provides, in relevant part, that "The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive."

[68] Staff/400, Gibbens/23.

[69] *Id.*

[70] PGE/800, Wenzel – Faist/24-25.

[71] *See* NIPPC/300, Gray/22.

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On considering a proposal for a utility-owned resource, the Commission will consider whether the offering creates a barrier to the retail competitive market.[72]

9. Condition 8

Currently, Condition 8 states "All direct and indirect costs and risks are borne by the VRET customers, shareholders of the utility, or third-party developers and suppliers with provisions allowing independent review and verification by the Commission Staff of all utility costs. Costs include but are not limited to ancillary services and stranded costs of the existing cost of service rate based system."

PGE proposes to eliminate the last sentence of the condition, but otherwise leave the condition intact.[73] PGE argues that this modification recognizes that ancillary services costs and existing assets are funded through the subscribing customer's continued service on COS.[74] CUB, Renewable NW, and PacifiCorp agree with PGE's proposed modification.

Staff opposes PGE's proposed deletion. Staff is concerned that PGE's position is guided by its GEAR program, rather than VRET programs in general, and does not see a material benefit in the removal of the sentence.[75] Staff questions whether the change would reduce clarity to readers who may not be as familiar with cost-shifting concepts and concerns. However, Staff does support a change to Condition 8 language that would address future concerns about growth of the VRET and its relation to IRP planning.[76] Staff is concerned that even if there are measures in place to eliminate cost-shifting between participants and non-participating customers, the mere fact that procurement occurs outside of an IRP process will have an impact on the preferred portfolio in the utility's IRP. While individual implications for each utility should be addressed on a case-by-case basis during the utility's IRP, language is necessary in

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[72] Staff/400, Gibbens/23.
[73] PGE/800, Wenzel – Faist/28.
[74] *Id.*
[75] Staff/400, Gibbens/24-25.
[76] *Id.*

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Condition 8 that would address this concept. As such, Staff recommends the Commission adopt the following language for Condition 8:

> *All direct and indirect costs and risks are borne by the participating voluntary renewable energy customers, shareholders of the utility or third-party developers and suppliers with provisions allowing independent review and verification by Commission Staff of all utility costs. Costs include but are not limited to ancillary services and stranded costs of the existing <u>and additional future</u> cost of service rate-based system.*[77]

PGE opposes Staff's proposed language, arguing that it is unclear and may have inadvertently left out some language from the original condition.[78] Specifically, PGE questions the addition of "and future" in the last sentence, arguing that it "could capture the entirety of [its] revenue requirement for all resources" and questions whether Staff's intent was to refer to program administration costs.[79] PGE is also concerned that there are other interpretations of Staff's language, including that it intended that stranded costs of existing and future cost of service rate-based system would be borne by VRET customers, which it opposes.[80] To the extent that this is the case, PGE argues, the result would be excessive and impractical to implement. PGE agrees, however, that VRETs should be addressed in long-term planning.[81]

Staff appreciates PGE's diligence in identifying a missing word from the original Condition 8 in Staff's proposal. As Staff notes throughout its testimony, the nine conditions are meant to ensure that any and all VRET programs are in the public interest. Currently, there are no conditions that address the impact large VRET programs may have on utility least-cost, least-risk planning. Condition 8 provides that all direct and indirect costs must not be borne by COS

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[77] Staff/400, Gibbens/25.
[78] PGE/800, Wenzel – Faist/28.
[79] PGE/800, Wenzel – Faist/29.
[80] *Id*.
[81] PGE/800, Wenzel – Faist/30.

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customers but instead by a party who is associated with the voluntary program. Cost shifts from utility planning are therefore already required by every parties' proposed Condition 8; however, only Staff's proposal clarifies to stakeholders the Commission's intent to contemplate VRET programs on long-term planning.

NIPPC argues that the Commission should retain its original language, emphasizing that stranded costs in particular may occur with a VRET.[82] NIPPC states that it is concerned that the VRET program will have the unintended effect of shifting costs onto the Direct Access program, and that such language is then necessary to ensure that Direct Access customers are not subsidizing a utility's VRET program.[83] Specifically, NIPPC is concerned that capacity procured to provide service for the VRET program could inflate the level of capacity owned by, or under contract to, PGE and then PGE could seek to collect a portion of such costs from Direct Access customers.[84] This would occur unless PGE debited an equivalent amount of capacity from the transition calculation (as opposed to simply not charging Direct Access customers) because that capacity would have been replaced by VRET capacity.[85] In sum, NIPPC argues that Direct Access customers should not be responsible for capacity costs related to a voluntary program.

Staff agrees with NIPPC that stranded costs remain a concern and believes that its proposed Condition 8, as updated in this brief, provides more clarity on this issue.

10. Condition 9

Currently, Condition 9 states "All VRET offerings must be made publicly available and subject to review by the Commission to ensure they are fair, just and reasonable." All parties support maintaining this condition as written.

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[82] NIPPC/300, Gray/21.

[83] NIPPC/300, Gray/21-22.

[84] *Id.*

[85] NIPPC/300, Gray/22.

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(B) PGE's GEAR Program Energy and Capacity Credits.

PGE's GEAR program allows for credits to participating customers for the energy and capacity provided by GEAR resources. In Phase I, the Commission declined to approve credits for the PSO that would allow for customers to enjoy pricing below COS rates, reasoning that risks to COS customers were too great to warrant negative pricing.[86] For the CSO, the Commission expressed similar concerns, but ultimately decided that it would consider floating credits, which could result in net participant savings, on a case-by-case basis.[87] For calculating the capacity credits, the Commission directed PGE to utilize Staff's preferred method for determining capacity value, which relies on the capacity methodology from PGE's IRP.[88]

PGE proposes to continue the use of its credit methodology as proposed in Phase I, which uses "fixed credits where the energy and capacity credits will be calculated at the time the resource is procured and cannot result in negative credits."[89] PGE also proposes to continue utilizing the IRP methodology to value energy and the RECAP model to calculate capacity value during times of resource deficiency are used for the calculations.[90]

Staff continues to support the Phase I approach for both methodology and calculation, as it is the optimal solution because it is directly tied to PGE's resource needs as determined in the IRP, customers are provided with cost assurance, and because it cannot result in net bill savings.[91] The latter is important because it ensures sufficient differentiation between VRET and DA offerings, thereby reducing the concern that the VRET could be considered a barrier to the competitive retail market.[92] PGE proposes to use the loss of load probability model used in the most recently filed IRP or IRP Update at the time the capacity credit determination to determine

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[86] Order No. 19-075 at 2.
[87] *Id.* at 5-6.
[88] *Id.* at 6.
[89] PGE/800, Wenzel – Faist/40.
[90] Staff/400, Gibbens/28.
[91] Staff/400, Gibbens/28-29.
[92] Staff/400, Gibbens/29.

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capacity contributions (i.e. RECAP model).[93] Staff supports this change, as it better reflects the actual capacity cost that is avoided due to the VRET program.[94]

CUB, Walmart Inc. and Sam's West, Inc. (collectively, Walmart) and Renewable NW support a floating credit for both the CSO and PSO, which would allow for participants to achieve net bill savings compared to cost of service rates.[95] Renewable NW supports calculating energy and capacity credits based on the IRP as reasonable, at least at this time.[96] Walmart proposes that the Commission adopt the Alliance of Western Energy Consumers' (AWEC) proposed credit methodology for the CSO, which is based on Oregon's marginal cost of service methodology.[97] CUB proposed to update the methodology for calculating capacity credits to one that uses a technology-neutral proxy to value capacity during resource insufficiency times, as opposed to a single-cycle combustion turbine.[98]

Staff continues to support the consideration of floating credits for the CSO option only, using CUB's proposed methodology for the credit that is based on the actual power cost impact for COS customers using the MONET model.[99] Although it is theoretically possible for customers to achieve a net bill savings, Staff finds that this result is nevertheless appropriate given the Commission's previously stated desire to evaluate floating credits as part of a VRET program. The currently approved process, on a case-by-case basis, allows stakeholders to fully examine the impacts and maintain a limited scope. As stated above, Staff continues to recommend a fixed credit for the PSO option.

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[93] PGE/800, Wenzel – Faist/41.
[94] Staff/400, Gibbens/30.
[95] Walmart/400, Chriss/1; RNW/300, O'Brien/4; CUB/200, Jenks/10.
[96] RNW/400, Ramsey/13-14.
[97] Walmart/400, Chriss/2 (referring to AWEC's Phase I testimony AWEC/200, Mullins/2).
[98] Staff/400, Gibbens/29-30.
[99] Staff/400, Gibbens/29.

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(C) PGE's GEAR Program Cap Size.

PGE proposes to increase the size of its total program by 200 MW, for a total GEAR program of 500 MW.[100] PGE agrees with NIPPC to maintain the CSO and PSO distinction, consistent with tranche 1 of its program.[101] Therefore, the 200 MW PGE proposes for Phase 2 would be allocated 100 MW for the CSO and 100 MW for the PSO.[102] Walmart does not oppose the Company's proposed cap increase.[103]

Staff, however, stands by the concerns it raised in its opening testimony that there has been little to no information or experience from the first tranche, and is concerned that a higher cap comes with unknown, additional risk to COS customers.[104] Staff cites to examples including impacts on resource needs through the IRP, market fluctuations, power cost fluctuations, and unforeseen cost shifts as being subject to increase, and concludes that "optionality for a certain subset of customers should not come at the expense of COS customers."[105] Staff's primary recommendation is to keep the current participation cap adopted in Phase I. However, if the Commission determines that an increase is warranted, Staff recommends that the Commission set the cap at the amount it finds reasonable for the PSO portion of the program, rather than create a single cap for the PSO and CSO options.[106] CSO customers could apply for the program on a case-by-case basis.[107] This would maintain the distinction between the CSO and the PSO, and would limit the amount of risk COS customers would be exposed to as a result of the VRET program.[108]

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[100] PGE/800, Wenzel – Faist/2.
[101] PGE/800, Wenzel – Faist/6.
[102] *Id.*
[103] Walmart/400, Chriss/2.
[104] Staff/400, Gibbens/31.
[105] Staff/400, Gibbens/32.
[106] *Id.*
[107] Staff/400, Gibbens/33.
[108] *Id.*

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PGE urges the Commission to reject consideration of additional participation in the CSO on a base-by-case basis, and argues that waiting to allow additional capacity for the program until parties are completely informed by the results of the first tranche would be unacceptably far into the future.[109] PGE argues that there is sufficient information now in program design, and that a case-by-case process would introduce unwarranted administrative and regulatory burden on customers.[110] If the Commission is interested in a case-by-case review, PGE urges the Commission adopt PGE's proposed process, which includes a 60-day review process for Staff, the Commission and parties.[111] PGE also recommends that the CSO filing include the following:

- A customer Letter of Intent that contains the following:
  - Participation level (MW of resource of MWh of demand)
  - Commitment term (must equal PPA term), and
  - Whether the customer will bring a resource or if they want PGE to conduct a competitive procurement on their behalf that could include third-party and utility-owned resources.
- Information that enables the Commission to determine the impact to COS customers; and
- Potential benefits to the system.[112]

PGE further recommends the application reflect sensitivity to customer desires for confidentiality.[113] Staff has the same concerns regarding a 60-day review process for CSO filings as with future expansions of the GEAR program, generally. Staff believes that the 60-day timeline may be insufficient during periods of particularly heavy workload or in instances that substantial discovery is required.[114] Staff appreciates PGE's effort to identify filing requirements

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[109] PGE/800, Wenzel – Faist/33-34.
[110] *Id.*
[111] PGE/800, Wenzel – Faist/34-35.
[112] *Id.*
[113] PGE/800, Wenzel – Faist/35.
[114] Staff/400, Gibbens/49.

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to limit the potential need for additional discovery following the initial application, however Staff does not find that the proposal guarantees a full and complete description of all of the issues required by the Commission to consider.

NIPPC does not oppose PGE's proposed increase so long as PGE complies with the Nine Conditions as currently adopted,[115] but argues that an expansion of the VRET cap without also expanding the Direct Access caps would "improperly inhibit competition and further entrench PGE's monopoly status."[116] PGE argues that NIPPC's arguments are without merit given its proposal to express the GEAR cap in MW rather than aMW, which has the effect of making the GEAR cap proposal "significantly lower than [its] LTDA and NLDA caps (approximately 150 aMW for the GEAR, includes tranche 1 and 2, compared to 419 aMW for DA)."[117] Staff agrees with PGE that a one-to-one comparison of the GEAR and DA cap sizes does not make sense given the different cap metrics. Should the Commission decide to increase the cap for the GEAR, Staff believes that the Commission should consider the impact during deliberation of the issues in UM 2024, but does not believe that a stepwise increase in DA caps is required.

(D) PGE's GEAR Program Risk Adjustment Fee.

In Phase I, the Commission approved PGE's proposed risk-adjustment charge related to the risk to shareholders that the program could, relative to the term of the underlying resource, be under-subscribed.[118] The Commission found that PGE's program design protected COS customers from the risk of under-subscription, but not shareholders:

> If sufficient numbers of customers do not subscribe to the option, then PGE shareholders, not ratepayers, will be responsible for managing that shortfall and any losses associated with the cost of the VRET resources and PGE's failure to procure adequate subscriptions. As part of the terms and conditions, PGE's risk adjustment charge is a justified element that takes into account the possibility of under-subscription.[119]

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[115] NIPPC/300, Gray/30.

[116] NIPPC/300, Gray/31.

[117] PGE/800, Wenzel – Faist/35.

[118] Order 19-075 at 7.

[119] *Id.*

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In Phase II, PGE proposes a Risk Adjustment Fee to address two additional categories of risk: customer load variability[120] and variable resource.[121] PGE withdrew its proposal to address a fourth category of risk – PPA risk – which is the general risk of dealing with a third-party to develop, construct and operate a resource.[122] PGE argues that its risk adjustment fee is necessary to fully insulate non-participating COS customers from, and fairly compensate shareholders for, the risk associated with the GEAR, and that a flexible risk adjustment fee is the beast outcome for GEAR participants, COS and shareholders because it can be adjusted for specific circumstances and as risks change over time.[123] For the calculation, PGE proposes to use the lesser of the most recently approved cost of debt or cost of equity, but in no instance greater than 10 percent as a percentage of the PPA price.[124] PGE explains that this is appropriate for a number of reasons:

- The cost of debt and equity are generally accepted as fair risk compensation metrics. The cost of debt is what a lender will charge for the risk on a loan and the cost of equity is what shareholders require for risk compensation.
- Cost of debt and equity are updated to reflect macro level changes to risk compensation generally, and therefore, are unlikely to become dated.
- Making the risk adjustment fee equal to a percentage of the PPA prices serves as a proxy for both energy prices and potential REC prices. This is because as both of those increase or decrease, you would expect to see a similar increase or decrease in power prices.[125]

[120] This occurs when a customer uses less (or more) energy than subscribed for. Staff/400, Gibbens/34.

[121] This occurs when the renewable resources produces above or below forecast levels. Staff/400, Gibbens/34.

[122] PGE/800, Wenzel – Faist/36-37.

[123] PGE/800, Wenzel – Faist/37-38.

[124] PGE/800, Wenzel – Faist/39.

[125] PGE/800, Wenzel – Faist/39-40.

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In regard to Staff's concerns about the lack of specificity in calculating the risk adjustment fee, PGE set forth a number of examples for how the risk adjustment fee would be calculated in different scenarios, but also states that it is not "completely analogous to what the risk premium may be, which should include some acknowledgement of the risk weighted possible outcomes…"[126] In the alternative, PGE would support establishing a reasonable value within the range of possible risk if the Commission is unwilling to approve a flexible credit value.[127]

While Staff appreciates the additional examples provided in PGE/802, the fact remains that PGE's proposal remains opaque and does not provide a basis to conclude that any such fee would result in fair, just and reasonable rates. Staff continues to recommend that the Commission deny an increase to the risk adjustment fee beyond what was approved in Phase I and consider any change in a tariff filing when a more detailed review of methodology and calculation could be reviewed.[128]

Renewable NW does not oppose a risk adjustment fee *per se*, but recommends that any methodology or formula account for both potential costs and potential benefits.[129] Walmart continues to wholly opposes PGE's proposed Risk Adjustment Fee as arbitrary and incapable of determining whether it meets the fair, just and reasonable standard for approving rates.[130] If the Commission decides that a risk adjustment fee is warranted, it argues, then it should require PGE to specifically identify each risk that will be examined in setting the fee and the methodology to be applied for each risk.[131] Staff generally agrees with the arguments laid out by Renewable NW and Walmart. Staff believes they highlight the imprecise nature of the proposed methodology to date. Staff continues to maintain that the Company and its shareholders should be appropriately

[126] PGE/800, Wenzel – Faist/38; *see also* PGE/802.
[127] PGE/800, Wenzel – Faist/39.
[128] Staff/400, Gibbens/37.
[129] RNW/400, Ramsey/9-10.
[130] Walmart/400, Chriss/2.
[131] *Id.*

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compensated for additional risk resulting from the GEAR program, but asks the Commission to allow stakeholders to ensure that the risk adjustment matches the risks associated with each tranche.

(E) PGE Gear Program - Utility Ownership.

PGE advocates for changes to Condition 7 that would allow for utility ownership of a resource for tranche 2 of its GEAR, but also states it has no specific resource identified for tranche 2 at this time.[132] Renewable NW supports the option of utility ownership so long as the process resulting in procurement of a utility-owned resource clearly demonstrates that the resource is the least-cost, least-risk option.[133] CUB supports utility ownership if it is not included in rate base and non-participating customers are not paying rates that include return of and return on utility investment, but worries that even with this condition, the financial health of the utility may nevertheless be at risk.[134] NIPPC opposes utility ownership of a VRET resource as contrary to the public interest and without a benefit to the GEAR program.[135]

As stated above, Staff generally supports language in Condition 7 that allows for the possibility of utility ownership. For PGE's GEAR program, however, Staff does not believe the Commission should allow the option until there is a specific proposal from PGE that parties and the Commission can review to ensure that it would be in the public interest.[136] PGE has made no such proposal at this time.[137] Rather, PGE argues that it is "unclear as to what further details Staff is referring"[138] and unclear on Staff's proposed ownership application process.[139]

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[132] PGE/800, Wenzel – Faist/42.
[133] RNW/400, Ramsey/10-11.
[134] CUB/200, Jenks/16.
[135] NIPPC/300, Gray/22-28.
[136] Staff/400, Gibbens/40.
[137] Staff/400, Gibbens/39.
[138] PGE/800, Wenzel – Faist/43.
[139] PGE/800, Wenzel – Faist/44.

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Staff views the addition of a utility owned resource in the GEAR program as a major shift from PGE's currently approved GEAR program. Should the Company decide to pursue utility ownership, Staff believes that the stakeholders and the Commission have the right to fully investigate the proposal to ensure its compliance with the nine conditions for a VRET, and in the public interest. Staff believes that the appropriate regulatory approval process could take place during the course of a general rate case or as a stand-alone filing, similar to that proposed by PGE for other expansions to the GEAR program. Staff would reiterate that it supports a 90 day review timeline where stakeholders have a chance to review the details of the proposal, but also that a longer investigation may be recommended based on the information provided.

Staff notes that concerns regarding cost-shifting and the implications for COS customers are diminished when the utility elects to use an affiliate or treat the resource as below-the-line, but nevertheless are not non-existent, given the interrelated nature of utility risk and the financial health of the utility.[140] Scrutiny for utility-owned resources is particularly important because the resource could be built for a single customer's demand, making the risk of losing the customer or some of the customer's demand more impactful.[141] Staff is concerned about a GEAR structure that could effectively turn the GEAR program into a special contract program with minimal oversight from the Commission.[142]

(F) GEAR program Compliance with Competitive Bidding Rules.

PGE is agreeable to a process for GEAR resource procurement (regardless of ownership) that utilizes a modified or stream-lined competitive bidding process, in lieu of seeking a waiver of the competitive bidding rules (CBRs).[143] PGE recommends the process used in its prior Commission-acknowledged RFP as a starting point and make changes as appropriate. PGE

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[140] Staff/400, Gibbens/39.

[141] Staff/400, Gibbens/41.

[142] *Id.*

[143] PGE/800, Wenzel – Faist/46.

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argues that this would significantly reduce the time and cost of its implementation without changing the ability for an unbiased selection process.[144]

NIPPC strongly opposes any up-front waiver of the CBRs for large projects, without specific facts before the commission for consideration.[145] It argues that the CBRs are intended to protect two separate categories of market participants – ratepayers (by ensuring rigorous analysis supports the selected resource and competitive pricing), and third-party developers (by ensuring that the utility cannot simply choose the self-bid option, or select a vendor based on non-public criteria).[146] Finally, it argues that PGE ownership of a resource only serves to underscore the importance that the CBRs apply to GEAR resources. As such, NIPPC recommends that PGE be required to comply with the CBRs or explain why a waiver is appropriate based on the specific facts at the time the resource is procured.[147]

Staff believes that an alternative process for resource procurement may be required given the circumstances surrounding the GEAR; however, Staff recommends that the Commission approve an iterative process which results in incremental changes to the currently established CBRs. Staff continues to recommend that the Commission adopt a process including the following:

- All interested parties are able to provide feedback on the scoring, selection, RFQ criteria, and independent evaluator selection. The Commission sets the criteria at a public meeting.
- A qualified independent evaluator who review the Company's adherence to agreed upon process and proper selection of chosen resources.
- Ability for interested parties and the Commission to review the scoring and decision-making process.

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[144] PGE/800, Wenzel – Faist/47; PGE/801.
[145] NIPPC/300, Gray/29.
[146] *Id.*
[147] NIPPC/300, Gray/30.

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- Shareholder assumption of risk for any decisions or outcomes deemed to be outside of the agreed upon standards by the Commission during a second public meeting.
- Review of and potential amendments to this process following procurement.[148]

(G) PGE's GEAR Program Customer Size Requirements.

Currently, PGE's CSO participation limit is set at 10 aMW for customers.[149] The Commission committed to considering whether participation should be based on criteria in addition to or in lieu of size in Phase II.[150] Walmart advocates for the Commission to reduce the minimum size for the CSO and allow customers larger than 5 aMW to participate.[151] PGE supports Staff's proposal to allow customers below 10 aMW be allowed to petition the Commission for approval to participate in the GEAR program on a case-by-case basis. This strikes an appropriate balance between allowing PGE to control administrative costs and resource needs while also allowing customers in the CSO who may have the experience, ability, opportunity and specific interest to find their own resources, despite their size.[152]

(H) GEAR Program and IRP Interactions.

PGE agrees with Staff that it is appropriate to account for the current VRET products in its IRP and that the IRP provides an opportunity to understand how potential growth of the VRET could impact future resource needs, but stops short of agreeing with Staff that it should quantify the growth of the VRET products within the IRP.[153] PGE argues that quantifying the growth of the VRET products would be "highly speculative."[154] For this reason, PGE supports

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[148] Staff/400, Gibbens/43.
[149] Order No. 19-075 at 8.
[150] *Id.*
[151] Walmart/400, Chriss/2.
[152] PGE/800, Wenzel – Faist/36; Staff/400, Gibbens/46.
[153] PGE/800, Wenzel – Faist/47.
[154] PGE/800, Wenzel – Faist/48.

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the consideration of potential growth in VRET products, but not determination of expected growth in VRET products within the IRP.[155]

Staff's recommended approach provides the Commission and stakeholders with the most information to consider when examining the Company's future planning. The difference between potential and expected growth of VRET products would only require the Company to produce a high and low adoption scenario for VRET products, which is already produced for many other aspects of IRP planning. The planning process in general requires many conversations with different customer groups, and necessitates PGE utilizing this information to prognosticate. Staff's recommendation is no more burdensome than other IRP processes, and provides a range of potential outcomes for VRET impacts on the utility's long-term plan.

(I) GEAR Program and PGE Transmission.

Initially, PGE proposed that transmission issues in the VRET be considered in a larger transmission focused docket that would apply to all procurement moving forward. Now, PGE recommends that the Commission approve its proposal that the interim transmission solution outlined in its 2019 IRP Addendum on August 30, 2019 be applied to VRET procurement. Staff and Renewable NW support this approach.[156]

(J) GEAR Program - Post Phase II.

PGE requests that the process for future increases to the nameplate capacity for the GEAR be established as part of Phase II of this proceeding. PGE states that the process "would likely start with a tariff filing, proposing an increase in the cap" and agrees to Staff's proposed 90-day review process prior to taking the proposal to a public meeting for Commission determination.[157] Staff notes that the determination could, depending on the circumstances, be a

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[155] PGE/800, Wenzel – Faist/48.

[156] Staff/400, Gibbens/48.

[157] PGE/800, Wenzel – Faist/48-49.

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recommendation to investigate the filing further. Walmart does not oppose an expedited process for future cap increases.[158]

Relatedly, NIPPC argues that there should be a tandem process to consider similar increases to the Direct Access cap if the Commission is considering increases to the GEAR cap.[159] PGE argues that this is an issue within OPUC Docket UM 2024, and caps for Direct Access programs should be addressed within that proceeding. Staff finds that these are distinct issues—there is a difference between updating the cap (an issue in UM 2024), and a process that allows for adjustment of the Direct Access caps based on increased VRET offerings. However, Staff does not find that the Commission needs to adopt a specific process for adjusting the Direct Access caps as part of this proceeding.

IV. CONCLUSION

Staff urges the Commission to adopt its recommendations as set forth herein and to the extent not addressed in this brief, in its Prehearing Brief.

DATED this 3rd day of November, 2020.

Respectfully submitted,

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[158] Walmart/400, Chriss/2.

[159] NIPPC/300, Gray/32.

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