BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1953

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Investigation into Proposed Green Tariff.	STAFF'S CLOSING BRIEF

I. INTRODUCTION

Pursuant to Administrative Law Judge Kirkpatrick's November 30, 2018 Ruling, Staff of the Public Utility Commission of Oregon (Staff) hereby submits its Closing Brief in Docket UM 1953. Staff continues to recommend that the Commission find that voluntary renewable energy tariffs are consistent with the public interest, as required by HB 4126. Staff also continues to recommend that the Commission approve Portland General Electric Company's (PGE or Company) proposed green energy tariff, as reflected in its Cross-Answering Testimony, subject to the following changes proposed by Staff:

- The capacity credit applicable to green tariff subscribers should be based on IRP valuation, as opposed to QF pricing;
- There should be no negative pricing under the "bring your own" PPA scenario; and
- PGE should be required to update rates, terms and conditions of the program through advice filings filed with the Commission consistent with ORS 757.210 and ORS 757.215.

PGE, Alliance of Western Energy Consumers (AWEC), Calpine Energy Solutions, LLC (Calpine), Northwest & Intermountain Power Producers Coalition (NIPPC), Oregon Citizens' Utility Board (CUB), Renewable Northwest, and Walmart, Inc. (Walmart) each filed Opening Briefs in this case. Staff's Closing Brief addresses its recommendations and arguments of these parties, as necessary.

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II. ARGUMENT

(A) All parties agree that it is consistent with the public interest to allow electric utilities to offer VRETs to nonresidential customers, depending on program design.

Staff continues to find that it is in the public interest for qualifying electric utilities to offer appropriately designed VRET programs to their nonresidential customers that are consistent with the Commission's previously adopted VRET Guidelines:

1. Renewable Portfolio Standard (RPS) definitions for resource type, location and bundled renewable energy certificates (RECs) must apply to VRET products;
2. VRET options should only include bundled REC products. Any RECs associated with service participants must be retired by or on behalf of participants, unless the participants consent to the RECs being retired by the utility or developer;
3. The year in which a VRET eligible resource became operational should be no earlier than 2015;
4. The VRET program size is limited to 300 aMW for PGE and 175 aMW for PacifiCorp;
5. VRET product design should be sufficiently differentiated from existing direct access programs;
6. VRET terms and conditions (including the timing and frequency of offerings), as well as transition costs, must mirror those for direct access. PGE and PacifiCorp may propose VRET terms and conditions that differ from current direct access provisions but must propose changes to their respective direct access programs to match those changes;
7. The regulated utility may own a VRET resource, but may not include any VRET resource in its general rate base. It may recover a return on and return of its investment in the VRET resource from the VRET customer; however, the utility must

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share some of the return on with other utility customers for ratepayer-funded assets used to asset the VRET offering;

8. All direct and indirect costs and risks are borne by the VRET customers, shareholders of the utility, or third-party developers and suppliers with provisions allowing independent review and verification by the Commission Staff of all utility costs. Costs include but are not limited to ancillary service and stranded costs of the existing cost of service rate based system; and
9. All VRET offerings must be made publicly available and subject to review by the Commission to ensure they are fair, just and reasonable.[1]

As discussed below, there is considerable disagreement on program design, particularly related to the credits available to PGE's green tariff participants; however, no party to this proceeding has raised the argument that a VRET program would be inconsistent with the public interest regardless of program design. Further, no party has argued that the Commission's previous interpretation of the public interest standard through the adoption of the nine VRET Guidelines is no longer consistent with the public interest.[2] Therefore, Staff recommends the Commission conclude that VRET programs that are consistent with its previously adopted VRET Guidelines are reasonable and in the public interest.

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[1] *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order No. 15-405 at 1-2 (Dec. 15, 2015).

[2] PGE does argue that the Commission should address in Phase II of this proceeding (or a separate docket), "[t]he continued applicability of the nine conditions, and whether they continue to represent the best practice for purposes of offering voluntary renewable products." PGE/400, Sims-Tinker/5. Staff interprets this to mean that the Commission should further examine how these guidelines apply to specific VRET programs, but not that the nine VRET Guidelines are not applicable to this proceeding. As discussed in Staff's Opening Brief, the VRET Guidelines were adopted pursuant to the Commission's statutory obligation to consider the five factors in HB 4126 Section 3, as well as other applicable law such as ORS 757.646. While the Commission has the authority to reconsider its previously established policy, it must do so subject to statutory requirements. No party has advocated that the Commission do so as part of its approval of Phase I of PGE's green tariff program.

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(B) The Commission should approve Phase I of PGE's green tariff program, subject to Staff's recommendations, and address additional policy issues in Phase II of this proceeding.

HB 4126 directs the Commission to conduct a study to consider the impact of allowing electric companies to offer voluntary renewable energy tariffs to their nonresidential customers, which the Commission fulfilled in OPUC Docket No. UM 1690, Phase I.[3] Subsequent to the study, HB 4126 directs the Commission to consider the results of the study in conjunction with five statutory factors, in order to determine whether and under what conditions it is reasonable and in the public interest to allow electric companies to provide voluntary renewable energy tariffs to nonresidential customers. The five statutory factors are:

- Whether allowing electric companies to provide voluntary renewable energy tariffs to nonresidential customers promotes the further development of significant renewable energy resources;
- The effect of allowing electric companies to offer voluntary renewable energy tariffs on the development of a competitive retail market;
- Any direct or indirect impact, including any potential cost-shifting, on other customers of any electric company offering a voluntary renewable energy tariff;
- Whether the voluntary renewable energy tariffs provided by electric companies to nonresidential customers rely on electricity supplied through a competitive procurement process; and
- Any other reasonable consideration related to allowing electric companies to offer voluntary renewable energy tariffs to their nonresidential customers.[4]

The Commission fulfilled this obligation in OPUC Docket UM 1690, Phase II, wherein it interpreted its authority pursuant to HB 4126 and other applicable law, and established its policy regarding VRET programs in adopting the nine VRET Guidelines. As described in Staff's

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[3] *In re Public Utility Commission of Oregon*, OPUC Docket No. UM 1690, Order 15-258 at 1 (Aug. 26, 2015).

[4] HB 4126 Section 3(3).

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Opening Brief, it is through this lens that it and other parties evaluated PGE's proposed green tariff program in order to determine whether PGE's proposed program is consistent with Commission policy regarding VRET programs.

PGE continues to recommend that the Commission adopt its proposed green tariff program as described in its 400 series testimony and at the hearing in this case.[5] Approval of Phase I would allow PGE to offer an initial tranche of the program immediately, while additional policy considerations could be resolved during a second phase of this proceeding.[6]

Staff continues to agree with PGE's proposed green tariff program for Phase I of this proceeding, with three exceptions. For PGE's Phase I offering, Staff continues to recommend that the Commission (1) adopt a capacity credit based on IRP valuation, as opposed to QF pricing, (2) preclude negative pricing under the "bring your own" PPA option, and (3) require PGE to file updates to its rates, terms and conditions through advice filings consistent with ORS 757.210 and ORS 757.215. Staff finds that these changes are consistent with HB 4126's five statutory factors, the Commission's previously adopted VRET Guidelines, and would be reasonable and consistent with the public interest. The more detailed rationales for Staff's positions are described in Staff's testimony and Opening Brief, and so will not be repeated here. Both Walmart and AWEC make arguments in their respective Opening Briefs that appear to misunderstand Staff's position on some issues, and therefore, Staff will offer a few points of clarification.

Walmart argues that the Commission should reject Staff's proposal to prohibit negative pricing, arguing that Staff's objective is to "make the green tariff less attractive than direct access."[7] This is not Staff's objective, nor would such an objective be consistent with applicable Oregon law. Rather, Staff's objective is to ensure that any green tariff program does not create a

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[5] PGE's Opening Brief at 5-6.

[6] PGE's Opening Brief at 6.

[7] Walmart's Opening Brief at 3, citing to Staff Witness Mr. Gibbens' testimony at hearing.

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barrier to the competitive market,[8] which as acknowledged by Walmart, often comes down to opportunity and price.[9] Staff notes that PGE acknowledges these concerns as valid.[10] CUB also agrees that negative pricing should not be a part of a VRET program, at least at this stage,[11] which is also Calpine's recommendation if a fixed credit is adopted.[12]

AWEC also raises issues with Staff's proposed crediting mechanisms, which would allow for a levelized, fixed credit over the term of the subscription period, and would preclude the opportunity for negative pricing.[13] To be clear, Staff's proposal is the same as PGE's alternative proposal for PGE PPA resources for both energy and capacity credits,[14] but Staff would apply this methodology to "bring your own" PPA resources as well.[15] AWEC argues that Staff's position is inconsistent with its position in PGE's request for proposals in Docket UM 1934;[16] that Staff's implied position that PGE's avoided cost is the same as the PPA price is asymmetrical, and therefore, unfair;[17] and that Staff's preferred fixed credit would not be fixed.[18]

AWEC's use of the term "avoided cost" is unclear, but Staff assumes that AWEC means actual avoided cost (as opposed to QF avoided costs), which is consistent with Staff's

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[8] Hearing Tr. at 78-83.

[9] Hearing Tr. at 101-102. Staff also notes that PGE testified that some customers may be willing to pay some level of a premium above COS rates to participate in a VRET program with their incumbent utility. Hearing Tr. at 46.

[10] PGE/400, Sims-Tinker/11; Hearing Tr. at 25-26.

[11] CUB's Opening Brief at 4-5.

[12] Calpine's Opening Brief at 1. Staff also notes that, if a floating credit is ultimately adopted by the Commission, its position is that the credit should float freely, or more specifically, be updated annually as is the case with power costs. Staff/200, Gibbens/11.

[13] *See* PGE/400, Sims-Tinker/7; PGE/400, Sims-Tinker/11.

[14] AWEC appears to misunderstand Staff's position, as reflected in its Option 4. Any criticism of Staff's position would necessarily apply to PGE's proposal as well, with the exception of the "bring your own" PPA which, as AWEC correctly points out, would allow for negative pricing. Staff, as discussed in testimony and its opening brief, continues to oppose negative pricing for any green tariff program subscriber. *See* AWEC's Opening Brief at 2.

[15] Staff's Opening Brief at 13-14.

[16] AWEC Opening Brief at 3-4.

[17] AWEC Opening Brief at 4.

[18] AWEC Opening Brief at 5.

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recommendation in this case.[19] Based on this assumption, Staff clarifies that the only time that the PPA price is considered is when the avoided cost is greater than the all-inclusive price. Again, Staff is proposing the same methodology as PGE for energy credits, and PGE's alternative proposal for capacity credits. This means that if the credit is greater than the all-in PPA price, then the green tariff program credit would be at the all-in PPA price. Conversely, when the avoided cost is less than the PPA price, then the avoided cost is exactly the credit that would be applied. This is because the value to COS customers is equal to the cost of energy and capacity, which COS customers would have otherwise paid for. This treatment is warranted because a PPA used for procuring resources for COS goes through a competitive process and is generally procured based on need identified in the IRP,[20] a distinction which AWEC identifies based on Staff's positions, but fails to acknowledge as rational. In this case, procurement of a PPA could be outside of the competitive process,[21] and absent a demonstration of need and evaluation in the IRP process.[22] Therefore, Staff's recommended approach to calculating credits is appropriate.

Regarding fixed credits, Staff is unpersuaded by AWEC's argument that fixed credits would not in fact remain fixed. Under Staff's credit mechanism, the credit would remain fixed independent of COS rates going up or down over time. AWEC's position illogically assumes that the level of COS rates affects the maximum credit. When the non-negative pricing limitation is binding, the credit is set to the all-in price of the green tariff program, which would mean that customers pay no premium above COS rates for renewable energy. Under Staff's proposal, when COS rates change, there is no mechanism by which the credit would need to change in order to maintain non-negative pricing.

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[19] *See* Staff/200, Gibbens/15-16.

[20] Staff's Opening Brief at 12.

[21] Although PGE testified that it would use a competitive process, this procurement is not subject to the same requirements as other resources. Staff's Opening Brief at 12.

[22] Staff's Opening Brief at 12.

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Finally, Staff recommends that the Commission open a Phase II of this proceeding, as initially suggested by PGE and supported by Staff, AWEC, CUB and Renewable Northwest, to address several complex and significant policy issues, particularly related to the calculation of energy and capacity credits on a long-term basis and the interaction with VRET programs and direct access programs. NIPPC and Calpine do not explicitly express a position on a second phase of this proceeding, but both encourage the Commission to provide guidance as to how direct access programs should be updated in order to ensure that the green tariff program does not favor direct access programs. Staff finds that these policy issues are perhaps better addressed after further development of the record, but does not oppose the Commission providing guidance in this proceeding on these issues. Walmart does not address PGE's proposal to bifurcate this proceeding in its Opening Brief, but raises several issues that would be ripe for discussion in Phase II, including size limitations for the "bring your own" PPA option, floating credits, policy considerations on cross-subsidization, and interaction with current direct access programs.

IV. CONCLUSION

As articulated in its testimony in this proceeding, Staff finds that voluntary renewable energy tariffs for nonresidential customers are consistent with the public interest, and that it is reasonable that electric utilities offer those programs to their customers, generally. However, Staff continues to find that the design of any such program is critical in determining whether a specific proposed program will result in rates that are fair, just and reasonable. In this case, Staff recommends that the Commission approve Phase I of PGE's nonresidential customers, subject to

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Staff's recommendations as discussed above, and open Phase II in order to address the additional policy considerations implicated by the parties' positions in this case.

DATED this 21st day of December, 2018.

Respectfully submitted,

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