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*Via Electronic Filing*

Chair Megan Decker  
Commissioner Letha Tawney  
Commissioner Mark Thompson  
Public Utility Commission of Oregon  
201 High St. SE, Suite 100  
Salem OR 97301

Re: Docket No. ADV 1264 – NIPPC’s Comments Regarding PGE’s Schedule 55 Fifth Supplemental Compliance Filing for Order No. 21-091 (Phase II)

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully submits these comments recommending the Commission reject, or require modification of, Portland General Electric Company’s (“**PGE**”) proposed tariff changes to its Schedule 55 Green Energy Affinity Rider (“**GEAR**”), filed July 29, 2021 by PGE as a compliance filing to Order No. 21-091.<sup>1</sup> As explained below, NIPPC is concerned that PGE’s proposal inappropriately blurs the distinction between the PGE-Supplied Option (“**PSO**”) and the Customer-Supplied Option (“**CSO**”). PGE’s proposal would undermine the important element of competition introduced by the CSO and contradicts agreements made by PGE in this proceeding that were incorporated into the Commission’s Order No. 21-091. PGE’s proposal also introduces complexities related to utility ownership and RFP processes that are inappropriate in a compliance filing.<sup>2</sup>

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<sup>1</sup> PGE’s July 29, 2021 filing was designated as the “Fifth Supplemental Filing.” PGE subsequently filed a Sixth Supplemental Filing to correct a PGE website link contained in the tariff sheet that provides information to interested customers. NIPPC’s comments herein address issues raised by the Fifth Supplemental Filing.

<sup>2</sup> NIPPC appreciates PGE’s circulation of proposed tariff language to interested parties for discussion prior to making its filing, as well as PGE’s willingness to make some recommended modifications based on feedback received. NIPPC is attaching as Exhibit A hereto for the Commission’s consideration the redlined comments NIPPC offered to PGE prior to the filing that NIPPC believes would have ameliorated some of the concerns expressed herein.

The Commission vetted PGE’s GEAR program in detail during Phase I and Phase II of this docket. One aspect of the program specifically addressed by the Commission related to the express limitations on PGE’s involvement with identifying and negotiating CSO resources. In fact, the interplay between the CSO and PSO options was the basis for the Commission to suspend consideration of Phase II of Docket UM 1953 and reconsider aspects of Phase I in Order No. 19-348. These issues were resolved through a stipulation agreed to by all active parties, and approved by the Commission. The Commission explained that it had “found a need to identify appropriate, measurable, or testable distinctions between the PSO and the CSO.”<sup>3</sup> The stipulated limitations on PGE’s involvement in the CSO are not ambiguous. As the Commission’s Order No. 20-036 summarized:

PGE’s role would be limited to providing interested customers with information about: (1) program description and mechanics; (2) the queue and remaining capacity under the cap; (3) the possibility that beginning March 23, 2020, the Commission may consider changes to program capacity for effect no earlier than June 1, 2020; and (4) the Renewable Northwest website as a source of a map of potential projects and developers. PGE will work with interested CSO customers, and the CSO customer will determine the appropriate point in time to involve PGE during contract negotiations. PGE will maintain final contract approval, but may only object to qualifying PPAs to avoid shifting costs and risks onto non-participating customers or PGE shareholders.<sup>4</sup>

The point of these restrictions was to limit PGE’s role to allow room for competition in supply procured by eligible large customers. And the limitations clearly contemplated the *customer-supplied* product to be a PPA resource, not a PGE-owned resource.

In its Fifth Supplemental Filing, PGE states that the Stipulation “applied to phase 1 of UM 1953 and did not extend to Phase 2 and beyond.”<sup>5</sup> However, as the Commission specifically noted in its Phase II Order, PGE agreed to maintain the same PSO/CSO distinctions as included in the Stipulation in the Phase II docket. In the Phase II proceeding, PGE initially had proposed to eliminate the distinction between the PSO and CSO and to maintain a single, overall program cap.<sup>6</sup> NIPPC objected to the proposal to limit the protections in place for the CSO, testifying:

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<sup>3</sup> See OPUC Docket No. UM 1953, Order No. 20-036, at 4 (January 31, 2020).

<sup>4</sup> Order No. 20-036 at 3.

<sup>5</sup> PGE’s Fifth Supplemental Filing at p. 1

<sup>6</sup> UM 1953 PGE/700, Wenzel-Halley/13.

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.<sup>7</sup>

In response, PGE affirmatively retracted its proposal to change the distinction between the PSO and CSO and proposed to include a 100-MW carve out for the CSO in the expanded program.

PGE's reply testimony stated:

***We agree with NIPPC to maintain the CSO and PSO distinction, consistent with tranche 1;*** therefore, the 200 MW proposed for tranche 2 would be allocated 100 MW for the CSO and 100 MW for the PSO.<sup>8</sup>

Thus, with PGE's agreement with NIPPC on this point, no parties had occasion to respond to any proposed changes to the PSO-CSO distinction, and the Commission's final Order No. 21-091 did not approve any changes to the stipulated distinction from Order No. 20-036. The Commission's Order even confirms: "PGE agrees with NIPPC to maintain the CSO and PSO distinction, consistent with Phase I of its program. Accordingly, the 200 MW PGE proposes for Phase 2 would allocate 100 MW for the CSO and 100 MW for the PSO."<sup>9</sup>

Notwithstanding this resolution to maintain the PSO-CSO distinction consistent with Phase I, clearly articulated by Commission order, PGE now proposes through the compliance filing mechanism to significantly expand its procurement role with respect to CSOs as well as open the door to utility ownership of the CSO. With respect to PGE's procurement role, PGE now proposes that the CSO shall mean a resource "identified and selected by the Customer, *with assistance from PGE in identifying a resource if requested by the Customer*" [emphasis added]. As noted above, PGE is to have "no role" in selecting CSO resources, and is only permitted to provide prospective CSO customers with the following information: "(1) program description and mechanics; (2) the queue and remaining capacity under the cap; (3) the possibility that beginning March 23, 2020, the Commission may consider changes to program capacity for effect

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<sup>7</sup> UM 1953 NIPPC/300, Gray/33.

<sup>8</sup> UM 1953 PGE/800, Wenzel-Faist/6 (emphasis added); *see also id.* at p. 32:2-5.

<sup>9</sup> OPUC Docket No. UM 1953, Order No. 21-091 at 8 (March 29, 2021).

no earlier than June 1, 2020; and (4) the Renewable Northwest website as a source of a map of potential projects and developers.” PGE’s proposed tariff language specifying that it may provide assistance to customers in identifying CSO options is inconsistent with these limitations and should be rejected and replaced with the agreed-upon limitations.

Similarly, the Stipulation and the Commission’s orders make it clear that, while PGE must be a party to the final PPA supporting a CSO proposal, it is not intended to be a material participant in the underlying PPA contract negotiations, and its authority to object to any aspect of a CSO PPA that meets minimum criteria is expressly limited: “PGE will maintain final contract approval, but may only object to qualifying PPAs to avoid shifting costs and risks onto non-participating customers or PGE shareholders.”<sup>10</sup> Thus, PGE’s newly proposed tariff language that “[i]n all cases, the Company will be the entity contracting for the resource to serve the CSO Customer *and must be involved in the contract negotiations* [emphasis added] and execution” is directly contrary to the Commission’s order, rather than in compliance with such order, and should be rejected. Instead, PGE should be ordered to include the same limitations as previously required by the Commission.

PGE’s proposed modifications with respect to potential ownership of GEAR resources also raises issues that should have been addressed during the contested case phase if PGE wanted such authority, and are not appropriate for an after-the-fact compliance filing. For example, PGE now proposes that it be allowed to own a customer-supplied resource. This proposal raises at least two important policy questions: How would the competitive bidding rules apply in the case of a proposed PGE-owned customer-supplied option? Would the possibility of utility ownership result in deterrence of PPA structures?

NIPPC submits that utility ownership of a customer-supplied resource is contradictory on its face and should be rejected. The Staff Report in this docket indicates that, based on discussions with PGE (that did not include NIPPC), “PGE confirmed that the Company did intend that a CSO resource could be utility-owned pursuant to its interpretation of the Commission’s

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<sup>10</sup> Order No. 20-036 at 3.

order.”<sup>11</sup> Yet, PGE has submitted as a compliance filing a definition of CSO that specifically includes ownership of a CSO resource by PGE:

“Customer Supply Option (CSO)” means a resource identified and selected by the Customer, with assistance from PGE in identifying a resource if requested by the Customer, and contracted as a Power Purchase Agreement (PPA), **or Company-Owned Resource, asset purchase**, or other means consistent with the Minimum Requirements.

NIPPC submits that, of ownership of a CSO resource is not contemplated, and not consistent with the Commission’s intent, then the Commission should reject this tariff language. Allowing this language to remain introduces significant and inappropriate ambiguity into the program. As NIPPC recommended to PGE, and incorporated, in Exhibit 1, NIPPC has not objection to a definition of Customer Supply Option as: ““Customer Supply Option (CSO)” means a resource identified by the Customer and contracted as a Power Purchase Agreement (PPA).”

It is worth reiterating that PGE’s proposing significant policy changes in a compliance filing deprives other stakeholders and the Commission of the opportunity to fully investigate the impact of PGE’s new proposal. PGE’s proposal to make this significant change during the compliance phase, rather than the contested phase of this proceeding is procedurally improper and should be rejected. PGE’s cover letter to its compliance filing states that PGE needs more involvement in procuring the CSO to “incorporate[e] learnings from the Phase 1 subscription process while preserving the bright-line distinction between the PSO and CSO.”<sup>12</sup> As noted above, PGE’s proposed changes do not “preserve[] the bright-line distinction between the PSO and CSO.” If the proposed changes were in fact necessitated by “learnings from Phase 1”, PGE should have proposed these modifications in its testimony filed after the close of the Phase 1 subscription process. PGE’s last round of testimony, in which it agreed to NIPPC’s proposal to maintain the CSO and PSO distinction, was filed on August 19, 2020, which was well after PGE’s March 25, 2020 notification to the Commission that the Phase 1 CSO subscription cap had been filled through a large customer’s notice of intent to subscribe to the remaining 140 MW in the Phase 1 CSO.<sup>13</sup> Because the Phase II queues have not been opened yet, it is unclear how PGE

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<sup>11</sup> Staff Report, Item No. RA1, August 2, 2021 at p. 3.

<sup>12</sup> PGE’s Advice No. 21-11, Cover Letter, p. 1 (July 29, 2021).

<sup>13</sup> PGE’s Letter Regarding Customer’s Notice of Intent, OPUC Docket No. UM 1953 (March 25, 2020).

could have gained any further experience in the goals of customers since the initial Phase I cap was filled. Thus, PGE's assertions regarding customer requests for further assistance do not support the major policy change PGE proposes through this compliance filing. PGE characterizes its changes as removal of a "gag rule" prohibiting PGE from assisting customers in locating a resource, but in reality PGE has proposed material changes to the CSO that will open up the CSO to utility ownership and the type of special contract arrangements that harm the competitive retail market.

For the reasons set forth above, the Commission should condition approval of PGE's compliance filing upon the adoption of the changes proposed by NIPPC.

Sincerely,



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One of counsel for the Northwest and Intermountain  
Power Producers Coalition.

August 6, 2021

## EXHIBIT 1

### NIPPC PROPOSED SUGGESTIONS FOR PGE SCHEDULE 55 TARIFF CHANGE

"Customer Supply Option (CSO)" means a resource identified by the ~~Customer, with assistance from PGE if requested by the Customer,~~ and contracted as a Power Purchase Agreement (PPA), ~~asset purchase, or other means consistent with the minimum requirements.~~ CSO eligible Customers, are Customers with greater than 10 aMW in load or as otherwise approved by the Public Utility Commission of Oregon (OPUC),.

**Commented [CF1]:** The Stipulation approved in Order No. 20-036 specifies "PGE may have no role in CSO project procurement prior to any cap changes." Order 21-091 notes that "PGE agrees with NIPPC to maintain the CSO and PSO distinction, consistent with Phase I of its program." NIPPC believe this commitment governs a number of the changes proposed here.

"PGE Supply Option (PSO)" means the renewable resource(s) for Subscribing Customer(s) is identified and procured by PGE to meet aggregate Subscribing Customers loads in the program. The PSO resource could be contracted as a PPA, ~~asset purchase a Company-owned resource,~~ or other means consistent with the ~~Minimum Requirements.~~

Company-Owned Resource. Should the Company propose to own a resource serving this program, the Company will follow Commission direction including proposing accounting safeguards for separate accounting for the Company owned GEAR resource as mandated in Commission Order 21-091. The renewable energy GEAR resource ~~shall not may~~ be included in the Company's general rate base and the Company will must share some of the return on investment with the other utility customers for ratepayer-funded assets used to assist acquisition and operation of the GEAR resource. ~~so long as the asset(s) can be accounted for separately from the Company's general rate base. The proposed safeguards will prevent the commingling of renewable resources serving this program with other assets that are in rate base for the purpose of serving non-GEAR customers.~~<sup>14</sup>

**Commented [CF2]:** NIPPC requests that, if PGE is adding language regarding a company-owned resource, it references the full set of requirements from Condition 7.

#### CSO Specific Provisions:

1. The Customer shall independently make the selection of the CSO resource for enrollment in the program. Should the Customer approach PGE for help during the process for a CSO resource, the Company's role will be limited to providing interested customers with information about: (1) program description and mechanics; (2) the queue and remaining capacity under the cap; (3) the Commission may consider changes to program capacity and (4) the Renewable Northwest website as a source of a map of potential projects and developers.

**Commented [CF3]:** These requirements come straight from the stipulation.

<sup>14</sup> This requirement is found in Commission Order 21-091 at page 12.

2. ~~The Customer will determine when to engage PGE in the CSO resource identification and solicitation process. Should the Customer approach PGE for help during the process for a CSO resource, PGE will assist the Customer.~~ The Company will provide written notice of the Customer's request to the Staff of the OPUC.
3. ~~If a Customer elects to seek PGE's help for resource identification or solicitation, the Company will ensure the costs of such efforts are separately tracked and collected via the Customer's program administration fee to avoid cost shifting.~~
3. ~~In all cases, the Company will be the entity contracting for the resource to serve the CSO Customer and will maintain final contract approval but may only object to qualifying PPAs to avoid shifting costs and risks onto non-participating customers or PGE shareholders. The CSO customer will determine the appropriate point in time to involve PGE during contract negotiations.~~
4. ~~must be involved in the contract negotiations and execution.~~
  
5. The Company will not help design a CSO resource solicitation ~~if the Company plans to submit a Company provided resource.~~ Any submission of a utility developed resource to a CSO Customer would be in the form of a formal response to a Customer's solicitation.
6. The same renewable energy project may support both the CSO and PSO; however, contracts for the CSO and PSO will be separately negotiated.
7. The Company will accept the commercial structure of the resource that is selected by the Customer, subject to the allowable commercial structures and applicable requirements as identified in the posted Minimum Requirements, and may only object to qualifying PPAs to avoid shifting costs and risks onto non-participating customers or PGE shareholders.