BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1953

In the Matter of	)
	)
PORTLAND GENERAL ELECTRIC COMPANY	)
	)
	)
Investigation into Proposed Green Tariff-Phase II	)

ANSWERING TESTIMONY OF SPENCER GRAY

ON BEHALF OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION

July 16, 2020

I. INTRODUCTION

Q. Please state your name, business address, and present position with Northwest & Intermountain Power Producers Coalition.

A. My name is Spencer Gray. I am employed by the Northwest & Intermountain Power Producers Coalition ("NIPPC") as Executive Director. My business address is P.O. Box 504, Mercer Island, WA 98040. I have been in my current position since early 2020.

Q. What are your duties as Executive Director?

A. I advocate for policies that facilitate competition in the Northwest to deliver reliable, cleaner, and more affordable electric power to consumers. I am responsible for managing all of NIPPC's regulatory engagements.

Q. Briefly describe your education and experience prior to your employment at NIPPC.

A. After completing a B.A. at Yale University in the Humanities, I was employed in a number of staff positions in the U.S. Senate over nine years, including as a Legislative Director and on the Professional Staff of the Senate Energy and Natural Resources Committee. In those capacities, I drafted legislation, conducted congressional oversight activities, and advised members of Congress on public policy affecting electric utilities and the power sector. In addition to my background in the public sector, I was employed as an associate in the equity research division of an institutional brokerage, FBR Capital Markets, covering utilities and other publicly-traded energy firms.

A.

Q. Have you previously testified regarding Portland General Electric Company's ("PGE") Voluntary Renewable Energy Tariff ("VRET") proposal?

A. No, I have not. However, I am adopting the testimony submitted by my predecessor as Executive Director of NIPPC, Robert Kahn.

Q. What specific testimony are you adopting?

A. I am adopting the testimony NIPPC filed in this docket on July 18, 2018, designated as NIPPC/100 and NIPPC/101, which was submitted in the first phase of this proceeding, admitted into evidence by order issued December 3, 2018. I am also adopting the testimony NIPPC filed in this docket in the second phase of this proceeding on July 26, 2019 as NIPPC/200, which has not yet been admitted into evidence.

Q. Do you have any changes or clarifications to make to the testimony adopted?

A. No, I am adopting this testimony as filed.

Q. What is the purpose of the testimony you are filing today?

A. My testimony here generally replies to and addresses the testimony filed in this second phase of Docket UM 1953 (the "Phase II" proceeding) by PGE on April 15, 2020,[1] which includes PGE's prior testimony filed on October 17, 2019.[2] I also offer a limited response to testimony filed by Citizens' Utility Board ("CUB"),[3] PacifiCorp ("PAC"),[4] and Commission Staff ("Staff")[5] in this docket.

[1] PGE/700 through PGE/703,
[2] PGE/600 through PGE/606
[3] CUB/200 through CUB/201.
[4] PAC/100.
[5] Staff/300.

II. TESTIMONY

Q. Please summarize your testimony.

A. My testimony builds upon Dr. Kahn's testimony that I am adopting and responds to various specific statements and positions taken in testimony submitted by other parties to this proceeding. In particular, I am addressing the following issues:

- First, I address the status of VRET and Direct Access as two separate programs that, for a subset of electric power customers, are in direct competition with one another. I elaborate on this point with respect to the ways both programs support Governor Brown's Executive Order No. 20-04[6] facilitating decarbonization of Oregon's electric grid.
- Second, I address the various proposals to modify the "Nine Conditions" currently required for a VRET program to be deemed in the public interest, particularly with respect to PGE's proposal to adopt a new set of guidelines that eliminate the "mirror" condition that was intended to ensure that any programs offered by PGE under the VRET program must have terms and conditions that mirror Direct Access, set out as Condition 6. NIPPC cannot identify any changes in the retail power markets or with respect to renewable energy demand that would warrant eliminating the "mirror condition" as a core requirement for the VRET program. With respect to specific utility programs, such as PGE's Green Energy Affinity Rider ("GEAR") program, it may be appropriate for the Commission to grant a

[6] Brown, Kate. "Executive Order No. 20-04." Office of the Governor. State of Oregon. 10 Mar 2020. Retrieved July 16, 2020 from https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf

limited waiver of the mirror requirement, but only to the extent the utility can demonstrate, with evidentiary support, that 1) a given term or condition of service *cannot reasonably be implemented under Direct Access*; 2) the utility has presented a *compelling rationale for why different terms and conditions are necessary* for the program to function, and 3) that the different treatment *does not create barriers to the competitive market*. Specifically on point three, the utility should be prohibited from creating a category of customer that is eligible for service under the VRET but ineligible to receive service under Direct Access.

As part of this section, I also respond to the testimonies of PGE, PAC and CUB that assert that, because PGE's VRET is priced on a "cost-of-service plus" basis, it does not directly compete with Direct Access in the marketplace. My testimony elaborates on the inaccuracies of this assertion.

- Third, focusing on testimony with respect to PGE's proposal to modify Condition 7, I respond to the suggestion that utilities should be granted the authority to own VRET resources and include such resources in rate base. Allowing a utility to own and include a VRET resource in rate base is not in the public interest and does not add any benefit to the program.
- Fourth, I respond to the testimony by PGE, CUB and others related to PGE's proposal that its procurement of VRET resources should be exempt from the Commission's longstanding resource procurement requirements. There is no need for the Commission to grant any pre-approval for waiver of the resource procurement requirements. If PGE desires a waiver to

procurement requirements when it desires to acquire a VRET resource through a PPA, it should be required to seek such waiver from the Commission as it did in the first phase of its VRET program, based on the specific facts and circumstances at that time. In addition, I will explain that no waiver of the resource procurement requirements is ever be appropriate in any circumstance where PGE is seeking to acquire a VRET resource that it will own (or have a contractual right to own).

- Fifth, I address various other aspects of PGE's proposed expansion of the program cap and the interplay between PGE-supplied agreements and Customer-supplied agreements.

SECTION 1: Direct Access and the VRET are directly competing programs each of which can support decarbonization of the electricity grid in Oregon.

Q. Does PGE's VRET program directly compete with the Direct Access program to serve customers seeking low-carbon energy?

A. Yes, these two programs directly compete for some of the same customers. Each of these programs would be of interest to a prospective customer who desires to purchase its electric power with a lower carbon footprint than is available under the utility's standard cost of service option. Each of these programs would also be of interest to developers seeking to develop a renewable power project. I discuss the fact that these are directly competing programs and respond to some of the statements to the contrary in greater detail in Section 2 of my testimony.

Q. PGE testifies that offering its VRET supports Oregon's decarbonization goals and provides business customers the opportunity to meet their 100% renewable goals.[7] Do you agree with that?

Yes, to an extent, but PGE is not the only entity that can provide customers with services that allow them to meet 100% renewable goals—Direct Access is just as well positioned to rise to this challenge. While PGE's VRET offers a path towards Oregon's decarbonization goals, Direct Access offers that same path. Unfortunately, the opportunities for customers to access renewable power through Direct Access are limited due the customer participation cap and the implementation of tariff restrictions on the Direct Access program. By attempting to limit customers from seeking out competitive alternatives to purchase lower-carbon power, PGE's VRET-based support for Oregon's decarbonization goals is muted.

NIPPC fully supports Oregon's decarbonization goals as articulated in Governor Brown's Executive Order No. 20-04. The independent power industry, which includes many NIPPC members, has long been at the forefront of developing new renewable power projects and pioneering carbon-free power technologies. In fact, the vast majority of all renewable power projects in Oregon and in the Pacific Northwest historically have been, and currently are, being developed by independent power developers.[8] I agree that a properly designed and properly implemented VRET would support Oregon's decarbonization goals — but the point I want to emphasize is that the same is true for an expansion of

[7] PGE 700, Wenzel-Halley/2.
[8] *See* Renewable Northwest Project, Project List & Maps, retrieved June 3, 2020 from https://renewablenw.org/renewable-project-map/.

Direct Access. Both the VRET program and the Direct Access programs offer the opportunity for customers that desire to purchase low-carbon power to do so, and customers seeking a low carbon energy supply should be allowed to select the opportunity that best meets their needs.

Indeed, in recent years, large customers have increasingly sought to "green-up" their electricity supply beyond the traditional least-cost portfolio percentages offered by the utilities. Direct Access service has provided opportunities for customers to negotiate a customized green electricity supply that meets the customer's sustainability goals, while ensuring the financial burden of these decisions is not placed on the rest of utilities' customers receiving bundled service.

For example, Infomart Data Centers, the developer of a Hillsboro data center, explained: "We purposely sought the Direct Access right with the intent to source low-carbon power for our Portland facility[,]" and "we prefer to develop data centers in areas with open and competitive markets."[9] Another example is Apple's procurement of renewable energy supply from newly constructed solar and wind facilities to serve its Prineville data center through Direct Access, which helps Apple meet its corporate goal of 100 percent renewable energy supply.[10]

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[9] *See* "This Hillsboro data center now gets all its energy from BPA system," Portland Business Journal (April 27, 2016), https://www.bizjournals.com/portland/blog/sbo/2016/04/thishillsboro-data-center-now-gets-all-its-energy.html.

[10] *See* "Exclusive: Apple backing two huge Oregon renewable-energy projects," Portland Business Journal (April 23, 2017), https://www.bizjournals.com/portland/news/2017/04/23/exclusive-apple-backing-two-huge-oregon-renewable.html (noting Apple signed PPAs for purchase of 200 MW from

The *Portland Business Journal* reported: "Apple's deal breaks new ground in Direct Access in Pacific Power's territory, and, in the process, paves the way for a big swath of new renewable energy to come onto the grid."[11] An Apple representative explained: "To strengthen the connection between Apple and these projects, we use Oregon's Direct Access program to schedule the renewable energy from these projects directly to our data center[.]" Thus, Direct Access provides a supply of renewable energy, as well as the support for new renewable generation built on the local grid, for customers who wish to go beyond Oregon's Renewable Portfolio Standard ("RPS") requirements.

It is clear that Direct Access is already helping further Oregon's goal of moving to carbon-free power. PGE's VRET offers an additional path towards this goal. But if implemented as proposed by PGE, expanding PGE's VRET will grow PGE's monopolistic market share at the expense of Direct Access. In a system that needs innovation and competition to foster newer, greener products, Electric Service Suppliers ("ESS") should be able to offer a Direct Access service product that competes with a VRET—and PGE should not be permitted to move forward with a VRET proposal shielded from competition.

In summary, PGE's VRET can support Oregon's clean energy goals, but the proposed modification of the protections for the competitive market engendered in the Nine Conditions (as addressed below) would thwart additional decarbonization available from Direct Access. Oregon's clean energy goals would

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the Montague Wind Farm and 56 MW from the Galla Solar Facility, both located in Oregon).

[11] Id.

be better served by retaining the Nine Conditions and requiring PGE to remove impediments to Direct Access in lockstep with any expansion of its VRET program.

SECTION 2: The Nine Conditions

Q. Why are the Nine Conditions at issue in this proceeding?

A. As addressed in NIPPC's prior testimony that I am adopting,[12] Oregon's existing Direct Access law places an affirmative duty on the Commission to eliminate barriers to the development of a competitive retail market structure, and to ensure its policies mitigate the vertical and horizontal market power of incumbent electric companies, and prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates.[13] The legislature also directed the Commission to expressly consider the effect on the development of a competitive retail market for electricity when evaluating whether it would be in the public interest to allow the utilities to offer a VRET.[14] After the lengthy original VRET proceeding, the Commission issued an order that allowed VRETs to go forward, but only with express "Nine Conditions" designed to protect the competitive retail market and other constituencies. Even with such conditions, at least one member of the Commission, then-Chair Ackerman, did not believe a VRET was consistent with the public interest and the Commission's statutory obligations, and would

[12] *See, e.g.*, NIPPC 200 Kahn/4
[13] 2020 ORS §757.636(1)
[14] Oregon House Bill 4126, 3 (3), February 11, 2014.

have disallowed VRETs completely.[15] Now, as it attempts to expand the VRET program, PGE is proposing to eliminate many of the protections embodied in the Nine Conditions, to the detriment of the competitive market.

Q. Did the Commission determine in Phase I that it was appropriate to change the Nine Conditions?

A. No. In the Phase I Order of this proceeding, the Commission stated that "[w]e see a need to assess changes in Oregon's competitive electricity supply market and in the renewable energy development marketplace since 2016 as part of a reconsideration of the Nine Conditions,"[16] but did not make a determination that any of the conditions should be changed.

Q. Has there been a fundamental change in Oregon's competitive electricity market and/or in the renewable energy development marketplace since 2016 that would warrant a change to these Nine Conditions?

A. No, nothing has fundamentally changed that would warrant alteration of the Nine Conditions, and, in my view, neither PGE nor any other party has provided evidence to the contrary. Since 2016, the state of Oregon has re-affirmed and increased its commitment to pursue low carbon power, and customers have continued to seek sources of low carbon power. As described above, a power supply portfolio with less carbon content than the investor-owned utilities' portfolios is something that has always been available through Direct Access. There continues to be significant demand for Direct Access service that remains

[15] *See* Public Utility Commission of Oregon, "Order No. 15-405," OPUC Docket No. UM 1690, p 2., Chair Ackerman dissent ("Rather than defer consideration of Phase II, I would have concluded at this time that it is not in the public interest to allow utilities to offer VRETs and would have closed this docket.").
[16] Order No. 19-075.

unmet largely due to utility tariff limitations that prevent customers from accessing different avenues for renewable energy. Nothing has changed with respect to the interplay between the competitive retail market and utility service in the last few years that would justify revisions to the Nine Conditions.

Q. PGE and other parties propose a variety of changes to the "Nine Conditions." Do you agree with these proposed changes?

A. As a general matter, I do not agree with any of the proposed changes to the Nine Conditions. These are the conditions that the Commission found to be necessary to ensure a VRET would be within the public interest.[17] These conditions are also intended to apply to all VRET proposals, not just PGE's GEAR proposal. Rather than change any of the Nine Conditions, the Commission should—at the very most—allow utilities to seek case-by-case waivers of specific conditions. In considering whether any waivers should be granted, the Commission should do so only if it finds that the waiver will not interfere with the Commission's statutory mandate not to enact policies that could harm the development of a competitive retail market for power.

Q. PGE testifies that "the Commission articulated, and PGE agrees, that different terms and conditions should apply to these [VRET and Direct Access] programs as they are for distinctly different customers."[18] Do you agree with this statement?

A. No. I disagree with the statement that VRET and Direct Access are for distinctly different customers. I also am unaware of any instance that the Commission ever

[17] Order No. 15-405 (2015).
[18] PGE/700, Wenzel-Haley/11, lns 7-9.

articulated such a position.[19] With respect to the notion that VRET and Direct Access would serve distinctly different customers, nothing could be further from fact, as the programs are in direct competition for many of the same customers. Many commercial and industrial businesses in Oregon are interested in purchasing renewable power. Many would be agnostic as to whether they purchase such power from the utility or an Electricity Service Supplier ("ESS") – indeed, they would likely take service from the entity offering and providing the service that most closely aligns with the service they uniquely want. For example, if a new data center desiring renewable power were considering locating in PGE's service area, that data center could consider purchasing renewable power from either an ESS or from PGE pursuant to the GEAR program. Similarly, PGE notes that some of the local municipalities have goals to become carbon-free in the near future. These municipalities and their goals could be served either by a VRET or through Direct Access. All these customers should be allowed to evaluate a VRET offering and Direct Access offering one against the other, taking into account the features of service that matter to them most. This comparative evaluation by customers is, put simply, competition. This competition will drive innovation and creativity to the benefit of Oregon as it looks to decarbonize its electric supply. The concept that these are distinctly different customers is fundamentally false.

[19] PGE/700, Wenzel-Haley/11, cites Order No. 19-075, page 8, for this proposition, but the concept does not appear to be supported by that reference.

As noted, I am unaware of any indication that the Commission has agreed that a VRET program and Direct Access serve distinctly different customers. In fact, the opposite appears to be true. For example, in the original VRET proceeding, the Commission adopted Staff's analysis that "[t]he VRET program that would allow a utility to offer a large Direct Access-eligible customer an alternative renewable option must be considered in the context of clear and long-standing statutory and policy direction to the Commission to promote competitive market options for large customers" [20] – making it clear that the Commission believes that the each program would compete for the very same customers.

Q. Please comment on PAC's representations that the VRET and Direct Access are "completely different Consumer options"[21] and CUB's statement that PGE's Green tariff is a "very different product than Direct Access."[22]

A. I disagree with these statements. PAC suggests that "potential VRET customers are customers that are not seeking an alternative energy supplier, but instead want to drive the incremental addition of renewable generation while remaining a cost of service customer."[23] While PGE's GEAR program and the Direct Access programs are not identical, they still are competing. The fact that PGE's GEAR program is designed as a "cost-of-service plus" program does nothing to change the fact that the programs are competing options for some customers. It is possible that a prospective customer may place additional value taking service under a cost-of-service tariff, or may place additional value on leaving the

[20] Order No. 15-405, P.9.
[21] PacifiCorp 100 Lockey/2.
[22] CUB 200, Jenks/14.
[23] Id.

utility's power supply for service from an ESS, but that is a decision factor to be made within a competitive process, and does not change the underlying premise that these products compete.

Q. The second factor that CUB identified as distinguishing the VRET from Direct Access is CUB's statement that a VRET adds additional physical resources to the system, but Direct Access does not. Does this mean the programs are not competing?

A. No, it does not. First, CUB is incorrect in its assertion that a VRET adds additional physical resource to the system, but Direct Access does not. For example, Oregon's largest solar power plant, Avangrid Renewables' Gala project, was built to provide Direct Access service to Apple in Prineville.[24] A customer that wants to ensure additionality of renewable resources is free to do so through the Direct Access program (or at least would be free to do so but for various caps, thresholds and other tariff-impediments). Moreover, even if CUB's assertion were correct (and it is not), this fact would represent, at most, a distinction among the programs that a prospective customer could evaluate, but does not change the fundamental premise that the programs are in direct competition.

Q. Please respond to PGE's testimony related to Condition 6, the "mirror condition."

A. Condition 6 specifies that "Voluntary renewable energy product offering terms and conditions (including the timing and frequency of offerings), as well as transition costs, must mirror those for Direct Access. PGE may propose terms and conditions that differ from current Direct Access provisions but must propose

[24] https://www.bizjournals.com/portland/news/2017/10/30/apple-solar-farm-oregons-biggest-goes-live.html

changes to their Direct Access programs to match those changes." NIPPC addressed the need to retain this condition in the testimony I am adopting. Here I respond to testimony of PGE and other parties that seek to eliminate Condition 6.

Q. Please continue.

A. As noted, PGE's VRET proposal and Direct Access are competing services. PGE has a financial incentive to ensure that customers choose its VRET service over services offered by its competitors, which is one of the key reasons a VRET without the protections of the "mirror condition" would not be in the public interest. In prior testimony, NIPPC provided examples (but not an exhaustive list) of terms of service that should be mirrored, including the calculation of capacity and energy credits, the customer eligibility threshold, and the program cap. As Alliance of Western Energy Consumers ("AWEC") noted, an additional term and condition of service that should be mirrored is an equivalent ability to sign up for the Direct Access program as there is for the VRET program. Currently, a prospective customer can only elect to participate in Direct Access during limited election windows that occur once per year, while PGE can offer a VRET under its GEAR program at any time throughout the year. It is arguably a violation of Condition 6 for PGE to be able to offer VRET service without any restrictions as to the time of year it can offer those service when Direct Access alternatives face such restrictions.

NIPPC acknowledges that the application of Condition 6 should take into account material differences between the applicable VRET program and the Direct Access programs. For example, NIPPC would not necessarily assert that

the identical capacity credit included in the GEAR program could be imported for use in PGE's long-term Direct Access program, given the potentially different capacity values brought to non-participating customers through the two programs. That was a point discussed in the testimony of Kevin C. Higgins on behalf of Calpine Energy Solutions, LLC in Phase I.[25] But absent an express and compelling rationale, program terms should remain comparable.

Q. How did PGE respond to your examples of terms of service that should be mirrored?

A. Rather than address the examples, PGE offered non-sequiturs and incorrect assertions that the mirror conditions would limit customer options. For example, throughout this proceeding, NIPPC has maintained that PGE's GEAR proposal appears intended to "lock out" competition by creating terms and conditions of services under which a customer has the option to purchase renewable power through a VRET, while at the same time is prevented from purchasing such service from a competing power supplier – a direct violation of Condition 6. Other parties share this concern.[26] In its testimony, PGE does not address the concerns, stating instead that it "assumes that NIPPC is referring to the term commitment associated with the GEAR when accusing PGE of being able to 'lock out' competition."[27]

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[25] Calpine Solutions/100, Higgins/5-9.
[26] *See, e.g.,* RNW/300, Obrien/11 ("Program terms and conditions could tilt the scale in favor of a green tariff offering without shifting costs onto non-subscribing customers. If a green tariff product is offered with a rolling window for subscription, for example, while Direct Access has a limited annual subscription window, then that green tariff offering might prove a more attractive option to customers who would rather not wait 11 months to access low-cost renewable energy").
[27] PGE 701, Wenzel-Halley/22-23.

Q. Do you agree with this characterization?

A. No, I do not. PGE's failure to address NIPPC's and other parties' comments on this critical concern pervades the docket. NIPPC's concern that PGE will "lock out" competition is not related to the term length of customer commitments under PGE's GEAR program. Rather, our concern is that PGE is seeking authority to expand a program under which PGE, and only PGE, is able to serve categories of customers– despite the clear statutory directive that retail customers are supposed to have the ability to purchase power from a supplier of their choice on the competitive market.

Q. Please Continue.

A. For example, PGE has proposed a GEAR program that allows it to serve prospective customers with loads as low as 30 kW,[28] but does not allow customers to take long-term Direct Access unless they have a load of at least 1 MW. Thus, all customers between 30 kW and 1 MW are "locked out" from purchasing, long-term Direct Access. Similarly, Direct Access customers and ESSs are, in fact, "locked out" from respectively receiving or offering a service competing with PGE's VRET to the extent the long-term Direct Access programs are at or near maximum capacity. Bear in mind that these limitations on Direct Access offerings available on PGE's system are tariff requirements put forth by PGE and not requirements of the Direct Access laws or regulations.

[28] See PGE Original Sheet No. 55-2 ("This schedule is available – subject to capacity made available within Phase I of the program to all Nonresidential Customers each of whose aggregate demand across all retail schedules exceeds 30kW. In the event that a Customer has multiple accounts – some of which may fall under 30kW of demand the Customer will be allowed to aggregate all Nonresidential accounts.")

PGE's response to NIPPC's statement that eligibility threshold must be subject to Condition 6 is especially telling. With respect to the eligibility threshold, PGE notes that parity between its VRET program and Direct Access would require that the PGE Green Tariff to changed so that it is available only to customers with the same 1 MWa load threshold that is applicable to Direct Access. PGE argues against such a change to its GEAR program as follows:

> "Changing this eligibility threshold would satisfy NIPPC's request, but the negative consequence of this would be that it leaves customers between 1 kW and 250 kW (with aggregate load of at least 1 MWa) with no option for directly driving decarbonization through additional renewable generation."[29]

PGE's response ignores the obvious alternative option. Rather than preclude customers with smaller loads from "driving decarbonization" through its VRET programs, PGE should be required to abide by Condition 6 and lower the eligibility threshold for long-term Direct Access to mirror the proposed threshold for the VRET.

Put simply, the existing mirror condition permits the utilities to propose a term or condition different from Direct Access, such as a different customer size threshold level, provided that they also "must propose changes to their Direct Access programs to match those changes." PGE has provided no explanation as to why it cannot make this change. If PGE were to simply make a matching update to its long-term Direct Access tariff, all customers eligible for the VRET program would then have two competing options for directly driving

[29] PGE/701, Wenzel-Halley/20, lns 10-15.

decarbonization through additional renewable generation. That change would be in the public interest. Allowing PGE to exercise its monopoly power to serve a class of customer that Direct Access service providers are blocked from serving is not in the public interest, nor is PGE's proposal to eliminate the important protections of Condition 6.

PGE's concerns with the other examples have the same flaw: PGE proposes terms and conditions for its VRET that it is unwilling to propose for Direct Access. Generally speaking, if PGE were to expand the terms and conditions it is proposing for its VRET to also apply for Direct Access, it is increasing customer choice and facilitating the development of the competitive market. When PGE proposes to offer a more favorable opportunity for its own product than for competing products, it is impermissibly using monopoly power to lock out competition. PGE's reaction to the examples above demonstrates why the mirror condition must be retained.

Q. Do you believe PGE's proposal that Condition 6 should not apply to cost of service VRET programs is appropriate?

A. No. PGE suggests that the "mirror" condition should not apply at all for cost-of-service-based VRETs.[30] It is a red herring claim that is irrelevant to maintaining comparability in offering consumers the choice to access the retail market, as required by statute. Furthermore, PGE's proposal invites confusion and disputes. Indeed, determining whether a tariff is "cost-of-service" based will not be transparent, and an argument could easily be made by PGE that any PGE-offered

[30] PGE/701, Wenzel Halley 24.

VRET is cost-of-service based. For example, PGE could contend that cost-of-service could include market-supplied products procured by PGE or products that include credits that result in the customer paying less than the normally applicable non-VRET cost-of-service tariff.

Q. Are there modifications to Condition 6 that may be acceptable?

Yes, I believe that Condition 6 could be modified in a manner that obviates some of the concerns expressed about the condition without removing the important protections Condition 6 provides. As set forth in NIPPC prior testimony that I am adopting, my recommendation is that Condition 6, requiring that the terms of any generic VRET mirror Direct Access, be maintained, but that specific utility programs, such as PGE's GEAR program, can receive a limited waiver of the requirement if specified conditions are met. In order to be eligible for consideration of such waiver, PGE should be required to demonstrate, with evidentiary support, that 1) a given term or condition of service cannot reasonably be implemented under Direct Access; 2) the utility has presented a compelling rationale for why different terms and conditions are necessary for the program to function; and 3) that the different treatment does not create barriers to the competitive market, such as creating a category of customer that is eligible for service under the VRET but ineligible to receive service under Direct Access. This proposal would provide flexibility in application of the necessary competitive retail market protections, but still provide reasonable opportunity for objection and Commission resolution when a utility proposes a VRET that could harm the competitive retail market.

Q. Please address comments with respect to Condition 8.

A. Condition 8 provides that "All direct and indirect costs and risks are borne by the VRET customers, shareholders of the utility, or third-party developers and suppliers with provisions allowing independent review and verification by the Commission Staff of all utility costs. Costs include but are not limited to ancillary services and stranded costs of the existing cost of service rate-based system." PGE proposes to modify this condition by eliminating the final sentence that references ancillary and stranded costs, arguing that it is redundant. More importantly, PGE testifies that no stranded costs can result from a green tariff program.[31]

Q. Do you agree that a VRET will not produce stranded costs?

A. No, I do not agree, and I believe that the Commission should explicitly retain this language. NIPPC is concerned that the VRET program will have the unintended effect of shifting costs onto the Direct Access program. Currently, the utilities are entitled to charge customers moving to Direct Access a transition charge to recover costs for a share of the capacity that the utility purchased prior to the Direct Access customer leaving the system, to avoid improper cost-shifting. If PGE acquires additional capacity to provide service for the VRET program, it could inflate the level of capacity owned by, or under contract to, PGE, and then PGE could seek to collect a portion of such costs from Direct Access customers – which would violate the cost recovery requirements of a VRET program. To the extent PGE acquires capacity for its VRET program, it must not only ensure that

[31] PGE/701, Wenzel-Halley/27, lns 13-21.

such VRET capacity is not included in the transition costs calculation, but also debit an equivalent amount of capacity from the transition cost calculation – capacity that for all practical purposes has been replaced by the VRET capacity, under a voluntary program, should not be the responsibility of customers that have elected to leave PGE's cost of service.

SECTION 3: CONDITION 7 AND UTILITY OWNERSHIP OF VRET RESOURCES

Q. Please provide background on the issue of utility ownership of VRET resources.

A. One of the most fundamental protections the Commission imposed to ensure that allowing utilities to offer a VRET would be in the public interest was to strictly limit a utility's ability to own a VRET resource. In the Staff Memo to the Commission adopted in the VRET proceeding, Staff found that "[o]f the range of VRET models considered, Staff identified utility ownership of VRET resources to *have the most potential for impacts to competitive markets for VRET resource development*,[32] and Staff recommended that "the regulated utility should not be permitted to own a VRET resource."[33] Staff's analysis of the issue is detailed. Among other things, Staff noted that Oregon utilities are monopolies, and that "[a] monopoly's participation in a VRET market would reduce and possibly eliminate the competitive nature of such a market due to these aforementioned advantages being unavailable to potential producers."[34] Staff noted further that "[a] utility would be able to absorb the failure of a generation asset (a failed

[32] Order No. 15-405Appendix A, P. 9.
[33] Id.
[34] Id., P. 12.

market entry) through means afforded to it by way of its regulated status and recognition of its public benefit, whereas a third party or customer would not necessarily have such loss-mitigating means available to them. Barriers like this introduce additional risk to participants interested in participating in a market where utilities are permitted to operate; this particular risk is detrimental to the competitive aspects of a market."[35] Staff concluded that a utility participating in a VRET market "may further inhibit competitiveness due to a utility's horizontal market power"[36] – which the Commission is expressly required to mitigate under statute; and that even if utility ownership of VRET resources could produce a short-term rate savings to customers, "[i]n the long term, such a scenario ultimately produces harm to the market in the form of fewer participants, riskier signals to investors, and subsequent higher prices.[37]

Q. Did the Commission fully adopt Staff's recommendation that utilities be prohibited from owning a VRET resource?

A. No, the Commission did not ultimately mandate a complete prohibition on allowing utilities to own a VRET resource, but did something of similar effect: the Commission expressly prohibited a utility from including a VRET resource within its rate base, and further required that, to the extent a utility did desire to own a VRET asset, it would be required to share some of the return it receives from such ownership with other utility customers for ratepayer-funded assets used to assist the VRET offering. By refusing to allow a utility to include a VRET in

[35] Id., P. 12.
[36] Id., P. 12.
[37] Id., P. 13.

rate base, and requiring a sharing of revenue, the Commission effectively eliminated the competitive advantage the utility would otherwise gain from owning a VRET resource. In addition, by ensuring that a utility did not include a VRET in rate base, the Commission essentially required that any utility ownership be undertaken through an affiliate, which would require the utility to follow a variety of regulatory requirements designed to ensure separation of functions and eliminate cost shifting, such as a requirement to maintain separate books and records and account for marketing costs separately.

Q. Has anything changed in the power markets in the Pacific Northwest or Oregon that would fundamentally change the concerns regarding utility ownership?

A. No, there have been no fundamental changes to power markets in the Pacific Northwest or Oregon that would fundamentally change the concerns regarding utility ownership. The local utilities in Oregon maintain their status as monopoly service providers with respect to distribution, and largely with respect to sales of power. The number of ESS providers competing with the utilities have not significantly changed. The limitations on the terms and conditions under which an ESS can provide competitive service to potential customers have not significantly changed, other than to the extent that Direct Access offerings for some utilities are now essentially "capped out" from offering additional service. In short, nothing has changed that would warrant revisiting the Commission's determination on this issue.

Q. Please comment on PGE's proposal with respect to ownership of VRET resources.

A. Despite the clear recommendations of Commission Staff and the fact that there have been no significant changes in market dynamics, PGE seeks to eliminate the protections in Condition 7 – which would bar PGE from including a VRET in rate base and would require PGE to share any revenue received with other customers -- - in favor of a simple statement that "the regulated utility may own a voluntary renewable energy resource, and when it does, it must continue to ensure there is no cost-shifting to non-participants."

Q: Do you agree with this proposed change?

A. No, I do not. As Dr. Kahn testified in NIPPC's initial Phase II testimony, if any change is to be made to Condition 7, it should be to expressly prohibit utility ownership of a VRET resource.[38] I agree with this. PGE states that it is interested in pursuing ownership of a GEAR resource and that rate base ownership should be an available option.[39] NIPPC believes that a VRET based on the GEAR program, but also allowing for utility ownership, would not be in the public interest, and would be impermissible under the legislative directive that Commission policies must eliminate barriers to the development of a competitive retail market.

[38] NIPPC 200, Kahn/18, 25-26.
[39] PGE 700, Wenzel – Halley/16-17.

Q. Please provide further comment on your concern regarding PGE's desire to own a VRET resource.

A. I have numerous concerns with PGE's proposal to own a VRET resource and include such resource within rate base. The utility incentive to own generation resources is well-documented and has been repeatedly recognized by this Commission, as discussed above. The utility already has an inherent incentive to discourage customers from participating in Direct Access programs because participation in Direct Access reduces the utility's own resource needs, and thus its ability to expand rate base upon which the utility may earn its authorized rate of return for distribution to shareholders. If the utility may pursue a rate-based resource through the VRET, the incentives to engage in anticompetitive practices towards Direct Access programs will be substantially magnified. There are many highly competitive renewable facilities under development by IPPs in the region available to sell power to PGE through a PPA as part of the VRET program without creating the many competitive risks inherent with utility ownership of the VRET resource. Moreover, Oregon law and the Commission's regulations already allow for a utility to provide this type of service through an affiliate, but also include numerous protections to ensure transparency and fair treatment of competitors. Allowing PGE to own the VRET resource and place it in rate base would be directly contrary to these provisions.

Q. Are there any benefits to allowing a utility to own (and include in rate base) a VRET project?

A. The benefits to the utility if allowed to own a VRET project and include it in rate base are clear – it can earn a return on the investment for their shareholders and

avail itself of all the rate regulated protections on cost recovery that come with their monopoly utility service. I am not aware of any benefits from allowing a utility to own a VRET asset other than for the parochial interests of the utility itself. Ownership of a VRET asset by the utility will not facilitate Oregon's goal of reducing carbon, and, as Staff has found, will ultimately lead to higher prices for everyone by further incenting the utility to inhibit retail choice and protect its monopoly power and market share.

Q. What other concerns do you have regarding Utility Ownership of a VRET resource?

A. I have numerous additional concerns with respect to utility ownership of a VRET resource. For example, I am also concerned that allowing a utility to own and include a VRET resource in rate base could improperly inflate the level of transition costs that Direct Access customers would be required to pay because it could increase the overall capacity used to calculate transition charges, even though such capacity may not have been necessary or appropriate "but for" the VRET – a direct and inappropriate cost shift. While a prohibition on cost shifting nominally should prevent this result, backing out excess capacity from transition cost calculations to ensure that the costs of such excess capacity are borne neither by Direct Access customers nor the utility's non-participating retail customers will be complex.

I am also concerned with the interplay between PGE's proposed risk adjustment mechanism and the potential for rate-basing a VRET asset. PGE is proposing in this docket that it be allowed to recoup a risk premium for any VRET that would account for the possibility that a given customer or VRET

supplier does not meet its contractual obligations, without shifting that risk on to other customers (which would be cost-shifting) or placing the risk on PGE's shareholders. If PGE were allowed to include a VRET within rate base, however, any risk premium would amount to double-recovery for PGE: PGE's rate or return already includes a premium to reflect business risk; PGE should not be entitled to have the protection of a risk adjustment premium and earn a rate of return on the same asset.

SECTION 4: RESOURCE PROCUREMENT AND PLANNING

Q. PLEASE COMMENT ON PGE's PROPOSAL FOR A WAIVER OF THE COMPETITIVE BIDDING RULES ("CBR").

A. In PGE's Phase I VRET proceeding, PGE sought a determination from the Commission that the Competitive Bidding Rules ("CBR") not apply to VRET resources. The Commission soundly rejected this request, finding that a procurement under the VRET resource that met the CBR size threshold would be subject to the CBR, but nevertheless granted PGE a one-time, fact-specific waiver of the rules based on the specific circumstances and timing of its Phase I VRET proposal.[40] PGE is now again seeking a complete before-the-fact waiver of the CBRs based on generic statements, without any specific resource in mind. PGE offers that it could "leverage other procurement actions, such as future renewable Request for Proposals (RFPs) to evaluate available resources" without having to separately and independently conduct a full IRP process.

Q. Do you agree with PGE's proposal?

[40] Order No. 19-075, p. 4.

A. No. The Commission's CBR rules for large projects are important tools designed to ensure that the utility selects the most appropriate resource. It would not be appropriate to grant PGE a waiver of such rules in advance, without any specific facts before the Commission for consideration. The CBRs protect two separate categories of market participants. They protect the utility's ratepayers by ensuring through a rigorous analysis that the appropriate resource is selected. The CBRs also protect third-party power developers to ensure that the utility cannot simply choose a self-build option, or select a vendor chosen based on non-public criteria, rather than the most competitive option available.[41] This also benefits the utility's ratepayers as competitive markets drive costs down, allow for innovation, and produce more reliable products. PGE's suggestion that only the VRET participants will bear the cost of the VRET resources does nothing to protect customers or renewable developers. The additional fact that PGE desires to own a resource and include it in rate base makes PGE's proposal clearly inappropriate.

[41] Consider, for example, two developers (I will refer to them as Developer A and Developer B) with relatively equivalent renewable power projects under development suitable for use as a VRET resource. Assume Developer A is a well-known developer with a track record of success, backed by an investment grade credit rating, and is willing to offer its capacity to PGE's VRET program at a fixed price per kW. Assume Developer B is a brand new developer with no track record, not backed by an investment grade credit rating, and is willing to offer its capacity to PGE's VRET program at a higher fixed price per kW – 20 percent more than Developer A -- but is also willing to offer PGE a right of first refusal to purchase the asset (freely assignable to an affiliate or a third party) at a fixed price at the end of the PPA term, something that Developer A is unwilling to do. PGE should not have unfettered discretion to select Developer B.

Q. What does NIPPC recommend as an alternative?

A. NIPPC believes that, to the extent PGE desires to acquire a VRET resource through a PPA that meets the size threshold of the CBR, PGE should be required to comply with the CBR requirements or explain why a waiver of the CBRs is appropriate based on the specific facts at such time. These facts can include what other recent procurement actions PGE can leverage to ensure it is choosing an appropriate resource, as well as any timing considerations that may make a full CBR impractical, and its arguments can be fully evaluated by the Commission, informed by comments from other market participants. This is the same process the Commission used for Phase I. By contrast, with respect to any proposal under which the utility proposes to own a VRET asset – expressly including any PPA that gives the utility the right to acquire the asset in the future – no waiver of the CBRs would be appropriate.

SECTION 5: PROGRAM CAP AND THE INTERPLAY BETWEEN PGE-SUPPLIED AND CUSTOMER-SUPPLIED RESOURCES

Q. Do you support PGE's request that the participation cap set out in Condition 4 be raised from 300 MW to 500 MW, measured by the nameplate capacity of the VRET resource?

A. NIPPC does not oppose increasing the cap from 300 MW nameplate capacity to 500 MW nameplate capacity of the VRET resource, assuming the protections of the Nine Conditions remain in place and that PGE is not permitted to include a VRET asset in rate base. However, we do have concerns with PGE's related proposal to eliminate the bright line distinctions between the PGE-supplied option and customer-supplied option as well as any proposal to eventually increase the

VRET cap to a level higher than the caps on the long-term Direct Access program. If PGE's VRET cap is ever proposed to be increased beyond the level of the long-term Direct Access program (currently set at 300 aMW of load), PGE should be required to make a corresponding increase to the long-term Direct Access cap. When the Commission initially considered the VRET, it expressly tied the cap on the VRET program to the cap on the long-term Direct Access program. Since that time, various parties have continued to seek expansion of the Direct Access cap, and PGE has opposed such expansion. The Commission approved continuation of the cap limits on Direct Access over the objections of AWEC,[42] and this issue is now before the Oregon appellate court.[43] While PGE says that there is strong demand for its VRET product, it is clear that there is also strong demand for the competing product, long-term Direct Access. Expanding the cap on one program without also expanding the cap on the other would improperly inhibit competition and further entrench PGE's monopoly status.

Q. PGE also requests an expedited process to allow further expansions of the cap in the future. Do you support this proposal?

A. PGE is seeking an expedited process under which the Commission would act on a request for a cap increase within a 60-day review period, which it could request at any time.[44] There is neither a basis nor a need for such special treatment. The Commission's procedural rules are designed to provide due process for all

[42] *See* Public Utility Commission of Oregon. "Order No. 18-464," December 14, 2018, p. 17-18
[43] See pending appeal of Docket UE 335, *Alliance of Western Energy Consumers v. OPUC and PGE*, Appellate Court No. A171242.
[44] PGE 700, Wenzel-Halley/ 23.

interested parties, and PGE's proposal would remove these protections. This is particularly true given that, under its proposal, PGE would retain for itself the decision about when and under what conditions it could trigger the 60-day timeline. For example, if this proposal were adopted, PGE could choose to trigger the window at the start of a legislative session, or Thanksgiving week, or in the midst of other substantive litigation that strains the resources of the Commission and/or other parties. Having said that, if a carefully crafted expedited window for expansion of the VRET program is granted, a similar expedited process for expansion of the caps on competing products offered through Direct Access should be implemented in tandem.

Q. You indicated you were opposed to PGE's proposal to eliminate the distinction between the PGE-supplied option ("PSO") and the customer supplied option ("CSO") set asides within the proposed 200-MW expansion of the cap in the GEAR program. Please explain that issue.

The customer-supplied option was included in the GEAR program to allow large customers to "bring-their-own PPA" to the utility. To do so, the program included 100 MW for the PGE-supplied option (none of which could be included in PGE's rate base), and it included 200 MW for the customer supplied option. At the conclusion of Phase I of the program, PGE fully enrolled the PGE-supplied option and then used the same PGE-supplied resource for customers eligible for the 200-MW set aside for the customer-supplied option. At the direction of the Commission, the parties developed a stipulated demarcation clearly explaining that PGE would be allowed to have no role in procuring the resource for the remaining 140-MW capacity in the customer-supplied option, and the

Commission approved these clear limitations.[45] In approving this agreement, the Commission explained that it had "found a need to identify appropriate, measurable, or testable distinctions between the PSO and the CSO."[46] PGE now proposes to eliminate the distinction between the PGE-supplied option and the customer-supplied option.[47] In combination with PGE's proposal to eliminate the restriction on its ownership of VRET resources and the prohibition on VRET resources going into rate base, this would mean that PGE could own and place in rate base the entire 200-MW expansion of the program. NIPPC opposes the elimination of the distinction between PGE-supplied option and the customer-supplied option. The customer-supplied option brought an important element of competition and consumer choice to the GEAR program. If PGE is allowed to directly compete against the market, and especially if it has the inherent incentives of utility ownership, then the customer-supplied option will likely not be utilized again. The program should not be limited or unreasonably constrained by PGE's offerings, and the customer-supplied option should be preserved as a reasonable carve-out of any expansion of the program.

CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

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45 *See* Public Utility Commission of Oregon, "Order No. 20-036," January 31, 2020, OPUC Docket No. UM 1953, at 3-4.

46 Id. at 4.

47 PGE/700, Wenzel-Halley/13.