

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 1953

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC  
6 COMPANY,

7 Investigation into Proposed Green Tariff.

STAFF'S OPENING BRIEF

8 **I. INTRODUCTION**

9 Pursuant to Administrative Law Judge Kirkpatrick's November 30, 2018 Ruling, Staff of  
10 the Public Utility Commission of Oregon (Staff) hereby submits its Opening Brief in Docket UM  
11 1953. Generally, Staff continues to support voluntary renewable energy tariffs as being  
12 consistent with the public interest, and recommends that the Commission adopt this finding in  
13 this case. Staff further recommends that the Commission approve Portland General Electric  
14 Company's (PGE or Company) proposed green energy tariff, as reflected in its Cross-Answering  
15 Testimony, subject to the following changes:

- 16 • The capacity credit applicable to green tariff subscribers should be based on IRP  
17 valuation, as opposed to QF pricing, and  
18 • There should be no negative pricing under the "bring your own" PPA scenario.  
19 • PGE should be required to update rates, terms and conditions of the program through  
20 advice filings filed with the Commission consistent with ORS 757.210 and ORS  
21 757.215.

22 Staff's testimony in this proceeding also raised concerns about the relationship between  
23 Voluntary Renewable Energy Tariff (VRET) programs and direct access programs. Staff's  
24 recommendation in this proceeding strikes an appropriate balance between direct access  
25 programs and the VRET at this time, but recognizes that changes to direct access programs may  
26 be appropriate depending on the program design adopted by the Commission in this case.

1 **II. BACKGROUND**

2 The Commission opened docket UM 1953 in order to determine whether offering a  
3 VRET is in the public interest, and to evaluate PGE’s proposed green energy tariff. Legal and  
4 policy requirements for voluntary renewable energy tariff (VRET) programs are found in House  
5 Bill 4126 and the Commission’s orders in docket UM 1690.

6 *1. House Bill 4126*

7 During the 2014 legislative session, the Oregon Legislature passed House Bill 4126 (HB  
8 4126), wherein the Commission was directed to study the impacts of allowing utilities to offer  
9 voluntary renewable energy tariffs to customers.<sup>1</sup> The legislation further directed the  
10 Commission to consider the results of the study in conjunction with the following factors to  
11 determine whether, and under what conditions, it is reasonable and in the public interest to allow  
12 electric companies to provide VRETs to non-residential customers:

- 13 • Whether allowing electric companies to provide voluntary renewable energy tariffs to  
14 nonresidential customers promotes the further development of significant renewable  
15 energy resources;
- 16 • The effect of allowing electric companies to offer voluntary renewable energy tariffs  
17 on the development of a competitive retail market;
- 18 • Any direct or indirect impact, including any potential cost-shifting, on other  
19 customers of any electric company offering a voluntary renewable energy tariff;
- 20 • Whether the voluntary renewable energy tariffs provided by electric companies to  
21 nonresidential customers rely on electricity supplied through a competitive  
22 procurement process; and
- 23 • Any other reasonable consideration related to allowing electric companies to offer  
24 voluntary renewable energy tariffs to their nonresidential customers.<sup>2</sup>

25  
26 <sup>1</sup> HB 4126 Section 3(2).

<sup>2</sup> HB 4126 Section 3(3).

1 HB 4126 also provides the Commission with authority to allow such tariffs, following a  
2 determination that it is reasonable and in the public interest to allow the electric company to  
3 provide a VRET to its nonresidential customers.<sup>3</sup> All costs and benefits associated with the  
4 VRET are to be borne by the nonresidential customer receiving service under the voluntary  
5 renewable energy tariff.<sup>4</sup>

6 In accordance with HB 4126's directive, the Commission opened docket UM 1690 and  
7 directed Staff to conduct a study to consider the impact of allowing electric companies to offer  
8 VRETS to their nonresidential customers.<sup>5</sup>

9 *2. OPUC Docket UM 1690*

10 In docket UM 1690, the Commission implemented the legislative directives in two  
11 phases. In Phase 1, Staff conducted a study to consider the impact of allowing electric  
12 companies to offer VRETS to nonresidential customers. The Commission accepted the VRET  
13 Study in Phase 1 of this proceeding.<sup>6</sup> The Commission opened Phase 2 in order to address the  
14 threshold statutory question: whether, and under what conditions, it is reasonable and in the  
15 public interest to allow electric companies to provide voluntary renewable energy tariffs to  
16 nonresidential customers.<sup>7</sup>

17 In Phase 2 of the proceeding, the Commission adopted nine guidelines implementing the  
18 above statutory requirements, but deferred its decision on whether it is in the public interest to  
19 allow utilities to offer VRETS. Instead, the Commission invited PGE and PacifiCorp to file draft  
20 VRETS for consideration, and stated that it would make its determination within the context of  
21 specific utility proposals. The Commission's guidelines for a VRET program, as set forth in  
22 Order 15-405, are:

23 <sup>3</sup> HB 4126 Section 3(4).

24 <sup>4</sup> *Id.*

25 <sup>5</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-258 at  
1 (Aug. 26, 2015).

26 <sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

1 9. All VRET offerings must be made publicly available and subject to review by the  
2 Commission to ensure they are fair, just and reasonable.<sup>8</sup>

3 PGE and PacifiCorp subsequently declined the Commission's invitation to file draft  
4 VRETs or program designs, generally stating that they were unable to design a program that  
5 addressed concerns from the Commission, Staff and other stakeholders while providing a  
6 product that their customers had asked for.<sup>9</sup> Accordingly, in Order No. 16-251, the Commission  
7 adopted Staff's recommendation and closed docket UM 1690.<sup>10</sup> Staff noted in its public meeting  
8 memo that utilities are permitted by law to petition to amend or rescind Order No. 16-251 in  
9 order to resume the docket at a future date under appropriate circumstances.<sup>11</sup>

10 3. *OPUC Docket No. UM 1953*

11 On April 13, 2018, PGE filed a Petition to Amend Order No. 16-251 and Reopen Docket,  
12 in which it requested that the Commission amend its Order No. 16-251 and reopen docket UM  
13 1690 to permit review of the Company's green tariff, or in the alternative, that the Commission  
14 open a new docket to consider the Company's testimony and draft green tariff.<sup>12</sup> On May 24,  
15 2018, the Commission opened OPUC Docket No. UM 1953 to investigate PGE's specific green  
16 tariff proposal.

17 It is Staff's understanding that PGE's primary recommendation is set forth in its Cross-  
18 Answering and Reply Testimony in this case,<sup>13</sup> and entails splitting its green tariff program into  
19 two phases, with its initial offering to be structured as follows:

20 <sup>8</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-405 at  
21 1-2 (Dec. 15, 2015).

22 <sup>9</sup> UM 1690 – PacifiCorp Letter filed April 14, 2018; UM 1690 – PGE Letter filed April 14, 2018.

23 <sup>10</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 16-251 at  
24 1 (July 5, 2016).

25 <sup>11</sup> *Id.* at Appendix A, page 5.

26 <sup>12</sup> UM 1690 - PGE's Petition to Amend Order and Reopen Docket at 2.

<sup>13</sup> At the hearing in this case, PGE was asked whether it would prefer its original proposal or its  
more limited proposal as discussed in its 400 series testimony. Hearing Tr. at 38-40. PGE  
indicated its preference would be "to move forward with our original proposal." Hearing Tr. at  
39-40. However, PGE did not indicate that it was withdrawing its 400 testimony proposal,  
which addressed several party concerns, nor did it indicate whether there are some aspects of its  
original proposal that it would propose to update in light of the continued work in this

- 1 • Available to nonresidential customers whose aggregate demand across all retail  
2 schedules exceeds 30 kW; customer will be allowed to aggregate all nonresidential  
3 accounts.
- 4 • Third-party ownership of the resource, procured through a PPA using a competitive  
5 procurement process, with a duration of between 10 and 20 years. The resource will  
6 be operational after 2015.
- 7 • Subscribers will receive energy and RECs from renewable energy resources as  
8 defined by the Oregon Renewable Portfolio Standard.
- 9 • Total potential program size of 300 MW:
  - 10 ○ Limit PGE's procurement to no more than 100 MW of nameplate capacity.
  - 11 ○ For subscribers with a peak load greater than 10 MWa, customer can bring its  
12 own PPA up to 200 MW (nameplate) total for the purposes of the pilot with  
13 PGE retaining final approval over terms and conditions of the PPA.
- 14 • Subscribers will receive energy and capacity credits as follows:
  - 15 ○ For PGE PPA:
    - 16 ■ Energy credit calculated using the AURORA model in accordance  
17 with the methodologies acknowledged in PGE's IRP, updated with  
18 current assumptions.
    - 19 ■ Capacity credit will align with the value of PGE's proxy capacity  
20 resource, the capacity contribution of the PPA resource selected, and  
21 PGE's sufficiency/deficiency period, as determined by the most  
22 current Commission-approved sufficiency/deficiency period. Capacity  
23 credits only applied during years of capacity deficiency.
      - 24 • Alternatively, if the QF avoided cost rate cannot be used, the  
25 capacity value in the IRP should be used (i.e. the real levelized

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26 proceeding. Therefore, Staff's understanding is that the Company's primary recommendation in this case is consistent with its 400 series testimony.



1 Pursuant to HB 4126 Section 3, the Commission should conclude that it is reasonable and in the  
2 public interest to allow electric companies to provide VRETs to nonresidential customers, so  
3 long as utility-proposed programs meet the nine VRET Guidelines established by the  
4 Commission in Order 15-405.

5 HB 4126 requires the Commission to consider the results of the VRET study, as well as  
6 five statutory factors, in order to determine whether, and under what conditions, it is reasonable  
7 and in the public interest to allow electric companies to provide voluntary renewable energy  
8 tariffs to nonresidential customers. In docket UM 1690 Phase I, Staff engaged in a robust  
9 process with stakeholders in order to produce a VRET study. The Commission accepted the  
10 VRET study in Order No. 15-258. In UM 1690 Phase II, the Commission considered the results  
11 of the VRET study in conjunction with the five statutory factors, and took two actions. First, the  
12 Commission adopted nine guidelines for evaluating whether a proposed VRET program is in the  
13 public interest. Second, the Commission encouraged the utilities to file draft VRETs or a  
14 detailed design of a proposed VRET, in order to inform its decision on whether VRET programs  
15 are in the public interest. Ultimately, the Commission did not make a final public interest  
16 determination as part of docket UM 1690.

17 In this case, PGE filed a detailed proposal, including draft tariff sheets, and testified to its  
18 view on how the program applies to the nine guidelines set forth by the Commission. Staff and  
19 other stakeholders have indicated general support for PGE's green tariff program, subject to  
20 specific programmatic requirements, and have addressed how the program applies to the  
21 Commission's guidelines. Although a VRET program's design will impact whether that specific  
22 program meets the applicable public interest standard requirements, Staff continues to find that it  
23 is in the public interest for utilities to offer appropriately designed VRET programs to their  
24 nonresidential customers.<sup>14</sup> Staff therefore recommends that the Commission conclude that  
25 VRET programs, generally, are in the public interest.

26 <sup>14</sup> See UM 1690 – Staff's November 20, 2015 public meeting memo (Order 15-405, Appendix A).



1           Upon determining that a VRET program is in the public interest, the Commission may  
2 authorize specific voluntary renewable energy tariff programs in accordance with ORS 757.205.  
3 ORS 757.205 requires that each public utility file with the Commission schedules showing all  
4 established rates, tolls and charges in force at any time for service rendered within the state.  
5 ORS 757.210 requires the Commission to determine that proposed rates or schedules are fair,  
6 just and reasonable prior to taking effect.

7

8       **(B) It is reasonable and in the public interest to approve PGE's proposed green tariff  
9 program, subject to the changes recommended by Staff.**

10           In adopting the nine guidelines in Order No. 15-405, the Commission considered both the  
11 results of the VRET study and the required five statutory factors in HB 4126. Therefore, Staff  
12 considered PGE's proposed VRET program, as well as the modifications suggested by other  
13 parties, within the context of the Commission's nine VRET Guidelines.

14           It does not appear that there is dispute in the record as to whether VRET Guidelines 1, 2,  
15 3 and 4 have been satisfied by PGE's proposal in this case. VRET Guideline 7, related to utility  
16 ownership, was not implicated in this case as PGE has not proposed to own any resource to serve  
17 customers in the first tranche of the program.<sup>15</sup> However, PGE and several parties either  
18 question or disagree as to how VRET Guidelines 5, 6, 8 and 9 apply to PGE's proposed green  
19 tariff program.

20           1. *The Commission must consider the effect of a VRET program on competitive retail  
21 markets, as well as ensure that its policies do not create a barrier to competition.*

22           In approving a VRET program, the Commission is charged with considering both the  
23 effect of VRET programs on the competitive market, and ensuring that its policies (including the  
24 conditions under which a VRET may be offered) eliminate barriers to the competitive retail

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26 <sup>15</sup> In its Response Testimony, AWEC raised concerns that the Company's proposed tariff  
included language that would allow for cost-recovery of utility-owned resources, despite the fact  
that PGE was not requesting approval for a program that allows for utility-owned resources.  
AWEC/100, Mullins/6.

1 market.<sup>16</sup> ORS 174.010 requires that statutes on the same subject be construed as consistent and  
2 in harmony with one another. Both HB 4126 and direct access legislation address the  
3 development of a competitive retail market.

4 Section 3(3)(b) of HB 4126 requires the Commission to consider, when determining  
5 whether it is reasonable and in the public interest to approve a VRET program, the effect of  
6 allowing electric companies to offer voluntary renewable energy tariffs on the development of a  
7 competitive retail market. ORS 757.646(1) provides, in relevant part, that “[t]he duties,  
8 functions and powers of the Public Utility Commission shall include developing policies to  
9 eliminate barriers to the development of a competitive retail market structure.” In consideration  
10 of both HB 4126 requirements and ORS 757.646, the Commission adopted VRET Guidelines 5  
11 and 6.

12 VRET Guideline 5 provides that VRET product design should be sufficiently  
13 differentiated from existing direct access programs. Staff finds that Guideline 5 is satisfied, as  
14 PGE’s proposed green tariff program, as modified by Staff, is sufficiently different from its  
15 current direct access offerings in a way that balances the considerations implicated by VRET  
16 Guideline 6. As AWEC testifies, there are many examples of differences between the two  
17 programs.<sup>17</sup>

18 VRET Guideline 6 provides that VRET terms and conditions (including the timing and  
19 frequency of offerings), as well as transition costs, must mirror those for direct access—if  
20 proposed terms and conditions for a VRET program differ from current direct access provisions,  
21 PGE and PacifiCorp must propose changes to their respective direct access programs to match  
22 those changes. The parties take more divergent views on the application of VRET Guideline 6 to  
23 PGE’s proposed green tariff program.

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26 <sup>16</sup> See e.g. *State v. Langdon*, 151 OrApp 640, 645 (1997).

<sup>17</sup> AWEC/200, Mullins/3-4.

1 Staff continues to recommend that the Commission provide guidance in this order  
2 regarding how either or both of PGE's green tariff and direct access programs should be  
3 modified in order to ensure that the green tariff program is not more favorable than PGE's direct  
4 access program. While this may create a short-term difference between program design elements  
5 in direct access compared to PGE's green tariff, Staff continues to agree with NIPPC's concern  
6 that program attributes, such as election windows, threshold customer size, energy credit  
7 methodology, and the existence and methodology of a capacity credit, cannot give rise to a  
8 program that overall favors VRET programs over direct access programs. Staff also agrees with  
9 Calpine that, assuming the Commission adopts the Partial Stipulation Regarding Direct Access  
10 Issues filed in PGE's currently pending general rate case, docket UE 335, recommended  
11 transition rates in that case do not need to be adjusted in order to address these concerns,  
12 including the addition of a capacity credit.<sup>18</sup> Rather, Staff agrees with Calpine that necessary  
13 adjustments to PGE's direct access program could be addressed in the Company's next general  
14 rate case.<sup>19</sup> Staff's recommendations for calculating green tariff program energy and capacity  
15 credits are discussed in the following section.

16 2. *The Commission must ensure that all costs and benefits associated with a VRET*  
17 *program be borne by the nonresidential customer receiving service under the VRET.*

18 HB 4126 Section 3(4) provides "[a]ll costs and benefits associated with a voluntary  
19 renewable energy tariff shall be borne by the nonresidential customer receiving service under the  
20 voluntary renewable energy tariff." The Commission implemented this directive, in part,  
21 through the adoption of VRET Guideline 8, which provides:

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

26 <sup>18</sup> Calpine Solutions/100, Higgins/4.

<sup>19</sup> *Id.*

1 The Commission's interpretation of HB 4126 through the adoption of Guideline 8 makes clear  
2 the Commission's intent that there be no cost-shifting from VRET participants to a utility's cost-  
3 of-service (COS) customers. Therefore, Staff finds that crediting mechanisms for energy and  
4 capacity must ensure that COS customers are not subsidizing the green tariff program. Through  
5 this lens, Staff continues to recommend that the Commission adopt a fixed credit (the sum of  
6 both energy and capacity credits, as discussed more fully below) for program participants,  
7 without the possibility for negative pricing under either a PGE PPA option or a "bring your own"  
8 PPA option.

9 *i. The Commission should reject credit proposals that would allow for pricing to  
fall below COS rates*

10 Walmart advocated for the possibility of negative pricing implemented through floating  
11 credits, which would allow subscribing customers the opportunity to pay a rate less than COS  
12 rates.<sup>20</sup> Staff continues to recommend the Commission reject these proposals, as Staff sees this  
13 approach as potentially interfering with competitive markets, as discussed more fully above.

14 Further, procurement (either by PGE or customer and approved by PGE) would occur  
15 outside of the processes put in place to ensure COS customers receive the least-cost, least-risk  
16 resource acquisitions, which is based on identification of need in the IRP, followed by a formal  
17 competitive procurement process and is subject to a prudence review prior to cost recovery.<sup>21</sup>  
18 Although PGE clarified at the hearing that it would employ a competitive process as a best  
19 practice for this program, the details of that competitive process were not detailed in testimony,  
20 are they clear at this time, and the resource will also be acquired outside of identification of need  
21 and the IRP process.<sup>22</sup> As such, COS customers bear the additional risk of resource procurement

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23 <sup>20</sup> Walmart/100, Chriss/14; Walmart/200, Chriss/2. Staff also notes that AWEC has proposed  
24 that credits be updated with general rate proceedings based on PGE's marginal cost study. Staff  
25 finds this to be distinct from a true floating credit, as advocated by Walmart. Staff/200,  
26 Gibbens/7.

<sup>21</sup> Hearing Tr. at 59.

<sup>22</sup> Hearing Tr. at 33. PGE Witness Mr. Sims testifies that the Company will use, as a best  
practice, a competitive procurement process in order to secure resources for the green tariff  
program.

1 outside of the competitive process, for which they are not compensated when prices are  
2 permitted to go negative.<sup>23</sup>

3 PGE agrees with Staff's concerns regarding negative pricing,<sup>24</sup> but updated its proposal  
4 to indicate its willingness to allow for the possibility of negative pricing under the "bring your  
5 own" PPA option.<sup>25</sup> Staff urges the Commission to reject this proposal, as PGE has not  
6 identified any principled difference between allowing negative pricing for some green tariff  
7 program subscribers, but not others. Staff is concerned that such disparate treatment may be  
8 considered to give "bring your own" PPA subscribers an undue preference or advantage over  
9 PGE PPA subscribers, contrary to ORS 757.325. Staff's concerns over negative pricing are not  
10 mitigated by a different party procuring the PPA.

11 Although Staff does not recommend this approach, should the Commission choose to  
12 allow for negative pricing, Staff recommends an approach which removes the potential for cost  
13 shifting to COS customers.<sup>26</sup> This is achieved by utilizing the same model to calculate the  
14 energy credit as is used to calculate COS power costs. Any other approach results in the  
15 potential for cost shifting and would not comply with VRET Guideline 8.<sup>27</sup>

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17 *ii. The Commission should adopt fixed energy and capacity credits established at  
the outset of the subscription period.*

18 Staff also continues to advocate for a fixed credit scenario, and agrees with PGE's  
19 proposal to levelize energy and capacity credits over the life of the agreement.<sup>28</sup> In a fixed-credit  
20 pricing scenario, subscribers have complete foresight into the price paid for the PPA, as well as  
21 the capacity and energy credits received. Assuming a green tariff program subscriber joins the  
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23 <sup>23</sup> Hearing Tr. at 69-70.

24 <sup>24</sup> PGE/400, Sims-Tinker/10.

25 <sup>25</sup> PGE/400, Sims-Tinker/11.

26 <sup>26</sup> Staff/200, Gibbens/9.

27 <sup>27</sup> *Id.*

28 <sup>28</sup> PGE/400, Sims-Tinker/7.

1 program at a level equal to 100 percent of its required energy, market prices no longer affect the  
2 actual price of energy for that subscriber. All price risk is then borne by COS customers,  
3 because the fixed price and fixed credit would be known at the outset. As such, if a fixed credit  
4 is known from the outset and is permitted to be negative, it would make economic sense for any  
5 qualifying customer to subscribe. This results in unfair treatment to: (1) residential customers,  
6 who pay a premium for green energy programs, (2) non-subscribing COS customers, who bear  
7 the price risk and the added risk of paying for power outside of least cost planning, (3) ESSes  
8 who cannot attract direct access customers when there is a program with guaranteed price  
9 savings on power without the requirement to leave the utility or pay any transition costs, and (4)  
10 any customer who desires to increase the amount of green energy usage but cannot because  
11 another customer made an economic decision to lower their utility bill.

12 *iii. The Commission should adopt a credit calculation methodology that is based*  
13 *on PGE's most recently acknowledged IRP.*

14 Regarding the methodology used to calculate energy and capacity credits, Staff generally  
15 supports PGE's proposed crediting mechanism for its PGE PPA option, and proposes that this  
16 methodology be applied to the "bring your own" PPA option as well. Staff agrees with PGE's  
17 proposal to use the AURORA model to calculate the energy credit in accordance with the  
18 methodologies acknowledged in PGE's IRP, updated with current assumptions. For capacity  
19 credits, Staff continues to disagree that QF pricing is the optimal approach, but agrees with  
20 PGE's alternative proposal to utilize its IRP methodology to calculate and value capacity.<sup>29</sup> This  
21 uses the RECAP model to calculate the capacity contribution of a resource and provide a  
22 valuation based on assumptions using least cost planning.<sup>30</sup>

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26 <sup>29</sup> PGE/400, Sims-Tinker/9.

<sup>30</sup> *Id.*

1           3. *The Commission must ensure that parties have ample time to review all VRET*  
2           *offerings to ensure that they are fair, just and reasonable.*

3           Guideline 9 provides that all VRET offerings must be made publicly available and  
4           subject to review by the Commission to ensure they are fair, just and reasonable.<sup>31</sup> PGE  
5           proposed tariff language is “[t]he Company shall allow for regulatory review of the rate and  
6           credit mechanism agreed upon by The Company and the Customer through a compliance filing  
7           to the OPUC.”<sup>32</sup> Staff is concerned that the Commission’s compliance filing review process will  
8           not allow ample time to review of rate and credit mechanisms in order to ensure that program  
9           requirements are met and calculations are done correctly, particularly if a more complex  
10          crediting mechanism is adopted.

11          “Compliance tariffs are not defined in statute or rule, but are a mechanism used to  
12          implement a rate change resulting from a Commission decision.”<sup>33</sup> Compliance filings to  
13          Commission orders are not subject to the file and suspend procedures of ORS 757.210-.215.<sup>34</sup>  
14          The Compliance filing process is not intended, nor does it support, substantive engagement with  
15          proposed tariffs in the same way that advice filings are considered and presented to the  
16          Commission for consideration. Staff reviews compliance filings to determine whether it is  
17          consistent with the resolutions and determinations made by the Commission in its final order.<sup>35</sup>  
18          Typically, compliance filings are not controversial and Staff sends correspondence to the  
19          company after review of the compliance filing confirming that it is consistent with the respective  
20          Commission order and the tariffs filed by the company will go into effect with no other official  
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22          <sup>31</sup> *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-405 at  
23          1-2 (Dec. 15, 2015).

23          <sup>32</sup> PGE/201, Simms-Tinker/3.

24          <sup>33</sup> *In re Portland General Electric*, OPUC Docket Nos. UE 180 and UE 184, Order No. 08-118 at  
25          6 (Feb. 14, 2008).

25          <sup>34</sup> *Id.*

26          <sup>35</sup> *In re PacifiCorp*, OPUC Docket No. UM 1452, Order No. 10-260 at Appendix A, page 6 (Jun.  
30, 2010)(Staff stating its standard of review for a compliance filing is whether the advice filing  
is consistent with the resolutions and determinations made by the Commission in its final order).

1 action by the Commission. In rare circumstances, the Commission has previously rejected  
2 compliance filings that are inconsistent with the respective Commission order and ordered the  
3 utility to submit new compliance filings.<sup>36</sup>

4 In this case, the Commission is asked to approve the framework of a program, but has not  
5 been presented with evidence on the record (nor is approving), the actual rate that would be  
6 applicable to program participants. In this sense, Staff finds that green tariff program rates are  
7 more akin to annual power cost filings or other ratemaking filings, which are filed pursuant to  
8 ORS 757.210 and ORS 757.215, which are subject to the standard rules for suspension and  
9 investigation. At this time, particularly given that the green tariff program is new, Staff finds  
10 that the possibility for a more robust review process is necessary. However, this does not mean  
11 that the review process must be lengthy. ORS 757.220 permits the Commission to allow tariff  
12 changes without requiring 30 days' notice for good cause shown.

13 Therefore, Staff continues to recommend that the Commission direct PGE to update tariff  
14 provisions through standard advice filings, which is consistent with current Commission practice  
15 for updating rates, in order to allow for meaningful review of customers agreements and pricing  
16 as required by VRET Guideline 9.

#### 17 IV. CONCLUSION

18 As articulated in its testimony in this proceeding, Staff finds that voluntary renewable  
19 energy tariffs for nonresidential customers are consistent with the public interest, and that it is  
20 reasonable that electric utilities offer those programs to their customers, generally. However,  
21 Staff continues to find that the design of any such program is critical in determining whether a  
22 specific proposed program will result in rates that are fair, just and reasonable. In this case, Staff

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25 <sup>36</sup> See e.g. *In re Investigation into the Portland Extended Area Service Region*, OPUC Docket  
26 No. UM 261, Order No. 91-1140 (Sept. 5, 1991)(Staff noting that only issue before Commission  
when reviewing compliance tariffs is “whether the tariffs should be accepted and allowed to go  
into effect, or rejected, and the company required to submit a new tariff.”).



1 recommends that the Commission approve a green tariff program for PGE's nonresidential  
2 customers, subject to Staff's recommendations as discussed above.

3 DATED this 11<sup>th</sup> day of December, 2018.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM  
6 Attorney General

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8 Sommer Moser, OSB # 105260  
9 Assistant Attorney General  
10 Of Attorneys for Staff of the Public Utility  
11 Commission of Oregon  
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