

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

3 UM 1953 – Phase II

4 In the Matter of

5 PORTLAND GENERAL ELECTRIC  
6 COMPANY,

7 Investigation into Proposed Green Tariff.

8 STAFF’S CLOSING BRIEF

8 **I. INTRODUCTION**

9 Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Closing Brief  
10 in the above-captioned proceeding. This brief responds to the arguments and positions raised by  
11 other parties in their Opening Briefs, and continues to recommend that the Commission adopt  
12 Staff’s proposed updated VRET Conditions, as set forth in its Opening Brief and as described  
13 below, which would be applicable to all VRET programs. Staff also continues to recommend the  
14 Commission adopt specific program design elements for Portland General Electric’s (PGE)  
15 Green Energy Affinity Rider (GEAR) as set forth in its Opening Brief and as described below.

16 **II. ARGUMENT**

17 As indicated in Staff’s Opening Brief, Staff’s primary concern in Phase II of this  
18 proceeding is to ensure that VRET programs, generally, and PGE’s GEAR program specifically,  
19 do not result in unwarranted cost-shifting between program participants and cost of service  
20 (COS) customers.<sup>1</sup> Staff’s recommendations in this case ensure that this goal is met, and that  
21 VRET offerings, including PGE’s GEAR program offering, are in the public interest and results  
22 in rates that are fair, just and reasonable.

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<sup>1</sup> Staff/300, Gibbens/4-5.

1 (A) **VRET Conditions**

2 1. *The Parties are in agreement that any changes to the VRET Conditions should be*  
3 *applied prospectively.*

4 In its Opening Brief, PGE argues that although the circumstances warrant updating the  
5 original nine VRET conditions, any modifications should be applied on a prospective basis. This  
6 means that the original nine VRET conditions would continue to apply to Phase I of PGE’s  
7 GEAR program.<sup>2</sup> The Alliance of Western Energy Consumers (AWEC) echoes the argument  
8 that any changes should be prospective only, specifically referring to the Risk Adjustment Fee.<sup>3</sup>  
9 No party, including Staff, has argued that a change in the VRET Conditions in this case should  
10 impact Phase I of PGE’s GEAR program. It appears that all parties either support or do not  
11 oppose prospective application of VRET Conditions.

12 2. *PGE has not offered any compelling reason that the VRET conditions should be*  
13 *converted to guidelines.*

14 In testimony, PGE sought to change the current VRET conditions to VRET guidelines,  
15 without any substantive argument or evidence in support of its proposal.<sup>4</sup> PGE’s Opening Brief  
16 did not further address this issue, and therefore, Staff assumes that PGE does not oppose the  
17 continuation of Conditions, rather than implementing Guidelines. Renewable Northwest  
18 supported PGE’s proposed change in testimony,<sup>5</sup> but also did not substantively address this issue  
19 in briefing. Staff continues to advocate for retention of conditions, rather than guidelines,  
20 particularly absent a clear understanding of the distinction, and absent a compelling policy

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24 <sup>2</sup> PGE’s Opening Brief at 10-11. Staff notes one exception – that PGE’s GEAR resource should  
be “new” in order to ensure additionality, rather than simply operational no earlier than 2015. *Id.*  
at 11.

25 <sup>3</sup> AWEC’s Opening Brief at 3.

26 <sup>4</sup> *See* PGE/500, Sims – Tinker/4.

<sup>5</sup> Renewable Northwest’s Opening Brief at 6.

1 rationale to support the change, including whether the change would call into question whether  
2 offering a VRET remains in the public interest.<sup>6</sup>

3           3. *The Commission should approve Condition 1 language that includes the addition of*  
4           *energy storage.*

5           No party disputes retention of the current language of Condition 1, which provides that  
6 “Renewable Portfolio Standard (RPS) definitions for resource type, location, and bundled  
7 Renewable Energy Certificates (RECs) must apply to VRET products.” Oregon Citizens’ Utility  
8 Board (CUB) suggested, which Staff and Renewable Northwest support, a modification to allow  
9 energy storage associated with a renewable resource to be included in VRET applications.<sup>7</sup> In its  
10 testimony, PGE alluded to legal concerns with CUB’s proposal,<sup>8</sup> but did not address this issue in  
11 briefing.

12           Renewable Northwest argues in its Opening Brief that allowing energy storage resources  
13 would be consistent with the legal and policy VRET background and further supports  
14 decarbonization goals.<sup>9</sup> In addition to discussing the RPS statutes and Commission’s ongoing  
15 rulemaking in AR 616, Renewable Northwest further argues that EO 20-04 provides additional  
16 policy support for including associated energy storage, arguing that its inclusion supports the  
17 reduction of Greenhouse Gas (GHG) emissions, at a reasonable cost, consistent with EO 20-04.<sup>10</sup>  
18 Staff’s Opening Brief similarly dispelled PGE’s belief that including associated energy storage  
19 would be contrary to Oregon law or the public interest.<sup>11</sup>

20           PGE has offered no compelling basis to exclude energy storage from Condition 1, and  
21 therefore, its proposal to exclude the language should be rejected. Staff continues to find that the

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23 <sup>6</sup> Staff’s Opening Brief at 5.

24 <sup>7</sup> *Id.* at 5-7.

25 <sup>8</sup> *Id.*

26 <sup>9</sup> Renewable Northwest’s Opening Brief at 17-20.

27 <sup>10</sup> *Id.* at 18.

<sup>11</sup> Staff’s Opening Brief at 6-7.

1 Commission could conclude from the inclusion of energy storage in the RPS cost recovery  
2 statute indicates that the legislature finds value in energy storage associated with RPS-eligible  
3 resources, and that including energy storage in a VRET offering is consistent with the public  
4 interest. Staff continues to recommend that the Commission adopt the following language for  
5 Condition 1:

6 *Renewable Portfolio Standard (RPS) definition that must apply to voluntary*  
7 *renewable energy products are for resource types, location and bundled*  
8 *renewable energy certificates (RECs). Non-carbon emitting energy storage*  
9 *resources may be included but only in conjunction with RPS compliant*  
10 *resources.*<sup>12</sup>

11 4. *The Commission should adopt language in Condition 2 that removes the option that*  
12 *RECs may be retired on behalf of the utility or developer.*

13 Staff, CUB, PGE, PacifiCorp and Renewable Northwest agree that the Commission  
14 should remove the option in Condition 2 that allows for participants to elect for RECs to be  
15 retired on behalf of the utility or the developer. No other party substantively addressed this issue  
16 in testimony or briefing.<sup>13</sup> In testimony, CUB proposed to modify the condition to state that any  
17 load served by the renewable project eligible for a green tariff should be reduced from the  
18 utility's RPS requirements, due to concerns that load served by green tariff renewables would be  
19 "double served" by RPS compliance.<sup>14</sup> In its Opening Brief, CUB conditionally withdrew its  
20 proposal to modify, stating that "this condition must be revisited if the size of the program is  
21 increased or the conditions in this program eventually become a template for future community  
22 green tariff programs."<sup>15</sup>

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25 <sup>12</sup> Staff/400, Gibbens/7.

26 <sup>13</sup> In testimony, NIPPC generally opposed updating the nine conditions. NIPPC/300, Gray/11.

<sup>14</sup> CUB/200, Jenks/12-13.

<sup>15</sup> CUB's Opening Brief at 8-9.

1 As such, the parties agree that the Commission should adopt the following language for  
2 Condition 2:

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

6 5. *The Commission should revise Condition 3 language to require resources operational*  
7 *no earlier than one year in advance of program enrollment.*

8 PGE, PacifiCorp, Staff, CUB and Renewable Northwest support modification to  
9 Condition 3 that provides that VRET eligible resources should be required to be operational no  
10 earlier than one year prior to program enrollment, with program enrollment defined as the date  
11 that a customer signs a binding agreement to participate in the program. No other party raised  
12 specific concerns with changing the language in Condition 3. As such, the Commission should  
13 adopt the following language for Condition 3:

14 *The year that a VRET-eligible resource becomes operational should be no earlier*  
15 *than one year prior to the program enrollment. Program enrollment means that*  
16 *date when a customer signs a binding agreement to participate in the program.*

17 6. *The Commission should maintain the current 300 MW cap for PGE in VRET*  
18 *Condition 4.*

19 For PGE, parties generally support converting the expression of program cap size in  
20 megawatts (MW), rather average megawatts (aMW). Staff and CUB oppose increasing the size  
21 of PGE's program at this time, given the lack of empirical evidence on how the current program  
22 is performing, over concerns about cost-shifting between program participants and cost of  
23 service customers, and the lack of clarity on how PGE's proposed GEAR program may interact  
24 with the competitive retail market.

25 Whether PGE's proposal to convert its program cap from 300 aMW to 500 MW  
26 represents an increase in its currently approved program size is, in the very least, not clear on the

1 record in this proceeding. PGE argues that its requested 500 MW participation is not really an  
2 increase to the participation cap applicable to its GEAR program because 500 MW is less than  
3 the 300 aMW expressed in the original Condition 4, even though PGE, Staff, intervenors and the  
4 Commission have considered Phase I of PGE’s program to be subject to a 300 MW participation  
5 cap. It is incontrovertible that Phase I of PGE GEAR program was capped at 300 MW, rather  
6 than 300 aMW. Even PGE admits this in its Opening Brief, arguing that “As stated in PGE’s  
7 testimony, there is ample customer demand for the GEAR as the 300 MW *has been fully*  
8 *subscribed and there are customers waiting for the next tranche of available GEAR product.*”<sup>16</sup>  
9 Now, PGE attempts to both argue that its proposal is not an increase, but also acknowledges that  
10 it is seeking to increase its participation relative to its Phase I offering.

11 PGE’s attempt to recharacterize the Phase I cap in this proceeding is not well taken.  
12 Staff’s position, as well as other parties’ positions in Phase I and Phase II of this case were  
13 premised on the fact that PGE’s program cap, as established in Phase I, was limited to 300 MW.  
14 Based on that participation cap, Staff and CUB raised concerns about increasing the size of the  
15 program given the dearth of information and experience to date in assessing the risks to COS  
16 customers.<sup>17</sup> The concerns raised in Staff’s testimony and Opening Brief still stand.<sup>18</sup> While an  
17 increase to the participation cap may be appropriate in the future, Staff continues to find that an  
18 increase at this time is both premature and unsupported given the lack of detail in how a second  
19 tranche would be offered to customers, including whether the resource would be utility-owned,  
20 etc. If the Commission is inclined to increase the participation cap in this case, ahead of a  
21 specific utility proposal on resource, credits, etc., then it may be reasonable to increase the PGE  
22 Supply Option (PSO) by the 100 MW requested by PGE, and continue to evaluate additional  
23 participation in the Customer Supply Option (CSO) on a case-by-case basis. Staff supports  
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25 <sup>16</sup> PGE’s Opening Brief at 5.

26 <sup>17</sup> Staff’s Opening Brief at 20.

<sup>18</sup> *Id.* at 20-22.

1 expression of PGE’s program size in terms of MW, but to the extent that is the case, it should be  
2 set at 300 MW rather than 500 MW.

3 No party proposed changes to PacifiCorp’s VRET program size, which under current  
4 Condition 4 is set at 175 aMW.

5 7. *The Commission should retain the current language for Condition 5.*

6 All parties either agree or raise no specific objection to retaining Condition 5 as originally  
7 adopted. As such, the Commission should retain current Condition 5: “VRET product design  
8 should be sufficiently differentiated from existing direct access programs.”

9 8. *The Commission should retain Condition 6, updating language as proposed by Staff*  
10 *that ensures clarity between Condition 5 and Condition 6.*

11 In briefing, PGE, PacifiCorp and CUB continue to argue that Condition 6 should be  
12 eliminated, arguing that it seemingly contradicts Condition 5.<sup>19</sup> In support of its position, PGE  
13 first argues that the underlying basis for the condition is moot – that is, that it is not necessary  
14 because “the Commission has determined that there could be significant differences in the way a  
15 utility offering and DA program affect COS customers which may warrant different terms and  
16 conditions for the programs.”<sup>20</sup> PGE relies on the design of its GEAR program, which is  
17 designed such that participants remain COS customers, in support of its position.<sup>21</sup> PGE’s  
18 argument, however, is unpersuasive. The purpose of the VRET conditions are to ensure that *any*  
19 VRET, regardless of design or offering utility, remains in the public interest. As the  
20 Commission’s discussion in adopting the original Condition 6 demonstrates, it is possible that a  
21 utility could offer a VRET outside of COS and at a price competitive with or that undercuts  
22 Direct Access (or DA). PGE’s current GEAR program design should not undercut the value of  
23 Condition 6, as additional offerings that may be structured differently are possible in the future.

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25 <sup>19</sup> CUB’s Opening Brief at 11-12; PacifiCorp’s Opening Brief at 4-5; PGE’s Opening Brief at  
13-15.

26 <sup>20</sup> PGE’s Opening Brief at 13.

<sup>21</sup> *Id.*

1 The Northwest & Intermountain Power Producers Coalition (NIPPC) also argues that whether a  
2 VRET is a COS plus product does not change the fact that the service remains in direct  
3 competition with Direct Access for some customers, necessitating that Condition 6 be retained.<sup>22</sup>

4 Next, PGE argues that the mirroring requirement in Condition 6 conflicts with Condition  
5 5's requirement that VRET product design be sufficiently differentiated from DA programs.<sup>23</sup>  
6 PGE concludes that there would not be sufficient differentiation between the VRET and DA if  
7 terms and conditions were mirrored.<sup>24</sup> PGE's interpretation is unnecessarily strict, and ignores  
8 the fact that Condition 5 is not a substitute for Condition 6. As indicated in Staff's testimony and  
9 Opening Brief, Condition 6 is necessary in order to ensure that the competitive energy retail  
10 market is protected, and ensuring that neither Direct Access programs or VRET programs have  
11 an unfair advantage over one another.<sup>25</sup> The Commission has the discretion to exercise  
12 flexibility in which terms and conditions should be mirrored or substantially mirrored when  
13 evaluating individual VRET programs. PacifiCorp similarly recognizes the Commission's  
14 ability to review any utility VRET proposal to ensure that the rates and service are just and  
15 reasonable, and fair to Direct Access participants.<sup>26</sup>

16 Finally, PGE argues that Condition 6 "adversely limits VRETs and will potentially thwart  
17 the Commission's objective to limit the impact to the competitive market if the regulated utility,  
18 through strict application of Condition 6, can significantly lower the cap of its DA program to  
19 match the VRET program cap."<sup>27</sup> Again, as NIPPC also points out, there is no reason that the  
20 Commission has to strictly apply the same cap to each program, or that the VRET program cap  
21 must dictate the size of the Direct Access cap.<sup>28</sup> Rather, the Commission could decide that each

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22 <sup>22</sup> NIPPC's Opening Brief at 11-12.

23 <sup>23</sup> PGE's Opening Brief at 14.

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

25 <sup>25</sup> Staff's Opening Brief at 11-12.

26 <sup>26</sup> PacifiCorp's Opening Brief at 4-5.

27 <sup>27</sup> PGE's Opening Brief at 15.

28 <sup>28</sup> NIPPC's Opening Brief at 12-13.



1 program should be subject to a cap, and determine the cap based on its legal requirements and  
2 the public interest.

3 Like PGE, PacifiCorp’s Opening Brief argues that the combination of Condition 5 –  
4 which requires sufficient differentiation between VRET and DA programs – and Condition 6 –  
5 which requires the utility to mirror VRET program’s terms and conditions for Direct Access –  
6 creates a disincentive to innovation.<sup>29</sup> This is because, PacifiCorp argues, any novel approach is  
7 given to the competitive retail market, which the utility is constrained by in developing VRET  
8 products. PacifiCorp’s point is not compelling, as there is no reason that a utility cannot make a  
9 proposal for a VRET product that then could potentially necessitate subsequent changes to the  
10 utility’s DA programs. In other words, there is no reason to read the condition as strictly  
11 applying in one direction, rather than bi-directionally. NIPPC similarly acknowledges and  
12 argues that the Direct Access programs can be changed in response to VRET programs, rather  
13 than Direct Access programs being required to mirror VRET programs.<sup>30</sup>

14 Calpine Energy Solutions, LLC (Calpine) largely agrees with Staff’s rationale for  
15 maintaining Condition 6, and urges the Commission to retain the protections for the competitive  
16 retail market that Condition 6 affords.<sup>31</sup> Calpine argues that this is the critical purpose of  
17 Condition 6, and that the Commission must ensure that a utility is not afforded the opportunity to  
18 offer a green tariff with more favorable terms and conditions than would be available through  
19 Direct Access.<sup>32</sup>

20 Similarly, NIPPC also urges the Commission to retain Condition 6, arguing that this  
21 condition is critical to ensuring that there are not barriers to the competitive market, and that the  
22 utility’s vertical and horizontal market power is not enhanced.<sup>33</sup> It argues that the current state of

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24 <sup>29</sup> PacifiCorp’s Opening Brief at 5.

25 <sup>30</sup> NIPPC’s Opening Brief at 10.

26 <sup>31</sup> Calpine Energy Solutions’ Opening Brief at 7-12.

27 <sup>32</sup> *Id.* at 7.

28 <sup>33</sup> NIPPC’s Opening Brief at 10.

1 PGE’s GEAR and Direct Access programs demonstrate precisely why Condition 6 is necessary –  
2 citing to differences in the size of customer load eligible and Direct Access participation caps.<sup>34</sup>  
3 NIPPC also recognizes that it may not be practicable in every circumstance that a Direct Access  
4 program could or should be modified to mirror a VRET offering, but that this does not justify  
5 removal of the condition altogether. Rather, it argues, the Commission should allow utilities to  
6 seek waivers of this condition to the extent it can demonstrate, with express evidentiary support,  
7 that: (1) a given term or condition of service cannot reasonably be implemented under Direct  
8 Access, (2) the utility has presented a compelling rationale for why different terms and  
9 conditions are necessary for the program to function, and (3) that the different treatment does not  
10 create barriers to the competitive market, such as creating a category of customer that is eligible  
11 for service under the VRET but ineligible for service under Direct Access.<sup>35</sup>

12 Renewable Northwest neither supports nor opposes the removal of Condition 6, as it  
13 concludes that VRET programs and Direct Access programs are fundamentally different  
14 programs (though may compete for the same customers). It continues to recommend that the  
15 Commission require a utility offering a green tariff product to submit an annual report with three  
16 components: (1) customer interest in and actual subscriptions to the green tariff and Direct  
17 Access programs; (2) a narrative demonstrating that both programs are truly available to all  
18 interested customers; and (3) a narrative that analyzes how the green tariff program is affecting  
19 or otherwise interacting with the competitive marketplace.<sup>36</sup> Renewable Northwest finds that an  
20 annual report would be appropriately flexible as compared to a more stringent condition, and  
21 would allow for consideration of changes in the electricity sector.<sup>37</sup>

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<sup>34</sup> *Id.* at 12-13.

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<sup>35</sup> *Id.* at 14.

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<sup>36</sup> Renewable Northwest’s Opening Brief at 9-10.

<sup>37</sup> *Id.* at 10.

1 In recognition of Staff’s concern that the conditions are intended to be more broadly  
2 reaching than PGE’s current GEAR program,<sup>38</sup> PGE proposes the following language if the  
3 Commission is inclined to keep Condition 6:

4 *If a utility seeks to offer a VRET outside of or in lieu of cost-of-service, the following*  
5 *guidelines applies: Such VRET terms and conditions must fairly account for the*  
6 *differences from Direct Access programs. The Utility may propose terms and conditions*  
7 *that differ from current Direct Access provisions but must provide evidentiary support for*  
8 *those differences and must consider changes to their direct access programs to match*  
9 *such VRET terms and conditions, as appropriate.*<sup>39</sup>

10 For the reasons in its testimony and briefs, however, Staff continues to recommend the  
11 Commission retain an updated version Condition 6, which addresses concerns about an overly  
12 strict reading of the “mirroring” requirement, while ensuring the protection of the competitive  
13 energy retail market and without stifling innovation for new products, as these recommendations  
14 strike an appropriate balance between the concerns raised among all parties:

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

20 Alternatively, Staff supports the following Condition 6 language:

21 *Voluntary renewable product offering terms and conditions (including the timing*  
22 *and frequency of offerings), as well as transition costs must match terms and*  
23 *conditions of direct access to the extent practicable. The Utility may propose*  
24 *terms and conditions that differ from Direct Access provisions, but must*

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26 <sup>38</sup> PGE’s Opening Brief at 15.

<sup>39</sup> PGE/800, Wenzel – Faist/14; PAC/200, Lockey/2.

1           *demonstrate that the different terms and conditions are reasonable, in the public*  
2           *interest, and consistent with the Commission’s legal authority. The Utility*  
3           *maintains the burden of proof with regard to the difference between direct access*  
4           *offering terms and conditions and proposed VRET offering terms and conditions.*

5           9. *The Commission should adopt language for Condition 7 that allows for utility*  
6           *ownership to the extent that there is no cost-shifting to non-participants, and so long*  
7           *as it does not result in a barrier to the competitive market.*

7           PGE continues to propose to revise Condition 7 as follows: “The regulated utility may  
8 own a VRET resource, and when it does, it must continue to ensure there is no cost shifting to  
9 non-participants.”<sup>40</sup> PGE argues that “as revised, the Condition will preserve the no-cost shifting  
10 requirements, meaning that participating customers would bear all of the costs of the program”<sup>41</sup>  
11 and that Staff’s concern about utility ownership and the impacts on the competitive retail market  
12 are addressed directly in Condition 5 and therefore are not necessary in Condition 7.<sup>42</sup> CUB  
13 supports PGE’s proposed changes to Condition 7 as the proposed alteration “captures the spirit  
14 of the VRET Guidelines to ensure there is no cost shifting to nonparticipants.”<sup>43</sup> Renewable  
15 Northwest does not oppose utility ownership, pending application of a formal procurement  
16 process.<sup>44</sup>

17           In its Opening Brief, PacifiCorp argues that “there is no reasonable need to limit or  
18 prohibit utility ownership of a resource as part of VRET program Condition 7” because “there  
19 are protections in place that already address the vague concerns raised by parties like NIPPC in  
20 this proceeding.”<sup>45</sup> PacifiCorp urges the Commission to clarify that sharing a return is limited to  
21 ratepayer-funded assets that are not otherwise addressed through rates charged to the VRET

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23 <sup>40</sup> PGE’s Opening Brief 15.

24 <sup>41</sup> *Id.* at 16.

25 <sup>42</sup> *Id.*

26 <sup>43</sup> CUB’s Opening Brief at 12.

<sup>44</sup> Renewable Northwest’s Opening Brief at 13-14.

<sup>45</sup> PacifiCorp’s Opening Brief at 5-6.

1 customers, as to do otherwise is illogical and leaves the utility solely taking the risk.<sup>46</sup>  
2 PacifiCorp is also concerned that parties advocating against utility ownership are protecting  
3 certain market participants at the expense of customers, and that a competitive market thrives  
4 when more options allowed.<sup>47</sup>

5 Calpine opposes PGE's proposed revisions to Condition 7, given the risks to the  
6 competitive retail market and non-participating customers.<sup>48</sup> Because inclusion in rate base  
7 incents utility ownership, Calpine cautions that this harms the competitive retail market because  
8 it would exacerbate the existing utility incentive to discourage customers from participating in  
9 Direct Access programs.<sup>49</sup> Calpine also notes that PGE and other utilities can compete with  
10 Electricity Service Suppliers (ESSs) through affiliates, subject to the same rules as ESSs, and  
11 that PGE in particular has already acknowledged that it possesses data regarding customer  
12 expenditures and preferences on green tariff programs that are not equally accessible to ESSs.<sup>50</sup>  
13 Finally, Calpine argues that PGE has an advantage over ESSs because, as PGE admits, certain  
14 costs in development are funded by ratepayers.<sup>51</sup> There is no corresponding ratepayer funded  
15 research and development of ESSs products.<sup>52</sup>

16 In its Opening Brief, NIPPC appears to have shifted its position slightly to no longer  
17 oppose utility ownership, but urges the Commission to expressly prohibit the utility from  
18 including a VRET asset in rate base.<sup>53</sup> NIPPC notes that the limitations on utility ownership  
19 originally included in Condition 7 were considered prior to finding that a VRET could be in the  
20 public interest and that no fundamental changes have occurred that warrant different treatment at

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21 <sup>46</sup> *Id.*

22 <sup>47</sup> PacifiCorp's Opening Brief at 6.

23 <sup>48</sup> Calpine's Opening Brief at 12-17.

24 <sup>49</sup> *Id.* at 14.

25 <sup>50</sup> *Id.* at 15-16.

26 <sup>51</sup> *Id.* at 16.

<sup>52</sup> *Id.*

<sup>53</sup> NIPPC's Opening Brief at 15-18.

1 this time.<sup>54</sup> Like Calpine, NIPPC argues that maintaining Condition 7, with the limitation of  
2 inclusion on VRET assets in utility rate base, is paramount to protecting the competitive retail  
3 market.<sup>55</sup>

4 Staff continues to find that utility ownership is not wholly inappropriate and supports  
5 language for Condition 7 that allows for utility ownership, but with the backstop that the  
6 competitive market cannot be harmed. Staff understands Calpine's point about utility resources  
7 subsidizing utility products, which is discussed in the fee section of this brief. As stated in  
8 Staff's testimony and Opening Brief, PGE's proposed language simply does not take this into  
9 account, and therefore, should not be adopted. Staff also notes that the concern for the  
10 competitive retail market as it relates to utility ownership is not entirely contemplated by  
11 Condition 5. As such, Staff continues to recommend the Commission adopt the following  
12 language for Condition 7:

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

15 *On considering a proposal for a utility-owned resource, the Commission will*  
16 *consider whether the offering creates a barrier to the retail competitive market.*<sup>56</sup>

17 *10. The Commission should update Condition 8's language to clarify that current and*  
18 *future costs may be considered when ensuring that COS customers do not bear direct*  
*or indirect costs of VRET programs.*

19 In their Opening Briefs, PGE, PacifiCorp and Renewable Northwest continue to advocate  
20 that language in the original Condition 8 referencing examples of the types of costs that may be  
21 borne by VRET customers, shareholders or third-party developers should be eliminated, with the  
22 rest of Condition 8 remaining intact.<sup>57</sup> None provide any additional discussion or rationale in  
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24 <sup>54</sup> *Id.*

25 <sup>55</sup> *Id.*

26 <sup>56</sup> Staff/400, Gibbens/23.

<sup>57</sup> PGE's Opening Brief at 13; PacifiCorp's Opening Brief at 4; Renewable Northwest's Opening Brief at fn. 30.

1 their Opening Briefs in support of their positions. In its Opening Brief, CUB updated its position  
2 to concur with Staff that Condition 8 language should address future concerns about growth of  
3 the VRET and its relation to IRP planning.<sup>58</sup>

4 NIPPC also argues that the protections of Condition 8 must be maintained, and criticizes  
5 PGE's attempt to modify the provision based on the specific design of its GEAR program (a  
6 COS plus program that, by design, does not result in stranded costs) and failure to recognize the  
7 general applicability of the condition to circumstances beyond PGE's current GEAR design.<sup>59</sup>  
8 NIPPC further raises concerns about cost-shifting under PGE's GEAR program, which is  
9 discussed further below.

10 Staff continues to recommend the Commission adopt the following language for  
11 Condition 8:

12 *All direct and indirect costs and risks are borne by the participating voluntary*  
13 *renewable energy customers, shareholders of the utility or third-party developers*  
14 *and suppliers with provisions allowing independent review and verification by*  
15 *Commission Staff of all utility costs. Costs include but are not limited to ancillary*  
16 *services and stranded costs of the existing and additional future cost of service*  
17 *rate-based system.*<sup>60</sup>

18 PGE Opening Brief did not offer any additional rationale as to why Staff's proposed changes to  
19 Condition 8 are not appropriate or warranted.

20 *11. The Commission should retain Condition 9 as currently written.*

21 All parties either support or do not oppose maintaining this condition as written.

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

23 PGE continues to propose the use of its credit methodology as proposed in Phase I, which  
24 uses "fixed credits where the energy and capacity credits will be calculated at the time the

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<sup>58</sup> *Id.*

26 <sup>59</sup> NIPPC's Opening Brief at 19-21.

<sup>60</sup> Staff/400, Gibbens/25.

1 resource is procured and cannot result in negative credits.”<sup>61</sup> PGE reiterated that “the fixed  
2 credit methodology is an important product design feature providing certainty for GEAR  
3 subscribers in program attributes and costs”<sup>62</sup> and cautioned that “not fixing the credits could  
4 result in a cost savings from COS and PGE views this as a premium product that is in addition to  
5 COS prices.”<sup>63</sup> PGE further noted that it does not necessarily oppose a case-by-case floating  
6 credit request from CSO customers and gaining experience prior to changing program design.<sup>64</sup>

7 As set forth in Staff’s testimony and Opening Brief, Staff continues to support the Phase I  
8 approach for both methodology and calculation, as it is the optimal solution because it is directly  
9 tied to PGE’s resource needs as determined in the IRP, customers are provided with cost  
10 assurance, and because it cannot result in net bill savings.<sup>65</sup>

11 Staff continues to support the consideration of floating credits for the CSO option only,  
12 using CUB’s proposed methodology for the credit that is based on the actual power cost impact  
13 for COS customers using the MONET model.<sup>66</sup> It is unclear from PGE’s Opening Brief whether  
14 its support of a floating credit is limited to the CSO portion of its offering, or to the PSO as well.  
15 Staff continues to find that limiting the potential for a floating credit to a case-by-case  
16 determination under the CSO is appropriate given that it allows stakeholders to fully examine the  
17 impacts and maintain a limited scope. Staff continues to recommend a fixed credit for the PSO  
18 option.

19 In briefing, CUB and Walmart, Inc. (Walmart) support a floating credit for both the CSO  
20 and PSO, which would allow for participants to achieve net bill savings compared to cost of  
21 service rates.<sup>67</sup> CUB argues that fixed credits put too much risk on non-participating COS

22 <sup>61</sup> PGE/800, Wenzel – Faist/40.

23 <sup>62</sup> PGE’s Opening Brief at 9.

24 <sup>63</sup> *Id.* at 10.

25 <sup>64</sup> *Id.*

26 <sup>65</sup> Staff/400, Gibbens/28-29.

26 <sup>66</sup> Staff/400, Gibbens/29.

<sup>67</sup> Walmart’s Opening Brief at 1; CUB’s Opening Brief at 5-6.



1 customers, but recognizes that a relatively small overall program cap mitigates this risk.<sup>68</sup> For  
2 this reason, CUB supports PGE’s proposal to use fixed credits whereby the energy and capacity  
3 credits will be calculated at the time the resource is procured and cannot result in negative  
4 credits, assuming the program cap is maintained.<sup>69</sup> Walmart accepts Staff’s, and potentially  
5 PGE’s, compromise that the Commission continue to be open to considering floating credits for  
6 the CSO option on a case-by-case basis.<sup>70</sup> Walmart also urges the Commission to order PGE to  
7 continue to look into the possibility of allowing a floating credit for the PSO as well.<sup>71</sup> Staff  
8 does not oppose continuing to evaluate whether programmatic changes are appropriate once  
9 sufficient information is known to ensure that no cost-shifting to non-participating COS  
10 customers is occurring.

11 **(C) PGE’s GEAR Program Cap Size**

12 For the reasons discussed in the section on Condition 4, above, Staff’s primary  
13 recommendation is to keep the current participation cap adopted in Phase I (300 MW).  
14 However, if the Commission determines that an increase is warranted, Staff recommends that the  
15 Commission set the cap at the amount it finds reasonable for the PSO portion of the program,  
16 rather than create a single cap for the PSO and CSO options.<sup>72</sup> CSO customers could apply for  
17 the program on a case-by-case basis.<sup>73</sup> This would maintain the distinction between the CSO and  
18 the PSO, and would limit the amount of risk COS customers would be exposed to as a result of  
19 the VRET program.<sup>74</sup> Potential future cap increases are discussed below.

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<sup>68</sup> CUB’s Opening Brief at 6.

23 <sup>69</sup> *Id.*

24 <sup>70</sup> Walmart’s Opening Brief at 2.

25 <sup>71</sup> *Id.*

26 <sup>72</sup> *Id.*

<sup>73</sup> Staff/400, Gibbens/33.

<sup>74</sup> *Id.*

1 **(D) PGE’s GEAR Program Risk Adjustment Fee & Administrative Fee**

2 PGE’s Opening Brief addresses two types of fees intended to recover related costs in its  
3 GEAR Program – the Administrative Fee and the Risk Adjustment Fee.<sup>75</sup> PGE explains that the  
4 costs are intended to ensure that there is no cost-shifting to non-participants, and then provides  
5 examples of how the GEAR prevents cost-shifting through its two proposed fees.<sup>76</sup>

6 *1. The Commission should delay final determination on PGE’s proposed Administration*  
7 *Fee.*

8 In its Opening Brief, PGE explains the administrative fee “is designed to capture direct  
9 and indirect costs associated with the GEAR not already captured in the resource price and have  
10 those borne by participating customers.”<sup>77</sup> To accomplish this, PGE will forecast the direct costs  
11 to support the GEAR, which it argues is consistent with its administration of existing voluntary  
12 portfolio renewable product options. For indirect costs, loadings and allocations are applied to  
13 each dollar of forecasted labor costs over the life of the program, and then a corporate  
14 governance allocation is applied to capture indirect support costs. PGE argues this is a fair and  
15 reasonable, despite the fact that the corporate governance allocation does not include the legal  
16 and regulatory departments, because “it includes many other PGE administrative activities which  
17 will not be supporting the GEAR” and therefore “adequately serves as a reasonable and  
18 conservative proxy for the two departments. Additionally, PGE argues that “indirect support  
19 costs and, in particular, the legal and regulatory costs are primarily incurred during the setup and  
20 implementation of a specific tranche; whereas the corporate governance allocation is applied to  
21 all direct labor costs over the life of the program.”<sup>78</sup>

22 Staff is concerned that PGE’s proposal for the administrative fee was borne out through a  
23 data response to NIPPC and at the hearing in this case, rather than in PGE’s testimony which

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<sup>75</sup> PGE’s Opening Brief at 7-9.

25 <sup>76</sup> *Id.* at 6.

26 <sup>77</sup> *Id.* at 7.

<sup>78</sup> *Id.* at 8.

1 would have afforded other parties the ability to respond to PGE’s proposal on the record. Staff is  
2 further concerned that, by PGE’s own admission, there are costs that are not captured by this fee  
3 which is directly contrary to Condition 8. Staff is also concerned about PGE’s characterization  
4 of the corporate governance allocation as a “conservative proxy” because it implicitly  
5 acknowledges that the fee does not eliminate cost-shifting altogether, which is a condition of  
6 finding a VRET to be in the public interest. Staff finds that an accurate administrative fee is  
7 necessary and appropriate, but cannot conclude on the record in this case that PGE’s proposal  
8 hits the mark. When PGE files a tariff filing for its GEAR program that includes an  
9 administration fee, it should provide detailed evidence and analysis supporting its proposed fee  
10 that ensures no cost-shifting to non-participating COS customers.

11           2. *The Commission should deny an increase to the risk adjustment fee at this time, and*  
12           *consider whether changes are appropriate in a future tariff filing.*

13           In its Opening Brief, PGE appears to continue to argue that an expanded risk adjustment  
14 fee to capture two additional categories of risk above those captured in the current risk  
15 adjustment fee—customer load variability and variable resource risk.<sup>79</sup> PGE summarily states  
16 that its witnesses testified that the breadth of risk, beyond that addressed in the current risk  
17 adjustment fee, should be borne by subscribers.<sup>80</sup> In its cited testimony, PGE proposes to use the  
18 lesser of the most recently approved cost of debt or cost of equity, but in no instance greater than  
19 10 percent as a percentage of the PPA price for calculating the fee.<sup>81</sup>

20           The fact remains that PGE’s proposals are undetailed, academic, and do not provide a  
21 basis to conclude that any such fee would result in fair, just and reasonable rates. Staff continues  
22 to recommend that the Commission deny an increase to the risk adjustment fee beyond what was  
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25 <sup>79</sup> See PGE’s Opening Brief at 8-9.

26 <sup>80</sup> PGE’s Opening Brief at 8-9.

<sup>81</sup> PGE/800, Wenzel – Faist/39.

1 approved in Phase I and consider any change in a tariff filing when a more detailed review of  
2 methodology and calculation could be reviewed.<sup>82</sup>

3 Walmart shares in Staff's concerns and conclusion.<sup>83</sup> AWEC takes no position on the  
4 increase in the risk adjustment fee, so long as it is prospective in nature.<sup>84</sup> Renewable Northwest  
5 continues to recommend that any methodology or formula account for both potential costs and  
6 potential benefits.<sup>85</sup>

7 Staff continues to maintain that the Company and its shareholders should be  
8 appropriately compensated for additional risk resulting from the GEAR program, but asks the  
9 Commission to allow stakeholders to ensure that the risk adjustment matches the risks associated  
10 with each tranche.

#### 11 **(E) PGE Gear Program - Utility Ownership**

12 As discussed above, PGE advocates for changes to Condition 7 that would allow for  
13 utility ownership of a resource for tranche 2 of its GEAR, but also states it has no specific  
14 resource identified for tranche 2 at this time.<sup>86</sup>

15 Specifically for PGE, NIPPC raises the argument that inclusion of a VRET resource in  
16 PGE's rate base will create an over-recovery of costs because PGE is seeking a risk premium  
17 fee, but would also earn a rate of return on rate base which already compensates the utility for  
18 risk.<sup>87</sup> NIPPC argues that PGE should not be entitled to doubly recovery risk in rates.

19 As set forth in Staff's testimony and Opening Brief, for PGE's GEAR program, Staff  
20 opposes PGE's ownership of a resource until there is a specific proposal from PGE that parties  
21 and the Commission can review to ensure that it would be in the public interest.<sup>88</sup> Because PGE

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22 <sup>82</sup> Staff/400, Gibbens/37.

23 <sup>83</sup> Walmart's Opening Brief at 2-3.

24 <sup>84</sup> AWEC's Opening Brief at 3-4.

25 <sup>85</sup> Renewable Northwest's Opening Brief at 12-13.

26 <sup>86</sup> PGE/800, Wenzel – Faist/42.

<sup>87</sup> NIPPC's Opening Brief at 18.

<sup>88</sup> Staff's Opening Brief at 14.

1 has not made a proposal at this time, Staff does not recommend pre-approval of utility ownership  
2 of a GEAR resource. Staff continues to support a 90-day review timeline where stakeholders  
3 have a chance to review the details of the proposal, but notes that a longer investigation may be  
4 recommended based on the information provided. Staff also finds NIPPC’s point about  
5 potentially double-recovery to raise an interesting point that should be addressed in any filing for  
6 approval of a utility-owned GEAR resource in the future.

7 **(F) GEAR program Compliance with Competitive Bidding Rules**

8 In its Opening Brief, PGE acknowledged that the Competitive Bidding Rules (CBRs)  
9 apply to GEAR procurements as well as stakeholder concerns that a waiver when utility  
10 ownership is included in procurement. For that reason, PGE supports Staff’s proposal for an  
11 “RFP light” for all procurements, regardless of ownership.<sup>89</sup>

12 Renewable Northwest advocates for application of the CBRs when the utility could be  
13 the owner, arguing that this outcome would “help ensure that the procurement process is fair and  
14 results in the selection of the best available resource or resources.”<sup>90</sup> When utility ownership is  
15 not a potential outcome, Renewable Northwest supports a streamlined competitive bidding  
16 process because there is less concern about customer or developer confidence in a fair outcomes.  
17 Renewable Northwest supports at least one opportunity for stakeholder engagement on a utility’s  
18 draft RFP.<sup>91</sup>

19 NIPPC continues to strongly opposes any up-front waiver of the CBRs for large projects,  
20 particularly in circumstances where utility ownership is an option and in PGE’s case in particular  
21 absent analysis of prospective assets for the next phase of its GEAR program.<sup>92</sup> NIPPC does not  
22 oppose PGE requesting a waiver at the time it seeks to move forward with a resource.<sup>93</sup> NIPPC

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24 <sup>89</sup> PGE’s Opening Brief at 18.

25 <sup>90</sup> Renewable Northwest’s Opening Brief at 13.

26 <sup>91</sup> *Id.* at 13-14.

27 <sup>92</sup> NIPPC’s Opening Brief at 21-22.

<sup>93</sup> *Id.* at 22.

1 also raises concerns with PGE’s proposed waiver of the CBRs given that it “retains monopsony  
2 market power in negotiations with prospective renewable power developers, and can artificially  
3 limit competition among potential power suppliers.”<sup>94</sup> NIPPC worries that “absent a CBR,  
4 nothing prevents PGE from extracting special terms from a prospective developer, such as a  
5 requirement that the developer agree in advance to sell the asset to PGE in the future or similar  
6 proposals that PGE may believe are in its own best interest, but not necessarily in the best  
7 interest of either its customers or the competitive marketplace.”<sup>95</sup>

8 Staff appreciates PGE’s acknowledgment of the concerns raised by it and other  
9 stakeholders in this case. Staff continues to find that an “RFP light” process appropriately  
10 balances the need for flexibility in timing with concerns about acquisition process, specifically in  
11 the context of utility ownership. Staff supports Renewable Northwest’s suggestion that there be  
12 a stakeholder process on PGE’s draft RFP prior to issuance.

13 **(G) PGE’s GEAR Program Customer Size Requirements**

14 In its Opening Brief, Walmart continues to advocate for the Commission to reduce the  
15 minimum size for the CSO and allow customers larger than 5 aMW to participate.<sup>96</sup> PGE  
16 continues to support Staff’s proposal to allow customers below 10 aMW be allowed to petition  
17 the Commission for approval to participate in the GEAR program on a case-by-case basis.<sup>97</sup>  
18 Staff continues to find that a case-by-case waiver approach strikes an appropriate balance.

19 **(H) GEAR Program and IRP Interactions**

20 In its Opening Brief, PGE affirms its agreement with Staff that it is appropriate to  
21 account for the current VRET products in its IRP and that the IRP provides an opportunity to  
22 understand how potential growth of the VRET could impact future resource needs.<sup>98</sup> Perhaps in

23 \_\_\_\_\_  
24 <sup>94</sup> *Id.*

25 <sup>95</sup> *Id.*

26 <sup>96</sup> Walmart’s Opening Brief at 1-2.

<sup>97</sup> PGE’s Opening Brief at 5-6.

<sup>98</sup> *Id.* at 17.

1 response to Staff’s proposal that PGE should also quantify the growth of the VRET products  
2 within the IRP,<sup>99</sup> PGE notes that the Commission has the authority to ask for additional  
3 information from PGE.<sup>100</sup> PGE reiterates that its IRP and updates will incorporate all  
4 commitments under the GEAR to ensure consideration in the long-term planning process. In the  
5 event of a future expansion of the GEAR, PGE also commits to providing an update to its IRP  
6 sensitivity analysis for the requested amount of a new GEAR resource that shows updated effects  
7 on resource needs and implications for near-term actions.<sup>101</sup> Renewable Northwest largely  
8 supports PGE’s proposal as set forth in testimony, but offers some clarifications.<sup>102</sup> CUB also  
9 generally supports PGE’s approach to interactions between the GEAR and IRP with regard to  
10 resource planning.<sup>103</sup>

11 Although Staff appreciates PGE’s commitment to provide additional analysis and update  
12 IRP sensitivities when it seeks expansion of the GEAR at a future time, Staff continues its  
13 recommendation that PGE also quantify the expected and potential growth of VRET products  
14 within the IRP. As stated in Staff’s Opening Brief, this would provide the Commission and  
15 stakeholders with the most information to consider when examining the Company’s future  
16 planning.

17 **(I) GEAR Program and PGE Transmission**

18 PGE continues to recommend that the Commission approve its proposal that the interim  
19 transmission solution outlined in its 2019 IRP Addendum on August 30, 2019 be applied to  
20 VRET procurement.<sup>104</sup> Staff continues to support this approach.

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23 <sup>99</sup> PGE/800, Wenzel – Faist/47.

24 <sup>100</sup> PGE’s Opening Brief at 17.

25 <sup>101</sup> *Id.* at 18.

26 <sup>102</sup> Renewable Northwest’s Opening Brief at 14-16.

27 <sup>103</sup> CUB’s Opening Brief at 4.

<sup>104</sup> PGE’s Opening Brief at 17.

1 **(J) GEAR Program - Post Phase II**

2 For future tranche increases beyond its currently requested 500 MW program cap, PGE  
3 has agreed to Staff’s proposed 90-day review process prior to taking the proposal to a public  
4 meeting for Commission determination.<sup>105</sup> Renewable Northwest also supports a streamlined  
5 process for future cap increases.<sup>106</sup>

6 **IV. CONCLUSION**

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

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10 DATED this 13<sup>th</sup> day of November, 2020.

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Respectfully submitted,

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ELLEN F. ROSENBLUM  
Attorney General

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*/s/ Sommer Moser*

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26 <sup>105</sup> PGE’s Opening Brief at 16-17.

<sup>106</sup> Renewable Northwest’s Opening Brief at 16.