

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 22, 2019**

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

**DATE:** October 9, 2019

**TO:** Public Utility Commission

**FROM:** Scott Gibbens

**THROUGH:** Jason Eisdorfer and John Crider **SIGNED**

**SUBJECT:** PORTLAND GENERAL ELECTRIC: (Docket No. UM 1953) Compliance Filing for Schedule 55, Green Energy Affinity Rider.

**STAFF RECOMMENDATION:**

Staff recommends the Oregon Public Utility Commission (Commission) find Portland General Electric Company's (PGE or Company) implementation of its Green Energy Affinity Rider program, as described in its September 13, 2019, Compliance Filing, to be non-compliant with Commission Order No. 19-075 in docket UM 1953.

**DISCUSSION:**

Issue

Whether the Company's implementation of its Green Energy Affinity Rider program, during the initial offering for Schedule 55, complies with OPUC Order No. 19-075.

Applicable Law

Staff reviews a compliance filing to determine whether it is consistent with the resolutions and determinations made by the Commission in its final order.<sup>1</sup> Typically, compliance filings are not controversial, and Staff sends correspondence to the company after review of the compliance filing confirming that the filing is consistent with the respective Commission order; the tariffs filed by the company will go into effect with no other official action by the Commission. In rare circumstances, the Commission has

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<sup>1</sup> See e.g. *In re PacifiCorp*, OPUC Docket No. UM 1452, Order No. 10-260 (June 30, 2010).

rejected compliance filings that are inconsistent with the final order, and ordered utilities to submit new compliance filings.<sup>2</sup>

Compliance tariffs are not defined in statute or rule, but are a mechanism used to implement a rate change resulting from a Commission decision. Compliance filings are not subject to the file and suspend procedures of ORS 757.210-.215.

### Analysis

On September 13, 2019, PGE filed its Green Energy Affinity Rider (GEAR), Schedule 55, Rate and Credit Calculations and Customer Agreements, submitted in compliance with Order No. 19-075 (Compliance Filing), with expedited review requested. In its filing, PGE provides rate and credit calculations for its Schedule 55, which PGE asserts were performed in accordance with the filed tariff Schedule 55, using the IRP methodologies specified in the UM 1953 Phase I proceeding. PGE also provided copies of completed customer agreements. In its Compliance Filing, PGE also sought to “clarify the basis of the customer agreements,”<sup>3</sup> and provided a description of its customer enrollment and resource contracting processes for the first offering of the GEAR program.

Because PGE’s Schedule 55 does not contain rates, there is no associated tariff sheet included in PGE’s Compliance Filing requiring review by Staff; however, the tariff does require PGE to submit for regulatory review the rate and credit calculations agreed upon by the Company and the Customer.

### *Background*

Following HB 4126, the Commission opened UM 1690 on April 22, 2014, to investigate the potentiality of voluntary renewable energy tariffs (VRET) for nonresidential customers seeking to increase their renewable energy usage beyond a utilities portfolio. Through the investigation, the Commission found that with a proper framework, a VRET program could be offered to customers which would result in fair, just, and reasonable rates for all ratepayers. UM 1690 was closed on July 5, 2016, following Commission Order No. 16-251. At the time, PGE declined to file a VRET proposal, but stated it may do so in the future should conditions change. On April 13, 2018, the Company filed a proposal for a VRET program and the Commission subsequently docketed the contested case as UM 1953. Through Order 19-075 (the Order), the Commission ultimately approved PGE’s request to implement a VRET program subject to certain conditions.

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<sup>2</sup> See e.g. *In re Portland Extended Area Service Region*, OPUC Docket No. UM 261, Order No. 91-1140 (Sept. 5, 1991).

<sup>3</sup> PGE’s Compliance Filing at 1.

As part of those conditions, PGE was ordered to implement a Phase 1 of its GEAR program with a limited scope, and parties are to take part in a second phase that investigates further concerns. The Commission's Order for Phase I approved a voluntary supplemental rider to implement the program. Risks and costs of the program are paid for by subscribers, who also continue to pay all other applicable rates and supplemental schedules. Subscribers receive a credit for the value of incremental energy and capacity provided to PGE's system by the PPA from other COS customers. Any PPA cost above the energy and capacity value credited to the subscribers is to be borne by the subscribers. Structurally, the Phase I program was capped at a total of 300 MW, comprised of a 100 MW cap for a Company-procured resource to be made available to any non-residential customer whose aggregate demand across all retail schedules exceeds 30kW, and which would prohibit incremental credits to participants such that pilot participants cannot receive a credit from the program that exceeds the cost of participating in the program. The remaining 200 MW are reserved for the customer supplied option (CSO) for customers with demand in excess of 10 aMW, which was generally referred to as the "bring your own PPA" option, whereby customers could source a project and approach PGE about participating in the GEAR. Order No. 19-075 states "PGE...retain[s] final approval over any PPA terms and conditions."<sup>4</sup> The Commission's resolution for the CSO allows for the possibility of a floating credit on a case-by-case basis, such that the credit is not guaranteed to result in a net savings to the participant, but may.

In March 2019, the Company released a Request for Quotations (RFQ) asking for pricing and project details for the two supply options of the Green Tariff. This RFQ was not filed with the Commission or otherwise provided to the parties in this proceeding.

On May 31, 2019, PGE opened customer enrollment for Phase 1 of its GEAR program. As described in more detail below, within a few minutes, PGE received customer interest in excess of the 100 MW cap for a Company procured resource, with no customers indicating a desire to participate in the CSO option.

In June 2019, the Company notified three Customers who had expressed interest in PGE's initial Company offering about the CSO, as they met the size requirements for that portion of the program. PGE informed these customers that the CSO would maintain the same terms and conditions as the PGE offering, as the selected resource was expandable beyond 100 MW.<sup>5</sup> Two customers who had not initially qualified for the

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<sup>4</sup> Order 19-075 at 4.

<sup>5</sup> See Attachment A, PGE's response to OPUC DR No. 49.

program due to the cap limit and one who was already enrolled under the PGE procured cap elected to move to the CSO program.<sup>6</sup>

In its September 13, 2019 compliance filing, in addition to providing rate credit calculations and executed customer agreements, PGE notified the Commission through its Compliance Filing that it had worked with large customers who qualified for the CSO to move to the CSO option in order to completely meet the entire 160 MW of demand the Company had received following its initial offering at the end of May. The result was that 100 MW of the CSO option was utilized and 60 MW of the PGE procured option was subscribed to. Staff first became aware of PGE's implementation of the CSO on August 29, 2019, at a settlement conference scheduled for this proceeding.

At this time, PGE has identified, negotiated, and anticipates signing a PPA securing a single resource that will serve customers on both the PGE procured and CSO options. The resource is a 165 MW renewable project located within the state of Oregon. The PPA will last for 15 years, which is the same length that all interested customers of the program have signed-up for.

#### *Summary of Concerns and Recommendation*

As stated above, PGE requested expedited OPUC Staff review of its Compliance Filing, and to address this issue no later than the October 22, 2019 public meeting. Following discussions with the Company, and based on the information presented in PGE's Compliance Filing, Staff has two concerns regarding PGE's implementation of the CSO and PGE procured options in its GEAR program. Therefore, Staff is unable to "acknowledge" PGE's compliance with Order 19-072.<sup>7</sup>

Staff's first concern is that PGE's implementation of the CSO option is inconsistent with the Order. Pursuant to the Commission's Order, the CSO option customer is tasked with identifying a resource and negotiating a contract based on the minimum requirements posted by PGE, which must be brought to PGE for final approval. The resource procured is to be distinct from the resource procured for the PGE supplied option. Generally speaking, the CSO portion is meant to provide large, sophisticated customers with the freedom to source their own project, reducing the reliance of the program on the utility's monopsony power and protecting the wholesale power market. However,

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<sup>6</sup> PGE's Compliance Filing at 3.

<sup>7</sup> Staff notes that in a typical compliance filing process, Staff's role is to check calculations and ensure that the Company's rates are consistent with the relevant Commission order. Once that process is completed and if there are no issues, Staff writes an internal memo that memorializes the review process, and the Company receives stamped tariff sheets from the Commission. To the extent that there are concerns, Staff would raise those concerns through the public meeting process, as is the case here. However, unlike most compliance filing issues, Staff has not identified an issue with the Company's Schedule 55. Rather, Staff's issues are related to the Company's implementation of the CSO option.

PGE's implementation of the CSO option is contrary to this construct. As described by the Company and more fully below, the enrollment process between the CSO and PGE's procured offering was exactly the same apart from an email indicating a customer's desire to be moved to the CSO. As described more fully below, this is inconsistent with the record and the Commission's Order in this case, and effectively renders the difference between the CSO and PGE procured options meaningless.

Staff's second concern is that PGE's "reshuffling" of customers from the PGE procured portion to the CSO portion is inconsistent with the spirit of the Commission's Order. Specifically, CSO-participating customers initially contacted PGE with the intent to participate in the PGE procured option, as no customer indicated an intent or desire to work on procuring its own PPA for program participation. At least one customer, who based on timestamp was third in the queue, qualified to participate in PGE's open enrollment but was instead moved to the CSO in order to make room for other customers in the queue. PGE notes that the customer voluntarily moved, but based on the communications provided by the Company, Staff understands that this move was done by the customer at PGE's suggestion. The Commission's Order establishing the CSO Option, and the record supporting that Order including PGE's own description of how the CSO program would work, is inconsistent with the notion that customers may be shuffled around in order to maximize customer participation in the GEAR program.

Because of these concerns, and based on Staff's review of the Order and record by which the Commission's decision was made, Staff recommends that the Commission find PGE's implementation of the GEAR program contrary to its Phase 1 Order.

*Order No. 19-075 and UM 1953 Record*

The Commission notes in its Order approving PGE's VRET proposal that modifications are adopted in order to protect COS customers and the wholesale electricity market. With this framework in mind, the Commission adopted two distinct GEAR programs—the PGE procured and the CSO.

As described more fully below, the non-contested aspects of the CSO were that it would be capped at 200 MW, it was based on a customer sourced project, and that it would be a distinct product from the PGE procured option. The two main contested issues with regard to the CSO were in regard to the size requirements for participation and whether or not PGE would retain final approval of PPA terms. In resolution of these issues, the Order states:

We approve PGE's proposal both to set the Customer Supply Option participation limit at 10 aMW, and PGE's proposal review and amend all

contract terms. That noted, we require that PGE develop and publish minimum PPA standards so that customers may access clear information about PPA requirements, so that all eligible customers will have non-discriminatory access to Customer Supply Option. All eligible customers must have equal access to this program opportunity, within the size limits of the program PGE has proposed. Accordingly, PGE must make objective PPA criterion available to participating customers as part of the program offering. While we do not require PGE to open this option to customers smaller than 10 aMW in size for this limited initial option, Walmart raises an argument that size may not be the only criteria in determining the ability to effectively negotiate a competitive PPA and we will examine this issue in the second phase.<sup>8</sup>

Staff notes first that the PPA requirements are to be posted, so that Customers would have this information available when working with a developer. The basis in the record for this resolution is Northwest Intermountain Power Producers Coalition (NIPPC)'s arguments in its opening testimony regarding the utilities' monopsony power and protection of the wholesale electricity market.<sup>9</sup> Staff further notes that Walmart's argument regarding size requirements was due to its ability to negotiate a competitive PPA without meeting the 10 aMW threshold. It is clear that the customer is assumed to be included in the contract negotiations with the developer.

The record contains ample discussion about how the CSO option was anticipated to work. The first proposal for a CSO style process was made by the Alliance of Western Energy Consumers (AWEC) and NIPPC in their respective reply testimonies. AWEC requested that PGE, "provide large customers with greater control over procurement," and proposed adding the following language to the tariff:

Customers with loads exceeding 10 aMW may solicit bundled RECs on their own behalf, which are deliverable to the Company's system. The Company must review and approve any such solicitation and remains ultimately responsible for contracting with the seller. The Company shall allow the customer to participate in the contract negotiation process with the seller.<sup>10</sup>

NIPPC described a CSO or "bring your own PPA model" as a means to alleviate concerns regarding the utility's equal treatment of customers and power developers. NIPPC's argument states:

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<sup>8</sup> Order 19-075 at 8.

<sup>9</sup> See below.

<sup>10</sup> UM 1953 - AWEC/100 Mullins/7.

I recommend the Commission require PGE to accept pre-negotiated agreements where a customer can supply their own renewable PPA entered into with a third-party power provider, and sometimes referred to as a “Bring your own PPA” model. The “bring your own PPA model[“] offers a number of advantages over PGE’s proposal. For example, this mechanism would allow a given customer to tailor its PPA to its load size and start date. The customer would not be dependent on PGE to aggregate load to meet its desired renewable energy, nor place PGE or any other customers at risk if a given PPA were not sized exactly to the customer load. The Bring Your Own PPA model would also better align with the Commission’s obligation to remove impediments from the development of a competitive retail market, by allowing generators to negotiate directly with prospective customers, and not be subject to the monopsony power of the utility.<sup>11</sup>

As Staff previously mentioned, the Commission’s decision to require PGE to post minimum PPA requirements to provide open access was based on NIPPC’s concerns listed above.

In cross-answering testimony, most parties expressed support for the idea of a CSO; however, the actual proposal to differentiate between the PGE procured and the CSO, including that they be subject to separate caps, was made by the Company. The Company stated:

[The CSO] option would allow a customer to identify and bring a PPA from a third-party provider to PGE. To prevent inappropriate risk shifting from the PPA to cost-of-service customers, the proposed contract must conform to PGE’s requirements and the Company retains approval rights for all terms and conditions. As with other green tariff subscribers, the bring your own PPA subscriber would remain on cost of service, but would have the opportunity to seek resource alternatives that more directly align with the subscriber’s renewable energy goals.<sup>12</sup>

Further PGE states:

PGE will procure through a power purchase agreement (PPA) or PPAs, and offer to subscribers, no more than 100MW of nameplate capacity for Phase I; For subscribers with a peak load greater than 10 MWa, PGE will

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<sup>11</sup> UM 1953 - NIPPC/100 Kahn/7-8.

<sup>12</sup> UM 1953 - PGE/400 Sims – Tinker/4.

allow a bring your own PPA procurement method up to 200 MW (nameplate) total for the purposes of the pilot. PGE would retain final approval over terms and conditions;<sup>13</sup>

Later, PGE describes the separate caps:

**Q. With Phase I being limited to a pilot, please describe how the 100 MW cap and the opportunity for customers to bring up to 200 MW would interact.**

A. The 100 MW cap and the bring your own PPA 200 MW cap represent separate and distinct products under PGE's proposed Phase I pilot. Resources secured through the bring your own PPA option would not preclude PGE from procuring up to 100 MW for subscribers that do not qualify. Alternatively, if PGE has already procured 100 MW of capacity, that procurement will not prevent up to 200 MW of bring your own PPA resources from being accepted into the Phase I pilot.<sup>14</sup>

At the hearing for the docket, Ms. Baldwin, the representative for Walmart, asked Mr. Sims and Tinker why the CSO has a 10 aMW requirement. In response, Mr. Sims testified:

[O]ur thinking is there that here's a bring your own PPA environment, it would – in order to actually have a PPA come to us that we may actually agree with and actually get inside, it's going to require a certain degree of sophistication as to what are the customary requirements in a Power Purchase Agreement and what are the potential risk and value drivers of the underlying resource and what is the capability of the developer behind the proposed contract. And absent those factors, we think it would be very difficult for a subscriber to actually bring a PPA and more so a PPA that

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<sup>13</sup> UM 1953 - PGE/400 Sims – Tinker/5.

<sup>14</sup> UM 1953 - PGE/400 Sims – Tinker/6.



would meet the terms and conditions and – and the risk mitigation requirements that the utility would have.<sup>15</sup>

PGE's opening brief further explains the difference, as PGE requested approval of a VRET program with the following design:

Ability to procure solely through a power purchase agreement (PPA) or PPAs, and offer to subscribers, no more than 100MW of nameplate capacity for Phase I.

For subscribers with a peak load greater than 10 MWa, PGE will allow a bring your own PPA procurement method for up to 200 additional MW (nameplate) for the purposes of the pilot. This capacity would be separate from the PGE-procured portion of the pilot. PGE would retain final approval over terms and conditions.<sup>16</sup>

Staff finds that the Company's proposal clearly describes the programs as separate and distinct. They also only speak about the CSO as an option where the Customer brings a resource to PGE for consideration. Staff could not find a single reference in the record in which the Company indicated that customers could move between options or that PGE would procure resources for the customer in the CSO, nor could it find reference that the resource procured could be the same for both a PGE procured and CSO option.

As previously mentioned, according to the Company's response to Staff DR No. 48, the Company "released a request for quotations (RFQ) in March asking for pricing and project details for the two supply options of Green Tariff."<sup>17</sup> Staff first became aware of this in issuing discovery on the Company's compliance filing, and finds this approach odd, in that throughout the record for UM 1953, there is no mention that PGE will independently source resources for the CSO, much less a single resource for both options. Rather, PGE's own testimony and brief directly state that it would only procure up to 100 MW, and the bring your own PPA will be for customers to procure their own PPA.

Staff notes that the issue of customer size and related assumptions about customer sophistication does not make sense if PGE was intended to be the party procuring and negotiating the CSO resource. The distinction between the CSO and PGE procured options only results in preferential treatment for larger customers, as these customers can enroll in either supply option based on cap space with no other material difference

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<sup>15</sup> Mr. Sims response, page 47 of hearing transcript.

<sup>16</sup> PGE Opening Brief Page 5.

<sup>17</sup> Attachment B, PGE's response to Staff DR No. 48.

in process. In short, there is no reason to distinguish between the CSO and PGE procured options under PGE's reading of the Commission's Order.

Staff finds it worth noting that PGE's proposal for the CSO was in response to two parties' suggestions to include a "bring your own" PPA offering. At the hearing, Chair Decker described the Company's final testimony as a "settlement proposal for the commission to consider,"<sup>18</sup> going on to state that the initial testimony was a PPA-based offering but with different parameters.<sup>19</sup> Noting that the proposal in the final testimony was "more limited" and "scaled back" in terms of "the size of the program and some of the characteristics." In response, PGE noted that its preference would be to have its original proposal approved, but was willing to narrow some of the parameters in the interest of settlement. As approved in the Order, the program contains aspects which reflect the input of NIPPC and AWEC's concerns. Adherence to the Commission Order then represents not only the Company's need to comply with its regulating body, but also the valuation of intervenor opinion in a public record.

#### *Rate Credit Calculations*

Staff has reviewed the rate calculation and determined that the Company's methodology for calculating capacity and energy credits, complies with Order No. 19-075. Staff will continue to monitor the actual operation of the program to ensure the administrative costs match the forecasted amounts. Staff notes, however, that confirming the accuracy of rate credit calculations based on the assumptions provided by PGE does not constitute a determination that the Company's actions in implementing Phase 1 of the GEAR program are prudent. Staff further notes that the calculation of rate credits in this case does not address the difference in capacity between customer subscription and the size of the resource which may arise based on Commission decision.

#### *Next Steps*

For the reasons discussed above and based on the UM 1953 Phase 1 record and Order, Staff is unable to "acknowledge" PGE's compliance filing as consistent with Order No. 19-072. In instances where there is a disagreement related to a compliance filing, Staff has generally taken the issue to a public meeting for Commission determination.

Staff recommends that the Commission find PGE's implementation of Order No. 19-072 not in compliance with the Order. Should PGE desire "preapproval" of a GEAR program inconsistent with Order 19-072, PGE retains the right to file a motion to amend or modify the Order for good cause shown, and PGE has had this right for several months.

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<sup>18</sup> Chair Decker, page 38 and 39 of the hearing transcript.

<sup>19</sup> *Ibid.*

Staff understands that PGE now asserts that time is of the essence, and staff is amenable to an expedited process. To be clear, it is not Staff's intent or desire to delay implementation of the GEAR program; rather, Staff's concern is to ensure that the GEAR program comply with the relevant Commission order.

Staff notes that the Commission could determine that PGE's implementation of the PGE procured option is consistent with Order 19-072. Such a finding, however, raises other issues such as the treatment of the difference between the PGE resource size and the current customer demand for the program (currently 60 MW).

In order to avoid this issue in the future, Staff respectfully asks the Commission to direct the Company to notify all interested parties and Staff as soon as a question regarding order compliance arises. Staff first became aware of the issue on August 29, 2019, roughly two and a half months after PGE was struggling to deal with the distinction between the program options.

#### Conclusion

Based on the Order and the record, Staff finds that the Company's actions in Phase 1 of the Gear program are not in compliance with the intent and direction of the Commission in its UM 1953 Phase 1 Order.

#### **PROPOSED COMMISSION MOTION:**

Find Portland General Electric Company's (PGE or Company) implementation of its Green Energy Affinity Rider program, as described in its September 13, 2019, Compliance Filing, to be non-compliant with Commission Order No. 19-075 in docket UM 1953.

RA2 Attachment A

October 9, 2019

TO: John Crider  
Public Utility Commission of Oregon

FROM: Karla Wenzel  
Manager, Regulatory Strategy and Policy

**PORTLAND GENERAL ELECTRIC  
UM 1953 Phase II  
PGE Response to OPUC Data Request No. 049  
Dated September 27, 2019**

**Request:**

Regarding page 2, paragraph 5 of PGE's Compliance filing dated September 13, 2019: Please provide a copy of the communication with date stamp(s) whereby "PGE made large customers aware" of the fact that the selected resource for PGE's supply option could be expanded beyond 100 MW.

*Response:*

PGE's response to OPUC Data Request No. 048 (DR-048) describes how PGE contacted customers by phone after the enrollment event and communicated to large customers that they were eligible for the Customer Supply Option. In those same phone conversations, PGE made those large customers aware that the lowest cost, least risk resource that PGE had identified for the PGE Supply Option could be expanded beyond 100 MW such that it could accommodate them under the Customer Supply Option. PGE also explained that the terms of the customer agreements including the no subscriber fee would be the same as that being offered to customers under the PGE Supply Option. The customers who ultimately elected for the Customer Supply Option with those terms submitted emails confirming their requests, and those customer emails are provided as confidential Attachment A in DR-048.

## RA2 Attachment B

October 7, 2019

TO: John Crider  
Public Utility Commission of Oregon

FROM: Karla Wenzel  
Manager, Regulatory Strategy and Policy

**PORTLAND GENERAL ELECTRIC  
UM 1953 Phase II  
PGE Response to OPUC Data Request No. 048  
Dated September 27, 2019**

**Request:**

Regarding page 2, paragraph 5 of PGE's Compliance filing dated September 13, 2019: Please provide a copy of the communication with date stamp(s) whereby PGE "learned in June 2019 that the selected resource for the PGE Supply Option had the ability to expand beyond the 100 MW capacity needed."

*Response:*

PGE released a request for quotations (RFQ) in March asking for pricing and project details for the two supply options of Green Tariff: 100 MW of PGE Supplied Option and 200 MW of Customer Supply Option. PGE requested quotations for the Customer Supply Option (CSO) in order to help facilitate a PPA for interested CSO customers; however, at the time of the RFQ no customer had committed to the CSO. The RFQ stated:

**Action 1- PGE Supply Option:**

PGE will procure 100 MW of nameplate incremental renewable resources. PGE anticipates strong demand for the initial 100 MW and anticipates contract negotiations to begin in April 2019 with the top performing resource or resources.

**Action 2- Customer Supplied Option (CSO):**

A large customer (> 10MWa) can participate under this tariff by either informing PGE of their interest or by identifying potential resources that comply with PGE's minimum PPA requirements as PGE will be the counterparty for any possible transaction. The CSO is capped at 200 MW for the initial offering and is dependent upon customer demand. PGE is asking for quotes to be able to supply should a customer express interest. A quote can include a phased approach showing how a project could meet both actions.

In response to the RFQ, the developer for the selected resource provided multiple resource options consisting of different sizes, phases, and online dates. Initially, due to lack of committed interest in the CSO at that point, PGE elected to move forward with only the 100 MW resource for the PGE supply option. After phone discussions regarding the sizing of the project, PGE met in person with the developer on June 6, 2019 to discuss

expansion of the project. At that meeting, the developer informed PGE personnel that the project was a larger project that had been divided into 100 MW phases and the developer was able and willing to expand the original 100 MW project to a 160 MW or larger project. There is no formal email communication with this information.