BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1953

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC COMPANY	)	INITIAL BRIEF OF NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION
	)	
Investigation into Proposed Green Tariff	)	
	)	

Pursuant to the procedural schedule adopted by the Commission in this Docket, the Northwest and Intermountain Power Producers Coalition ("**NIPPC**") submits its initial brief on Portland General Electric Company's ("**PGE**")'s proposed filing of a Voluntary Renewable Energy Tariff ("**VRET**"). As set out in detail below, NIPPC supports approval of PGE's proposed VRET, subject to specific conditions that are required by applicable law and policy and will maximize opportunities for customer choice and cost-effective decarbonization of the electric grid. These include:

(1) The Commission must condition approval of PGEs VRET on the requirement that PGE update the terms under which it provides direct access service to "mirror" any terms offered under the VRET, as required by Order No. 15-405.[1]

(2) PGE must apply a consistent calculation of energy and capacity credits for its VRET and direct access programs.

(3) PGE should not be permitted to own a VRET generation asset.

Each of these conditions is discussed in greater detail below. With these conditions properly applied, approval of PGE's VRET will increase customer choice and increase opportunities to cost effectively decarbonize Oregon's electric grid.

[1] Re In the Matter of OPUC, Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 at 2 (Dec. 15, 2015) ("Order No. 15-405").

I. BACKGROUND

This proceeding addresses PGE's proposal to implement a limited VRET pilot program under which PGE would be authorized to provide customers electing to purchase VRET service with renewable power generated by third parties and acquired by the utility through purchase power agreements ("PPA").[2] This proposal must be considered against the legal backdrop in Oregon, including (1) Oregon's longstanding Direct Access laws, codified in Chapter 17, Section 757.600 through 757.689 of Oregon's Revised Statutes; (2) HB 4126 (2014), in which the legislature directed the Commission to consider whether to allow utilities to offer a VRET; and (3) the Commission's determinations in Docket UM 1690, opened in response to HB 4126 and culminating with Order No. 15-405.

By law, Oregon's electric generation industry is intended to be a competitive market where commercial and industrial retail customers are entitled to a choice from whom they purchase their energy, and allowing them to directly purchase power in the open market from third-party electric service suppliers ("ESSs") to the same extent as purchasing power from their local utility. This law, known generally as Direct Access, has been in place since 1999. The Oregon legislature declared that the Direct Access program is of critical import to the economic health of the state.[3] The law specifies that the Commission's duties expressly include "***developing policies to eliminate barriers to the development of a competitive retail market structure,***" including policies which "***shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies***."[4] The Direct Access program allows interested commercial customers the opportunity to purchase carbon-free renewable energy from an ESS. Direct Access customers (and or their electricity service supplier) remain customers of the local utility with respect to transmission services, and pay for their share of the electricity grid, remain

[2] See section II.C. below for further discussion regarding the limits PGE has proposed for utility ownership of VRET resources in its pilot program.
[3] *See* Preamble, Senate Bill 1149, Or Laws 1999, ch 865, compiled, as subsequently amended, at ORS 757.600-757.691.
[4] ORS 757.646(1) (emphasis supplied).

subject to renewable portfolio standard requirements,[5] pay the public purposes charges.[6] and similar obligations.

Almost 20 years have passed since the enactment of Oregon's Direct Access laws, but development of a competitive retail market remains stunted despite continued demand from commercial and industrial customers.[7] This is largely because of the high level of 'transition charges" imposed on Direct Access customers.[8]

The laws of Oregon also includes HB 4126 (2014), in which the legislature directed the Commission to consider whether to allow utilities to offer a VRET, including directing the Commission to expressly consider the effect of allowing electric companies to offer voluntary

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[5] ORS 469A.050 (2)

[6] 860-038-0480

[7] *See, e.g.*, Brief of Oregon Business Coalition, *Noble Americas Energy Solutions LLC v. Public Utility Commission of Oregon, et al*., CA A161359, filed June 21, 2016 (incorporated herein by reference). ("The Oregon Business Coalition agrees with the findings of the legislature in Senate Bill 1149 that the availability of competitively-supplied power is critical for Oregon to compete in the national and global marketplace. Members of the Oregon Business Coalition are entities that purchase power in the state of Oregon for business operations as well as entities that develop and sell power in Oregon. The Oregon Business Coalition represent a variety of employers and commercial interests that provide substantial employment in, and tax revenue to, the state. Some members of the Oregon Business Coalition desire the opportunity to select power sources that are tailored to their needs, including corporate sustainability goals to purchase a customized mix of renewable energy products – a product that is available under the Direct Access program but not offered by the utilities. Some members of the Oregon Business Coalition are in very competitive, price sensitive industries, and their ability to acquire power at fixed prices for a known, fixed period of time (as available through the Direct Access program, but not from a utility) is critical to continuing business operations within the state.

Members of the Oregon Business Coalition have choices whether to continue or expand their facilities in Oregon (with the incumbent growth of jobs and tax base) or site their economic activities in other states. The ability to access competitive wholesale power markets, including renewable power supplies, is critical to those make-or-break business decisions. The PUC's decision in the proceeding below allowed PacifiCorp -- without evidentiary support -- to place a transition surcharge into effect for customers seeking to elect the Direct Access program at a rate that is so high as to effectively create an economic barrier to utilization of the Direct Access program throughout PacifiCorp's Oregon service territory. Such an excessive charge renders the statutory opportunity afforded by the state for Direct Access meaningless to the customers of PacifiCorp. That result is detrimental to the Oregon economy and contrary to the intent of Oregon's Direct Access law.")

[8] *Id.* Note that the Direct Access law does not require customers using such service to pay any transition costs for leaving the utility system. Rather, the law specifies that:

> "The Direct Access […] rates ***may*** include transition charges or transition credits that reasonably balance the interests of retail electricity consumers and utility investors. The commission ***may*** determine that full or partial recovery of the costs of uneconomic utility investments, or full or partial pass-through of the benefits of economic utility investments to retail electricity consumers, ***is in the public interest***."

ORS 757.607(2) (emphasis supplied).

renewable energy tariffs on the development of a competitive retail market.[9] As required by HB 4126, the Commission opened Docket No. UM 1690, and over the course of 18 months conducted a detailed study, including holding several well-attended stakeholder workshops and multiple hearings. The Commission ultimately determined that it would be appropriate for Oregon utilities to offer a VRET, but only if the VRET met robust requirements to protect the competitive retail market and nonparticipating customers. Specifically, in Order No. 15-405, the Commission included nine requirements that must be met for a VRET proposal to be considered in the public interest, expressly including as condition No. 6 the requirement that VRET terms and conditions must "mirror" those of a utility's direct access program:

> 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 ***must propose changes to their respective direct access programs to match those changes***. [10]

These nine conditions – including the "mirror" condition, are the conditions on which the Commission found it would be just and reasonable for a utility to offer VRET service. These are the principles under which PGE's proposed VRET program should be evaluated. As addressed below, PGE has expressly asked that the Commission *not* reevaluate the applicability of these conditions, yet has asked the Commission to approve a VRET proposal that does not meet them.

II. DISCUSSION

A. The "Nine Conditions" Remain Applicable To Consideration Of PGE's VRET Proposal and Must Be Applied.

Consideration of any VRET program by the Commission must start with existing law, and clear legislative intent. The law directs the Commission to develop policies to eliminate barriers to the development of a competitive retail market structure.[11] The law also directed the Commission to expressly consider the effect of allowing electric companies to offer voluntary

[9] HB 4126 (2014) Section 3(3)(a)
[10] Order 15-405 at 2 (emphasis supplied); Staff/100, Kauffman/13, lns 14-19.
[11] ORS 757.646(1)

renewable energy tariffs on the development of a competitive retail market in determining whether to allow utilities to file VRET proposals.[12] Against that backdrop, the Commission determined that to ensure a VRET could be in the public interest, it must be designed subject to specific conditions.[13] Each of these conditions is important, but we specifically highlight Condition 6, which requires that any VRET proposal must mirror terms available for in the competitive market for direct access. This condition is necessary in light of the Commission's legal obligations to mitigate the vertical and horizontal market power of incumbent electric companies in order to spur competitive markets, and informed by the legislatures' directive that any determination whether a VRET is in the public interest take into consideration the effect such VRET would have on the competitive market. Stated simply, by law the Commission cannot approve a VRET that "tilts the playing field" in favor of the utility.

Despite this clear direction, PGE has proposed terms and conditions for its VRET program that do not mirror its direct access program, and has expressly indicated that it does not intend to modify its direct access program to be consistent with its VRET proposal.[14] PGE's refusal to follow the express requirements outlined by the Commission should not be tolerated, and the Commission should condition any order approving PGEs VRET to comply with these obligations.

The justifications PGE provides for its refusal to follow the Commission's clear directives are unavailing. Witnesses for PGE suggest a rationale – raised for the first time in cross-answering testimony, without opportunity for response -- that its obligation to ensure the terms of its direct access program mirror its VRET should not be applicable to it because PGE is no longer seeking approval to own VRET resources.[15] PGEs argument lacks merit. First, PGE is simply incorrect that this condition only applies in circumstances of utility ownership. The Commission did not limit its order in this manner and PGE cannot simply invent an exception to the Commission's plain wording. The "mirror" condition is a prerequisite for a VRET as

[12] HB 4126 (2014) Section 3(3)(a)
[13] Order 15-405 at 1
[14] See NIPPC/101 Kahn/2, PGE Response to NIPPC Data Request No. 002(b).
[15] UM 1953, PGE/400 Sims-Tinker/15

established by the Commission, and nothing in the Order 15-405 limits the applicability of this condition only to circumstances where the utility was proposing to own a VRET resource.

Second, PGE has expressly asked that any consideration of the applicability of the nine conditions *not* be addressed in this proceeding, but instead be addressed in a future proceeding.[16] Given that PGE has expressly asked the Commission *not* to consider the applicability of the nine conditions in this proceeding, and that parties have not addressed this issue, there is no basis for PGE to refuse the requirement to modify its direct access terms to meet any the terms of its VRET, if approved. Whether or not PGE could make a case for modification of the "mirror" provision set out in condition six in some future proceeding is not at issue here.[17] The simple facts are that PGE has not justified eliminating condition six, has not provided a basis for the Commission to make such a determination, and has expressly asked that consideration of this issue not be part of the proceeding. PGE cannot at the same time cherry-pick a single one of the nine conditions and ignore it for its own benefit.

Third, there can be little doubt that direct access and VRET programs are competing services. Allowing a VRET to move forward with more favorable terms than that available for direct access customers – without any basis – is a clear barrier to the development of competitive markets and contrary to state law. PGE's proposal to offer a 30 kW threshold for participation in its VRET, while maintaining a 1 MW threshold for participation in its direct access program, is a clear case in point. NIPPC has no position regarding whether there should be a VRET participation threshold of 30 kW or 1 MW, as long as the threshold is subject to the requirement set forth in condition 6 that it also "***must propos[e] changes to [its] direct access programs to match those changes."*** Either option provides an opportunity for fair competition, to the benefit of Oregon's electric customers. But allowing PGE to provide terms of service under its VRET that are materially more favorable than it allows under its direct access program, such as giving PGE the sole opportunity to provide service to customers with thresholds between 30kW

[16] UM 1953, PGE/400 Sims-Tinker, p. 5 ln 18-p. 6, ln 4, specifying that "The continued applicability of the nine conditions, and whether they continue to represent best practice for the purposes of offering voluntary renewable products" should be addressed in a separate phase of this proceeding.
[17] NIPPC believes this condition will always remain appropriate given the Commission's obligation to eliminate barriers to development of the competitive retail market.

and 1MW, is an abuse of monopoly power and creates an impermissible barrier to the creation of a competitive retail market.

B. The Commission Should Direct PGE To Apply A Consistent Calculation Of Energy and Capacity Credits For VRET and Direct Access Programs

PGE and other parties to this proceeding have proposed different calculations for the credit to be applied to a VRET customer to reflect the energy and capacity brought to the system through a VRET. Whatever mechanism is ultimately adopted, the Commission should require PGE to use a consistent theory for calculation of energy and capacity credits applicable to the direct access program.

Direct Access and a VRET are similar programs[18] and compete largely based on price. [19] As Walmart witness Chriss indicated when asked about evaluation of the programs, "essentially it all kind of boils down to the bill."[20] With both a VRET and Direct Access, a customer that otherwise would have been taking system capacity has contracted to take capacity from a third-party generator. The benefit to the system from the addition of such energy and capacity is largely the same, so the calculation of benefit to the system should be the same. NIPPC acknowledges that there may be other factors to consider in calculation of the overall transition charge paid in the direct access program. But that portion of the calculation related to the value brought to PGE's system from capacity and energy should be consistent, as recommend by Staff.[21] PGE's proposal to calculate capacity and energy credits from PGE's VRET program more favorably than capacity and energy credits from the direct access program, when the system impact is largely identical, is a blatant exercise of monopoly power contrary to law.

A simple thought experiment puts this into perspective. Consider the case of a renewable independent power producer that builds a new 500 MW plant, supported by a 250 MW, 10 year contractual PPA commitment from PGE to serve an existing customer through a VRET load ("Customer V"), and a 500 MW, 20 year commitment to serve an existing PGE customer that

[18] Staff/100 Kaufman/16 lns 11-12
[19] See Hearing Tr. Pp. 101-102, Testimony of S. Chriss.
[20] Id.
[21] See Staff/200 Gibbens/16, lns 11-12.

plans to leave PGE's system and instead take direct access ("Customer D"). Assume Customer V and Customer D each have an identical load profile. If PGE is in a resource-short situation, each customer will free up the same amount of general system capacity on PGE's system, and each customer will allow PGE to defer market purchase of power and/or investment in new capacity by an identical amount. Under what theory would it be acceptable to provide a substantial credit to Customer V, and not provide the same credit to Customer D? Each removes the same amount of load from general system resources, and each has been responsible for creation of the same amount of new capacity. Indeed, Customer D arguably provides *more* value to the system. Among other things, PGE would no longer be obligated to plan for its return of Customer D at all, whereas PGE remains obligated to plan for Customer V at the end of the its VRET contract, and Customer D would have committed to ensure generation capacity remained contractually dedicated to PGE's service territory for a full decade longer than Customer V.

Despite the nearly identical situation, PGE is proposing to provide a substantial benefit to customers taking its own service to the detriment of competitive power providers. Indeed, PGE has gone so far as to indicate that, should the Commission require it to treat customers electing service from the competitive marketplace in a similar manner with respect to a capacity credit, it would prefer to withdraw its proposal to offer a capacity credit at all.[22] PGE apparently would rather harm all potential customers, and possibly render its program nonviable, than compete on a level playing field. Given the law in Oregon requiring the Commission to limit the utility's use of vertical and horizontal market power and eliminate barriers to a competitive retail market, PGE's proposal cannot stand.

To be clear: PGE is attempting to eliminate competitive choice in the market, and eliminate opportunities to allow commercial customers to move to carbon-free renewable energy. PGE would rather crater its own program by removing capacity credits than allow fair competition as required by law. Like PGE's refusal to ensure VRET terms mirror those available for direct access, PGE's unilateral capacity credit proposal would sabotage the

[22] UM 1953, PGE/400 Sims-Tinker/19, lns 6-8 (specifying that PGE would choose to withdraw the capacity credit in the green tariff product rather than direct that it provide a capacity credit to ESS long term or new load direct access customers).

opportunity for real customer choice and substantially limit opportunities for customers to move to carbon-free, renewable energy.

C. The Commission Should Expressly Limit Utility Ownership of VRET Generation Resources

The Commission should expressly condition any approval of PGEs VRET in this docket to be structured through purchases of generation and capacity from third party generators through purchase power agreements ("PPAs") and prohibit PGE from owning a VRET resource. PGEs original proposal in this docket (as initially filed at Docket UM 1690) specified that "PGE is proposing to structure its initial green tariff offering through PPA(s) with a third-party,"[23] but also indicated that PGE "may consider future ownership of a green tariff resource."[24] PGE has not shown that utility ownership of a PPA resource is appropriate, nor demonstrated how it would meet VRET Condition 7,[25] or shown how it would share return from a utility-owned VRET with other utility customers.[26] PGE witnesses have subsequently confirmed both in written testimony[27] and on the witness stand that PGE is only seeking approval for a VRET based on PPAs, and is not seeking authorization to own any VRET resources.[28] The Commission should therefore explicitly specify that any authorization granted to PGE in this docket be limited to VRET service based on third party PPAs, and does not allow for utility ownership of generation resources used for a VRET.

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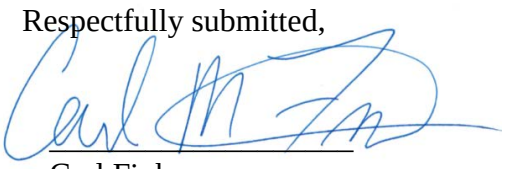
[23] UM 1690, PGE/200, Sims-Tinker/8, lns 1-2
[24] UM 1690, PGE/200, Sims-Tinker/9, lns 3-4.
[25] UM 1690, PGE/200, Sims-Tinker/5, lns 1-6. "The regulated utility may own a VRET resource, but may not include any VRET resource in its general rate base. It may recover a return on and return of its investment in the VRET resource from the subscriber; however, the utility must share some of the return [] with other utility customers for ratepayer-funded assets used to assist the VRET offering.
[26] Id.
[27] UM 1953, PGE/400 Sims-Tinker/1, lns 6-13
[28] See Hearing Tr. p. 52 ln. 13 to 54 ln 2.

III. CONCLUSION

NIPPC supports approval of PGE's proposed VRET, provided it is properly conditioned. As described above, the Commission should condition any approval of PGEs VRET on the requirement that PGE update the terms under which it provides direct access service to "mirror" any more favorable terms offered under the VRET, apply a consistent calculation of energy and capacity credits for its VRET and direct access programs, and limit the program to contractual acquisition of energy and capacity from third-party generation assets through purchased power agreements.

Dated this 11th day of December 2018.

Respectfully submitted,



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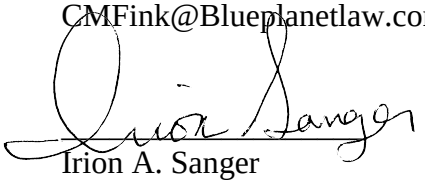

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