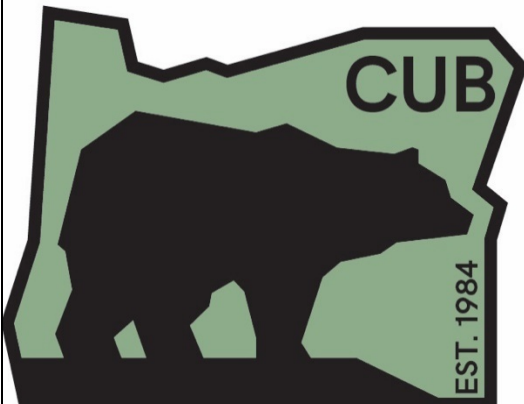


**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1953**

In the Matter of )  
 )  
PORTLAND GENERAL ELECTRIC )  
COMPANY, )  
 )  
Investigation into Proposed Green Tariff. )  
\_\_\_\_\_ )

**OPENING BRIEF  
OF THE  
OREGON CITIZENS' UTILITY BOARD**

November 3, 2020



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_____	)	

**I. INTRODUCTION**

Pursuant to Administrative Law Judge (ALJ) Arlow’s October 16, 2020 Memorandum and Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits its Opening Brief in the above-captioned proceeding. In this Brief, CUB clarifies and expands on positions articulated in its Phase II Opening Testimony and responds to issues raised by Portland General Electric Company (PGE or the Company), Oregon Public Utility Commission Staff (Staff), and the Northwest & Intermountain Power Producers Coalition (NIPPC). CUB offers support for a few of PGE and Staff’s proposed modifications to the conditions necessary to ensure this voluntary renewable energy tariff (VRET) program is in the public interest.<sup>1</sup> Additionally, CUB suggests several modifications to the VRET conditions to ensure the program sufficiently protects the interests of nonparticipating cost-of-service (COS) customers and furthers the public interest.

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<sup>1</sup> *In re Portland General Electric Company Investigation into Proposed Green Tariff*, OPUC Docket No. UM 1953, Order No. 19-075 at 1 (Mar. 5, 2019).

On April 13, 2018, PGE filed a proposed VRET with a discussion of the requirements outlined in Oregon Public Utility Commission (Commission) Docket No. UM 1690, which was opened on April 22, 2014 following the passage of House Bill 4126 (HB 4126).<sup>2</sup> HB 4126 directed the Commission to examine the likely effects of utility VRETs and determine whether such tariffs would be reasonable and in the public interest.<sup>3</sup> As part of UM 1690, the Commission adopted nine conditions that outlined the proper design considerations for any VRET to be found in the public interest (VRET Conditions).<sup>4</sup> The Commission ultimately decided to defer its decision as to whether, and under what conditions, it is reasonable and in the public interest to allow electric companies to provide VRETs to nonresidential customers.<sup>5</sup> Instead, the Commission indicated it would make this determination with the benefit of a proposal in front of it in a Commission proceeding.<sup>6</sup> This is that proceeding.

On March 5, 2019, in Order No. 19-075, the Commission approved PGE's VRET program with certain modifications. The Commission adopted PGE's proposal to review policy issues related to this docket in two phases, allowing the Company to procure up to 300 megawatts (MW) of new nameplate capacity resources through power purchase agreements (PPA) under the first phase of its VRET, with remaining issues to be addressed in this second phase.<sup>7</sup> PGE's VRET program includes a cap of 100 MW for a PGE Supply Option (PSO), and a cap of 200 MW for a Customer Supplied Option (CSO).<sup>8</sup> In the second phase, the Commission

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *In re Public Utility Commission of Oregon, Voluntary Renewable Energy Tariffs for Non-Residential Customers*, OPUC Docket No. UM 1690, Order No. 15-405 at 1-2 (Dec. 15, 2015).

<sup>5</sup> UM 1953 – Staff/400/Gibbens/3 citing OPUC Order No. 15-405 at 1-2.

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

<sup>7</sup> *In re Portland General Electric Company Investigation into Proposed Green Tariff*, OPUC Docket No. UM 1953, Order No. 20-036 at 1 (Jan. 31, 2020).

<sup>8</sup> UM 1953 – PGE/400/Sims-Tinker/5.

directed parties to examine the following issues, among others: credit calculation, reassessment of previously adopted conditions, the participation limits of any bring-your-own-PPA program, and VRET interactions with Oregon's Direct Access (DA) Program.<sup>9</sup>

In its Phase II Testimony, PGE makes several requests, including asking the Commission to adopt a revised set of seven conditions to be used for determining whether a green tariff is in the public interest, replacing the VRET Conditions adopted in Order No. 16-251.<sup>10</sup> PGE also requests that the participation cap on what it now calls its Green Energy Affinity Rider (GEAR) program be raised to a total of 500 MW.<sup>11</sup> In addition, the Company requests that GEAR subscribers be assessed a risk adjustment fee, that the method for calculating energy and capacity credits be continued from tranche 1 to tranche 2, that the Competitive Bidding Rules (CBRs) be waived for Phase II, approval of its proposal that the interim transmission solution outlined in PGE's 2019 Integrated Resource Plan (IRP) Addendum on August 30, 2019 be applied to VRET procurement, an affirmation that PGE's approach to addressing GEAR interactions within the IRP is reasonable, and adoption of its recommended 90-day process for the GEAR to offer subsequent tranches once tranche 2 is full.<sup>12</sup>

CUB supports some, but not all, of the elements in the Company's Phase II proposal. The modifications and conditions addressed herein enable the program to simultaneously provide customers with demand in excess of 10 average MW (aMW) with enhanced energy procurement options while holding remaining COS customers harmless. To achieve this balance, some changes to the nine conditions for VRET programs articulated in Commission Order No. 16-251

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<sup>9</sup> OPUC Order No. 19-075 at 9.

<sup>10</sup> UM 1953 – PGE/700/Wenzel – Halley/1, lines 10-15.

<sup>11</sup> UM 1953 – PGE/800/Wenzel – Faist/2, line 3.

<sup>12</sup> *Id.* at lines 3-18.

are warranted. This Brief will not address all issues cited by the Commission when it ordered a second phase, but will discuss CUB's broader position before discussing its position on each of the VRET Conditions.

## II. ARGUMENT

CUB's primary interest is to ensure that the contours of PGE's VRET program are reasonable and in the public interest, which is the threshold question posed by the Commission in this proceeding.<sup>13</sup> Since the Commission indicated a willingness to explore the conditions necessary to ensure a VRET program is in the public interest in this subsequent proceeding, it is appropriate for parties to propose modifications to the VRET Conditions that they believe are in the public interest here. To CUB, a VRET program can only be in the public interest if it truly holds nonparticipating COS harmless while enabling certain COS customers to pursue alternative energy options. If the program were to levy additional costs on nonparticipating COS customers, CUB does not believe it would be in the public interest. Further, the public interest is not served by protecting the profitability of for-profit independent power producers (IPPs). However, with the conditions and modifications discussed herein, CUB believes the VRET program can be designed in a manner that furthers the public interest.

### ***A. At this stage, the capacity and energy credits and program cap are linked.***

While PGE's VRET program is in its infancy, protections are necessary to ensure nonparticipating COS customers are held harmless because uncertainty around program and crediting design brings a higher risk of subsidization. The principal mechanisms to protect

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<sup>13</sup> OPUC Order No. 19-075 at 2 citing OPUC Order No. 15-258 at 1 (Aug. 28, 2015) ("in Order No. 15-258, we accepted Staff's study and opened Phase II to address "the threshold question of whether, and under what conditions, it is reasonable and in the public interest to allow electric companies to provide voluntary renewable energy tariffs to nonresidential customers.").

nonparticipating COS customers from inappropriate subsidization are the capacity and energy credits and the overall program cap. CUB continues to believe that using a fixed credit to compensate green tariff subscribers for the resource they are bringing to the system places too much risk on nonparticipating customers.<sup>14</sup> Relying on IRP forecasts to lock in a levelized transfer payment for 20 years places a great deal of risk on nonparticipating customers who could be asked to significantly overpay for the value of capacity.<sup>15</sup>

However, with a relatively small overall program cap, this risk is mitigated to an extent. A floating credit mechanism may be necessary if the program grows significantly. Having said that, at this time, CUB can support PGE's proposal to use fixed credits whereby the energy and capacity credits will be calculated at the time the resource is procured and cannot result in negative credits<sup>16</sup> provided that the program cap is retained. As we gather data on the efficacy of the crediting system, both the crediting system and the cap should be revisited. CUB cannot recommend expansion of the cap at this time because of the undue risk placed on COS customers who cannot participate in the VRET program.

If PGE's IRP forecast is going to be used to value capacity for credit purposes, a different proxy than a single cycle combustion turbine should be used.<sup>17</sup> Rather than valuing capacity when the utility is resource insufficient and modeling with a single-cycle gas plant, the capacity value should be technology-neutral and based on the least cost capacity resource that is available after the resource is developed and the utility is resource insufficient.<sup>18</sup> This specific change is supported by Staff, as it "better reflects the actual capacity cost that is avoided due to the VRET

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<sup>14</sup> UM 1953 – CUB/200/Jenks/8, lines 20-21.

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> UM 1953 – PGE/800/Wenzel – Faist/40, lines 6-8.

<sup>17</sup> UM 1953 – CUB/200/Jenks/7.

<sup>18</sup> *Id.*

program.”<sup>19</sup> As Staff notes, the avoided cost associated with procurement in the VRET is the least cost IRP solution, which may not be a single cycle combustion turbine.<sup>20</sup> CUB respectfully requests that the Commission authorize this adjustment to the methodology.

CUB is wary of the potential risk to nonparticipating COS customers from a fixed crediting mechanism rooted in the IRP. VRET resources are not IRP resources. They have not been identified as the least cost, least risk option to serve all customers on PGE’s system.<sup>21</sup> Instead, they are a value-added resource for a limited subset of customers to opt into to fulfill their energy procurement desires. In order to ensure this program is in the public interest, nonparticipating COS customers must be held harmless. However, in the spirit of moving this program forward, CUB is willing to agree to PGE’s crediting methodology with the small change regarding proxy resource use addressed above. The significant caveat is that the program cap must not be expanded while the program is in its early stages. As the Commission noted, retaining the 300 aMW program cap ensures “no increased risk to cost of service customers.”<sup>22</sup> If the Commission chooses to adopt PGE’s crediting methodology, CUB respectfully requests that the overall 300 aMW program cap be retained. As CUB will address in the following section, PGE’s proposal to change the program cap to 300 MW of nameplate capacity is reasonable.

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<sup>19</sup> UM 1953 – Staff/400/Gibbens/29-30.

<sup>20</sup> *Id.* at 30.

<sup>21</sup> UM 1953 – CUB/200/Jenks/7, lines 3-4.

<sup>22</sup> OPUC Order No. 20-036 at 4-5.

**B. *Some modifications to the original VRET Conditions are warranted.***

In order to ensure a well-functioning VRET program that is in the public interest, some modifications to the original Guidelines are warranted. This Brief will address each condition in turn.

1. *Condition 1:*

*Renewable portfolio standard (RPS) definitions that must apply to voluntary renewable energy products are for resource type, location, and bundled renewable energy certificates (RECs).*

CUB continues to urge the Commission to clarify this condition to enable the green tariff to cover non-carbon emitting RPS complementary technology such as battery storage.<sup>23</sup> Staff believes the inclusion of battery storage in conjunction with a renewable resource—such as PGE’s Wheatridge facility—may make sense for future resources.<sup>24</sup> To capture this, Staff proposed the following new language for Condition 1:

Non-carbon emitting energy storage resources may be included but only in conjunction with RPS compliant resources.<sup>25</sup>

CUB supports this language and urges the Commission to adopt it.

2. *Condition 2:*

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

In Opening Testimony, CUB agreed with PGE that this condition should be modified to eliminate the ability of the participant to consent to the REC being retired by the utility or developer.<sup>26</sup> CUB proposed to further modify the condition to state that any load served by

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<sup>23</sup> UM 1953 – CUB/200/Jenks/11, lines 20-23.

<sup>24</sup> UM 1953 – Staff/400/Gibbens/6, lines 14-16.

<sup>25</sup> *Id.* at 7, lines 18-19.

<sup>26</sup> UM 1953 – CUB/200/Jenks/12, lines 14-15.



renewable projects eligible for a green tariff should be reduced from the utility's RPS requirements.<sup>27</sup> PGE expressed opposition, noting that customers interested in green tariff products are seeking a tangible impact on renewable development beyond the required levels.<sup>28</sup> PGE noted it expects demand for the program to diminish overtime.<sup>29</sup> While this is speculative, CUB believes PGE's proposal is reasonable if the program continues to stay within the bounds of the cap. Staff follows a similar logic, arguing that CUB's concern may have merit if the load subscribed to VRET programs were to increase substantially.<sup>30</sup> CUB withdraws its request to modify this condition with the caveat that this condition must be revisited if the size of the program is increased or the conditions in this program eventually become a template for future community green tariff programs.

3. *Condition 3:*

*The year in which a VRET eligible renewable resource became operational should be no earlier than 2015.*

CUB agrees with PGE that this condition should be modified to state that any eligible resource must be new or expanded. Staff maintains its original position that the condition should be made more dynamic by avoiding using a static date.<sup>31</sup> CUB finds Staff's proposed change is reasonable.

4. *Condition 4:*

*The VRET program size is limited to 300 aMW for PGE and 175 aMW for PacifiCorp.*

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<sup>27</sup> *Id.* lines 20-22.

<sup>28</sup> UM 1953 – PGE/600/Sims – Tinker/6, lines 17-19.

<sup>29</sup> *Id.* at 7, lines 3-4.

<sup>30</sup> UM 1953 – Staff/400/Gibbens/8, lines 13-14.

<sup>31</sup> UM 1953 – Staff/400/Gibbens/9, lines 14-15.

As discussed, this condition is very important to ensure the size of this program will not unduly impact nonparticipating COS customers. CUB's support for the credit methodology is conditioned on the ability to retain the current program cap. The original VRET Guidelines limited PGE's program to 300 aMW.<sup>32</sup> Without any meaningful operational experience, there is no reason to expand the cap, especially given the Commission's finding that expanding the cap would increase risk to COS customers.<sup>33</sup> PGE claims that waiting for more operational knowledge would require waiting up to 15 years, which is unacceptable to potential VRET customers.<sup>34</sup> In determining whether a potential VRET program is in the public interest, protecting the interests of broad classes of customers who are ineligible to opt into the program should outweigh a desire to conform to what is "acceptable" to a few. PGE's request to expand the cap to 500 MW should be denied.

However, CUB is willing to accept PGE's proposal to move from aMW to MW to use a facility's nameplate capacity as the controlling figure. CUB joins Staff in urging the Commission to keep the size of the cap unchanged at either 300 aMW or MW.<sup>35</sup>

5. *Conditions 5 and 6:*

*Condition 5: VRET product design should be sufficiently differentiated from existing direct access programs.*

*Condition 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 must proposed changes to their respective direct access programs to match those changes.*

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<sup>32</sup> OPUC Order No. 16-251, Appendix A, at 7.

<sup>33</sup> *Supra*, note 20.

<sup>34</sup> UM 1953 – PGE/800/Wenzel – Faist/33, lines 9-13.

<sup>35</sup> UM 1953 – Staff/400/Gibbens/10, lines 18-19.

CUB continues to urge the Commission to retain the language in Condition 5 and to eliminate Condition 6. On their faces, these two conditions are contradictory. The VRET program is, and should be, sufficiently differentiated from DA programs. NIPPC argues for the retention of Condition 6 under the premise that these two programs offer competing opportunities for a subset of customers.<sup>36</sup> While this may be true, NIPPC has added little to the record to support its contention that requiring VRET programs to mirror DA programs actually furthers the public interest. NIPPC does not sufficiently rebut CUB's argument that the VRET adds a physical resource to the system, while DA does not. VRET customers remain on the COS schedule and the resources they subscribe to offer capacity and energy benefits to COS customers, hence the need for a crediting mechanism. Conversely, DA customers *leave* the COS system, and must pay transition charges to ensure there are no stranded costs associated with the assets they leave behind. While a customer can undoubtedly face a choice between a VRET program and DA to meet its needs, these two programs are entirely different. In grasping for an articulable argument, NIPPC argues that the IE Gala Project to serve Apple in Prineville is a DA resource that serves the system.<sup>37</sup> This argument falls flat as NIPPC is citing the exception, rather than the rule. DA resources do not serve COS customers in the way that a VRET resource would. While the Gala project may include capacity that helps provide reliability to the electric grid generally, it does so independently of PGE's efforts to balance its system.

NIPPC argues that the two programs are similar because they may potentially offer conflicting choices for some customers, but does not speak to the actual mechanics of each program at all. This is because they are entirely different. NIPPC's concerns are superficial and

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<sup>36</sup> UM 1953 – NIPPC/300/Gray/5.

<sup>37</sup> UM 1953 – NIPPC/300/Gray/14.

undertake no real analysis of the two programs. They appear to be rooted in a desire to boost independent power producers and Electric Service Suppliers (ESSs) rather than structure a program that is truly in the public interest. CUB continues to urge the Commission to retain Condition 5 and eliminate Condition 6.

6. *Condition 7:*

*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 VRET customer; however, the utility must share some of the return on with other utility customers for ratepayer-funded assets used to assist the VRET offering.*

CUB supports PGE's proposed alteration to Condition 7, as it captures the spirit of the VRET Guidelines to ensure there is no cost shifting to nonparticipants.<sup>38</sup>

7. *Condition 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.*

Condition 8 is critically important and at the core of the public interest determination for VRET programs. In testimony, CUB found PGE's proposal to eliminate the inclusion of the last sentence to be reasonable. However, Staff continues to believe that the inclusion of the final sentence of the original condition is appropriate, and proposes to expand it to consider future costs.<sup>39</sup> Staff argues this is necessary so the condition could adequately apply to long-term planning.<sup>40</sup> Because the full scope of costs resulting from this program are not yet known, CUB

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<sup>38</sup> UM 1953 – PGE/800/Wenzel – Faist/22, lines 2-3.

<sup>39</sup> UM 1953 – Staff/400/Gibbens/25, lines 19-20.

<sup>40</sup> *Id.*

finds Staff’s proposed change reasonable. Since this program is designed to be a value-added option for some customers, it is reasonable for language regarding cost shifting to be broad. CUB continues to stress that it is important to recognize that all “direct and indirect costs” is not limited to new, incremental costs.<sup>41</sup>

8. *Condition 9:*

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

CUB joins all parties to this proceeding in advocating for the retention of this condition.

### III. CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission accept CUB’s recommendations in this proceeding.

Dated this 3<sup>rd</sup> day of November, 2020.

Respectfully submitted,



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<sup>41</sup> UM 1953 – CUB/200/Jenks/17, lines 7-8.