

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1953

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

OPENING TESTIMONY OF

ROBERT D. KAHN

ON BEHALF OF THE

**NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION**

July 26, 2019

1 **I. INTRODUCTION**

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

4 **A.** My name is Robert D. Kahn. I am employed by Northwest & Intermountain
5 Power Producers Coalition (“NIPPC”) as Executive Director. My business
6 address is P.O. Box 504, Mercer Island, WA 98040. I have been in my current
7 position since 2002.

8 **Q. What are your duties as Executive Director?**

9 **A.** I champion the competitive paradigm in the Northwest’s electric power industry.
10 I am also responsible for managing all of NIPPC’s regulatory advocacy.

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

13 **A.** After completing a B.A. at Colgate University, I began my career as a staff
14 member for the architect/philosopher R. Buckminster Fuller. I later joined the
15 Program for the Study of the Future at the University of Massachusetts School of
16 Education where I completed a doctorate in 1982. I served two years in
17 California Governor Jerry Brown’s Administration as Public Information Officer
18 for the Office of Appropriate Technology. I have edited two books and authored
19 numerous articles for such publications as: Electricity Journal, New Energy,
20 Technology Review, Windpower Monthly, The Futurist, Water Environment &
21 Technology, and Independent Energy.

22 **Q. Have you previously testified regarding Portland General Electric**
23 **Company’s (“PGE”) Voluntary Renewable Energy Tariff (“VRET”)**
24 **proposal in the past?**

1 **A.** Yes, I submitted testimony in this docket on July 18, 2018, designated as
2 NIPPC/100 and NIPPC/101, and I understand this testimony was admitted into
3 evidence by order issued December 3, 2018. Subsequent to submission of that
4 testimony, the Commission issued an order addressing some aspects of PGE’s
5 proposal, and deferring some questions to a second phase of the proceeding.¹ My
6 testimony here addresses this second phase of Docket UM 1953 (the “Phase II”
7 proceeding). Some of the topics addressed in my prior testimony in this docket
8 are now being addressed in this Phase II proceeding, and I adopt and restate that
9 testimony as part of my testimony here.

10 **II. TESTIMONY**

11 **Q. Please summarize your testimony.**

12 **A.** My testimony focusses on the following topics.

- 13 • First, I address the continued applicability of the “nine conditions” guiding
14 green tariff design, including interactions with long term direct access, and
15 respond to the testimony of PGE witnesses Sims and Tinker proposing to
16 modify these conditions for any future VRET program they may offer. In
17 particular, I address the continuing need for any VRET program to have
18 terms and conditions that mirror Direct Access, especially with respect to
19 calculation of the value of capacity and energy credits, participation
20 thresholds, and program caps. I also address issues related to utility
21 ownership of VRET generation assets.

¹ Order No. 19-075 (March 5, 2019) (the “Phase I Order”).

- 1 • Second, I address issues related to PGE’s Customer Supply Option (also
2 known as the “bring your own PPA” option).
- 3 • Third, I address the need to apply Competitive Bidding Rules to VRETs
4 generally, as well as PGE’s request for a waiver of such rules with respect to
5 its specific VRET program, which is its Green Energy Affinity Rider
6 (“GEAR”) program, and any other VRET program is may create in the
7 future.
- 8 • Fourth, I urge the Commission to expressly reject PGE’s proposal that it be
9 permitted to own resources for the VRET program, including its GEAR
10 program.

11 **Q. Could you provide any relevant background on prior proceedings that**
12 **inform your testimony with respect to this phase of PGE’s VRET proposal?**

13 **A.** Yes. This proceeding is designated as “Phase II” of the Commission’s review of
14 PGE’s proposal to offer a VRET and is a follow-up to litigation regarding the
15 VRET proposal filed by PGE in this docket on May 24, 2018. In Phase I Order,
16 the Commission approved a scaled-down version of PGE’s VRET proposal,
17 subject to several modifications required by the Commission in an effort to ensure
18 that an initial program minimized the negative impacts to cost of service
19 customers and protected the competitive market for electricity as a whole. The
20 Commission also directed PGE to propose a schedule for this second phase
21 intended to examine policy issues not fully addressed in the first phase, including,

1 among others things: 1) whether the “nine conditions”² the Commission
2 established as requirements for a VRET to be within the public interest remain
3 appropriate; 2) how a VRET interacts with Oregon’s Direct Access program; 3)
4 the appropriate calculation of capacity and energy credits; 4) participation
5 limitations for any “bring your own” PPA program; and 5) a catch all for “any
6 other policy issues as identified by Parties in the course of the investigation.”³

7 **Q. Please continue.**

8 **A.** My testimony is also informed by the legal requirements of Oregon’s Direct
9 Access laws in general, the requirements of Oregon House Bill (“HB”) 4126
10 (2014) (“HB 4126”), and the framework developed by the Commission in
11 response to HB 4126 in Docket UM 1690. I addressed some of this history in my
12 prior testimony in this docket, and will not repeat it all here, but believe that all
13 policy issues related to a VRET must be addressed within the following
14 framework:

15 First, Oregon’s existing Direct Access law places an affirmative duty on
16 the Commission to eliminate barriers to the development of a competitive retail
17 market structure, and to ensure its policies mitigate the vertical and horizontal
18 market power of incumbent electric companies, prohibit preferential treatment, or
19 the appearance of such treatment, of generation or market affiliates, and

² The “nine conditions” are conditions set out in Order No. 16-251 that the Commission determined to be necessary for any VRET to be in the public interest in keeping with the requirements of existing law and directives.

³ Order 19-075 at 9.

1 determine the electricity services likely to be competitive.⁴ Any VRET proposal
2 must be considered within the confines of these requirements.

3 Second, any policy related to VRETs must be considered within the
4 framework of HB 4126, in which the legislature directed the Commission to
5 consider whether to allow utilities to offer a VRET, directing the Commission to
6 expressly consider the effect of allowing electric companies to offer a VRET on
7 the development of a competitive retail market.⁵ The Commission initiated
8 Docket No. UM 1690 to consider the directive issued by the legislature in HB
9 4126. Over the course of 18 months, Commission Staff conducted a study to
10 evaluate whether VRETS could be consistent with the public interests through
11 several highly engaged stakeholder workshops and hearings, and ultimately the
12 Commission allowed PacifiCorp and PGE to file their own VRETs proposals, but
13 only if such VRET proposals met robust requirements to protect the competitive
14 retail market and nonparticipating customers, including the expressly identified
15 “nine conditions.”

16

⁴ ORS 757.646(1) (“The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate.”).

⁵ HB 4126 (2014) Section 3(3)(a).

APPLICABILITY OF THE NINE CONDITIONS

Q. Why are the nine conditions an issue in this case?

A. In approving PGE’s GEAR program in Phase 1 of this proceeding, the Commission noted that it applied “flexibility” in its consideration of the nine conditions, stating that significant difference in the ways a utility offering and the direct access program affect cost-of-service ratepayers⁶ may warrant different terms and conditions for the programs and therefore stated that a “review of the nine conditions is appropriate in light of these differences and the clarity offered by a specific proposal from PGE.”⁷

Q. Are there any significant major changes in law or fact since the Commission issued its order adopting the nine conditions in 2015 that would render the conditions obsolete?

A. No, there are no significant changes in law or fact since the Commission issued its order adopting the nine conditions that would reduce the requirement that the nine conditions remain in place for a VRET to be in the public interest. The Oregon energy market is largely the same, with three significant policy changes that do not ameliorate the need for the nine conditions. First, the legislature adopted Senate Bill (“SB”) 1547, which has doubled the state’s Renewable Portfolio Standard (“RPS”). As PGE is now required to accelerate its acquisition of renewables, this change should decrease, rather than increase, the need for utilities to offer VRET services, and does not mitigate the need for core customer and

⁶ I use the term cost-of-service ratepayers rather than customers because customers imply that the individuals and companies have a choice, and the vast majority of cost-of-service ratepayers are captive and do not have meaningful choices in their power supplies.

⁷ Order 19-075 at 8.

1 competitive market protections. Second, PGE has taken a more aggressive
2 regulatory stance seeking to undermine and limit direct access in different
3 proceedings, which increases, rather than diminishes, the need for the
4 Commission to protect the competitive retail market. Third, ratepayer interest in
5 increasing their renewable purchases has increased. While this supports the
6 adoption of VRET programs, it does not warrant lowering the protections for
7 ratepayers because their interest in renewable energy should not be limited to only
8 an option in which the utility is the only entity offering service.

9 **Q. You mentioned that SB 1547 has doubled the state’s RPS requirements.**
10 **Does this apply to Direct Access as well?**

11 **A.** Yes, the RPS requirements apply to Electric Service Suppliers (“ESSs”), the
12 entities that supply Direct Access service, to the same extent as they apply to
13 PGE. This requirement is set out in ORS Section 469A.065, which specifies that
14 “An electricity service supplier must meet the requirements of the renewable
15 portfolio standards that are applicable to the electric utilities that serve the
16 territories in which the electricity service supplier sells electricity to retail
17 electricity consumers.”⁸ Like PGE, ESSs are required to move towards a
18 minimum of 50 percent renewable power by 2040, as well as the interim

⁸ “**469A.065 Renewable portfolio standard for electricity service suppliers.** An electricity service supplier must meet the requirements of the renewable portfolio standards that are applicable to the electric utilities that serve the territories in which the electricity service supplier sells electricity to retail electricity consumers. The Public Utility Commission shall establish procedures for implementation of the renewable portfolio standards for electricity service suppliers that sell electricity in the service territory of an electric company. If an electricity service supplier sells electricity in territories served by more than one electric company, the commission may provide for an aggregate standard based on the amount of electricity sold by the electricity service supplier in each territory. Pursuant to ORS 757.676, a consumer-owned utility may establish procedures for the implementation of the renewable portfolio standards for electricity service suppliers that sell electricity in the territory served by the consumer-owned utility.”

1 increased RPS targets. Direct Access customers also pay their full share of the
2 Public Purpose charge, and pay the full allocated share of costs to support PGE's
3 distribution network.

4 **Q. What is your position with respect to whether the "Nine Conditions" set out**
5 **in Order No. 15-405 should still be applicable to VRET proposals?**

6 **A.** I believe that the Commission should retain the Nine Conditions as requirements
7 for a VRET, and should consider adding further protections to ensure that the
8 Commission's policies eliminate barriers to the development of a competitive
9 retail market structure, ensure its policies shall mitigate the vertical and horizontal
10 market power of incumbent electric companies, prohibit preferential treatment, or
11 the appearance of such treatment, of generation or market affiliates, and
12 determine the electricity services likely to be competitive.

13 The nine conditions were the conditions that the Commission found were
14 necessary to ensure that a VRET could be in the public interest, after considering
15 the factors required by the VRET legislation (H.B. 4126). Most directly to the
16 points in my testimony, the legislature required the Commission to consider:
17 "[t]he effect of allowing electric companies to offer voluntary renewable energy
18 tariffs on the development of a competitive retail market," and "[a]ny direct or
19 indirect impact, including any potential cost-shifting, on other customers of any
20 electric company offering a voluntary renewable energy tariff."⁹ Notably,
21 Commission Chair Ackerman dissented in Order No. 15-405. She explained that

⁹ Or Laws 2014, ch 100, § 3(3)(b) & (c).

1 she would have concluded “that it is not in the public interest to allow utilities to
2 offer VRETs and would have closed this docket” even if all nine conditions were
3 met. The Commission was rightfully concerned with the potential harm to the
4 public interest of a VRET, and it appropriately conditioned any VRET on the nine
5 conditions. Nothing has changed that would warrant removal of those
6 protections.

7 **Q. PGE recommends that the Commission delete Condition No. 6 of the 9**
8 **conditions, which specified that: “Voluntary renewable energy product**
9 **offering terms and conditions (including the timing and frequency of**
10 **offerings) as well as transition costs, must mirror those of Direct Access.**
11 **PGE and PacifiCorp may propose VRET terms and conditions that differ**
12 **from current direct access provisions but must propose changes to their**
13 **respective direct access programs to match those changes.” Do you agree**
14 **with elimination of this condition?**

15 **A.** No. This condition that VRET terms and conditions must mirror those of Direct
16 Access, sometimes referred to as the “mirror” condition, is absolutely critical to
17 protect the competitive retail marketplace directed to be created by SB 1149 and
18 Oregon’s direct access laws. It is also a fundamental requirement found by the
19 Commission to be necessary to comply with H.B. 4126’s framework to the
20 development of a competitive retail market and prevention of cost-shifting and
21 other adverse impacts on non-participating customers.

22 **Q. What is PGE’s rationale for eliminating Condition 6?**

23 **A.** PGE recommends deleting Condition 6 but does not provide a reasoned basis for
24 doing so. PGE merely notes that the Commission did not require *exactly* the same
25 requirements for its initial phase of its GEAR program, and therefore concludes
26 that condition six “should no longer apply.” PGE goes on to make conclusory

1 tautologies, without any evidentiary basis, that “if the condition were to continue
2 to apply, it could be counter to the public interest,” and states that to direct “any
3 benefit that a green tariff product brings a subscriber either be removed or also be
4 attributed to Direct Access, does not provide a more competitive marketplace.”¹⁰

5 **Q. Do you agree with PGE’s statements?**

6 **A.** No, I do not. First of all, a blunt statement that Condition 6 could be counter to
7 the public interest does not make it so, and PGE fails to offer any examples of
8 how the public interest would be hurt by the application of Condition 6. That is
9 not surprising since there are no examples that PGE could offer that would
10 demonstrate Condition 6 as contrary to the public interest. Indeed the opposite is
11 true: increasing competition will drive down prices for the benefit of the Oregon
12 economy, increase innovation, diversify generation resources, and spur further
13 increases in renewable power supply and technology. The legislature has already
14 found that development of the competitive retail market is in the public interest.
15 Allowing PGE to create protectionist policies to maintain its monopoly status
16 clearly is not.

17 Second, PGE’s statement that allowing Direct Access to provide service to
18 customers interested in VRET services will not serve to make the market
19 competitive can only be true if PGE’s plans to offer VRET programs that provide
20 no benefits whatsoever to its customers. Put another way, if PGE can design a
21 VRET program that holds interest for some customers surely other entities active

¹⁰ See PGE 500 at p. 28.

1 in the Direct Access program could do the same. PGE has not provided any
2 explanation or justification why it should be permitted to provide any VRET type
3 program with terms and conditions that its competitors are unable to provide.

4 If allowing customers to choose among different programs to acquire
5 additional renewable capacity, whether from the utility or from a Direct Access
6 Provider, does not foster competition in the marketplace, what does? The fact is
7 that Direct Access could and should be allowed to directly compete with any
8 VRET program that PGE could offer – when it comes to offering generation to
9 customers Direct Access and PGE are direct competitors. Whether under Direct
10 Access or PGE’s GEAR program, a customer can purchase 100 percent carbon-
11 free power from a new facility. Allowing a utility to offer a VRET to customers
12 while at the very same time denying such customers the opportunity to receive
13 service under Direct Access is anticompetitive and has the effect of stifling
14 development of a competitive retail market. These limitations artificially preserve
15 the vertical and horizontal market power of the incumbent utility. For example,
16 as I address further below, allowing a customer with a load of 35 megawatts
17 (“MW”) to take service under a VRET but not allow them to participate in the
18 Direct Access market would limit customer choice, harm the competitive
19 marketplace, and would be against the public interest. It strains credibility to
20 suggest that allowing a utility to offer this service, but not allowing service at this
21 threshold under Direct Access, could somehow provide a more competitive
22 marketplace than if the two services were entitled to compete on even terms.

1 **Q. Are you opposed in principle to utilities offering programs or services not**
2 **subject to market competition?**

3 **A.** No. There are times in which an Oregon monopoly electric utility should be the
4 only company selling certain goods and services. While the free market
5 generally provides lower cost and better qualities services, I recognize that
6 electric utilities are natural monopolies in providing most distribution services. I
7 also note that, while generation is not a natural monopoly, Oregon's unique
8 regulatory situation may not at this time warrant retail competition for residential
9 customers, like that available in Texas, New York, Pennsylvania, and other states.
10 But there is no basis for PGE to create a program with terms under which it can
11 "lock out" competition from providing generation service to commercial and
12 industrial customers.

13 **Q. PGE argues that its GEAR service is different than service offerings**
14 **available under direct access because PGE's program has a narrow focus,**
15 **while Direct Access can offer a broader assortment of energy and cost**
16 **options.¹¹ Does this support PGE's suggestions that its VRET service should**
17 **not be required to mirror the terms of direct access?**

18 **A.** No, the fact that PGE's program may have a narrower focus than Direct Access
19 does not support allowing PGE to use terms and conditions of service as a barrier
20 to competition. PGE maintains that there is market demand for customers to
21 purchase green energy and drive the additionality of renewable generation.¹²
22 These are services that are available under Direct Access, and can be offered by
23 ESSs in the same fashion that PGE is proposing to offer, or perhaps in

¹¹ PGE 500 at 23, lines 5-14.

¹² PGE 500 at 23, lines 5-9.

1 conjunction with other service and products that the customer may want. Stated
2 differently, an ESS can offer the same services as any “narrow” program if the
3 utility does not use its regulated monopoly status to lock competitors out. The
4 fact that PGE has proposed a narrower product is not a rationale to remove the
5 requirement that PGE must propose terms and conditions that the utility allows
6 for competitive Direct Access offerings.

7 **Q. What specific terms and conditions of a VRET do you believe must be mirror**
8 **the terms of Direct Access?**

9 **A.** In order for a VRET program to appropriately mirror the terms of Direct Access,
10 there must be no distinctions that confer a clear competitive benefit to the utility’s
11 VRET service offering over what a Direct Access service provider is allowed to
12 offer. In particular, I highlight three specific issues that must be identical:

13 • **Calculation of capacity and energy credits.** Utilities must be required to
14 use a uniform mechanism for calculating the costs or benefits to the system
15 from capacity and power provided to load in the utility’s service territory by
16 a facility, whether such facility is providing service under a VRET or under
17 Direct Access. Consider the scenario in which a developer that is
18 constructing a new 150 MW renewable power generation facility enters into
19 an agreement with PGE for a five-year PPA for 75 MW of capacity to be
20 utilized for the GEAR VRET program, and enters into a second agreement
21 for a 15-year PPA for 75 MW of capacity with an ESS that will provide
22 service to a Direct Access customer. Both the PGE VRET PPA and the
23 Direct Access PPA will bring identical capacity and energy to the system. In

1 both circumstances, PGE will collect its full system rate for all distribution
2 services. There is no basis to provide a higher capacity or energy credit to
3 the GEAR customer than to the Direct Access customer.

- 4 • **Eligibility Threshold.** Utilities must be required to apply the same
5 eligibility thresholds for a customer considering VRET service and a
6 customer considering direct access service. PGE's current GEAR offering is
7 available to customers with aggregate load of just 30 kW. In contrast, PGE's
8 long-term direct access program is limited to customers with minimum
9 demand thresholds of 250 kW per site that can aggregate to 1 MW. This is
10 clear discrimination between the programs. A utility should not be permitted
11 to "keep for itself" all customers with a load between 30 kW and 1 MW. If
12 the demand for service in that load range is not significant, then there is no
13 reason the utility should need to have a program to serve such load. In
14 contrast, if demand for service in that load range is significant, allowing a
15 utility to "lock out" competitive suppliers should not be permitted.
- 16 • **Program Cap.** PGE's long-term Direct Access program is capped at 300
17 MWa and PGE has aggressively fought against increasing that cap.¹³ As I
18 address below with respect to PGE's proposed change to condition 4 of the
19 Nine Conditions, PGE is now proposing to increase the cap set forth in the
20 nine conditions and for its GEAR Program to 500 MW. As noted above,

¹³ See, e.g., PGE's position in Docket UE 335 opposing proposals from the Alliance of Western Energy Consumers to increase the Direct Access cap.

1 PGE's GEAR program and Direct Access are directly competing products.
2 Allowing PGE to place a cap on long term Direct Access, while at the same
3 time making its own competing product available to the same customers who
4 are kept out of Direct Access because of a cap, is anticompetitive and
5 frustrates the development of a competitive retail market.

6 **Q. Are there other VRET program aspects that you do not believe need to**
7 **mirror direct access?**

8 **A.** I believe that most, if not all, program terms should be identical to the highest
9 extent practical. At the same time, I recognize that differences in the programs –
10 whether PGE's GEAR program or a program proposed by a utility in the future –
11 may make it impossible for VRET and Direct Access program to be fully
12 identical in all circumstances, and the Commission may need to be flexible in
13 some instances.

14 My recommendation is that condition 6, requiring that the terms of any
15 VRET mirror direct access, be maintained, but that specific utility programs, such
16 as PGE's GEAR program, can receive a limited waiver of the requirement where
17 the Commission determines: 1) that it is impossible or at very least highly
18 impractical for the programs to be identical with respect to a given issue; 2) the
19 issue is not one of, or similar to, the primary requirements addressed above; 3) the
20 utility has presented a compelling rationale for the different treatment; 4) the
21 different treatment does not create a category of customer that is eligible for
22 service under the VRET but ineligible to receive service under Direct Access;

1 and 5) the utility is proposing a mechanism for its VRET that is as close to a
2 Direct Access offering as practical.

3 For example, PGE offers a very limited window for a customer to elect to
4 move to direct access but does not provide a similar limitation for its own
5 program. If PGE can demonstrate a rational basis why it cannot either: 1) limit
6 its program offering to the same timeframe as the Direct Access program window;
7 or 2) modify its Direct Access program window to comport with its VRET
8 offering, then the Commission can evaluate whether to grant a waiver of this
9 requirement. Absent such a showing, however, the program windows should be
10 identical.

11 **Q. PGE proposes to eliminate Condition 5, which requires that a green tariff**
12 **product be sufficiently differentiated from direct access programs. Do you**
13 **agree with this recommendation?**

14 **A.** No, I do not. The Commission is obligated to create policies to eliminate barriers
15 to the development of a competitive retail market structure, and to ensure its
16 policies are be designed to mitigate the vertical and horizontal market power of
17 incumbent electric companies. Allowing utilities to use their monopoly power to
18 offer services identical to direct access would contradict this obligation. I note
19 that the Commission has found that PGE's GEAR proposal is sufficiently
20 differentiated from direct access such that it meets this condition, and it is
21 possible that other VRET proposals made in the future may also be sufficiently
22 differentiated to meet this condition. The fact that PGE may have met the

1 condition with its specific Phase 1 Gear proposal does not change the need to
2 retain the requirement for evaluation of other proposals in the future.

3 **Q. PGE is asking the Commission to change the cap in Condition 4 from 300**
4 **MW to 500 MW. Do you support this change?**

5 **A.** I do not oppose increasing the cap on VRETs set out in Condition 4, provided that
6 the requirement remains that if the overall VRET cap becomes larger than
7 applicable caps on direct access programs, there must be an increase in the cap of
8 the direct access program. I note that it is not clear from PGE’s proposal and
9 testimony whether it believes the cap of 500 MW nameplate capacity of VRET
10 generation resources in its proposed VRET programs will exceed the 300 aMW
11 cap on participant loads in the comparable direct access program.

12 As addressed above in the discussion of the “mirror” condition, PGE asks to
13 remove the comparability provisions of the nine guidelines, which would
14 presumably allow PGE to design VRET programs with larger allowed
15 participation levels than comparable direct access programs. Allowing PGE to
16 offer a VRET with a higher cap than is available for competing direct access
17 programs impermissibly locks competition out of the market. I note that some
18 parties to PGE’s last rate proceeding at Docket UE 335 agreed to retain the cap of
19 300 MW^a for PGE’s long term direct access program as part of a settlement that
20 was subsequently approved by the Commission.¹⁴ I do not support allowing PGE
21 to increase the cap on its GEAR program unless PGE also agrees – or is required

¹⁴ UE 335, Modified Order, Order No. 19-129 (April 12, 2019). “Order Adopting Stipulation”) (appeal pending).

1 to – increase the cap for its long term Direct Access program to match any
2 increase in the VRET cap that exceeds the cap applicable to the Direct Access
3 program. Stated differently, I do not oppose PGE’s proposal to modify the cap
4 set out in Condition 4, provided the “mirror” condition remains in place and PGE
5 remains obligated to comply with that provision.

6 **Q. PGE proposes to significantly modify Condition 7 (PGE’s proposed condition**
7 **5) related to utility-ownership of a VRET generation resource, including**
8 **eliminating the provision that a utility may not include a VRET resource in**
9 **rate base and eliminating the requirement that the utility must share some of**
10 **the return from a VRET generation resource with other utility customers.**
11 **Do you agree with this change?**

12 **A.** No, I don’t agree with PGE’s proposed modification to Condition 7. If anything,
13 this section should be modified to expressly prohibit utility ownership of a VRET
14 resource. The restrictions on utility ownership is one of the most significant
15 conditions that the Commission proposed as necessary to find that a VRET could
16 be in the public interest, including both the clause that a utility not be permitted to
17 include a VRET resource in rate base, and the clause that the utility must share
18 with cost of service customers revenue made possible as a result of the utility’s
19 use of system resources to offer a VRET. PGE has not provided any suggestion
20 of a change in facts, circumstances or markets that would justify modification to
21 this condition, and is seeking a major policy change without any justification. I
22 address ownership issues in greater detail later in my testimony.

23

1 **CUSTOMER SUPPLY OPTION ISSUES**

2 **Q. What issues do you address with respect to the Customer Supply Option?**

3 **A.** I address three issues related to the Customer Supply Option in this testimony: 1)

4 PGE's requirement that a Customer Supply Option PPA have its own firm

5 transmission capacity; 2) PGE's requirement that generation resources for its

6 PPAs be expressly "built for" its program; and (3) PGE's limitations on customer

7 eligibility to participate in the Customer Supply Option.

8 **Q. What is your concern with respect to PGE's requirement that a Customer**
9 **Supply Option PPA have its own firm transmission capacity?**

10 **A.** PGE included a requirement on its web site that limits participation under the

11 Customer Supply Option alternative to resources that provide their own firm

12 transmission capacity. This issue was not addressed in Phase 1 of the proceeding

13 nor included within PGE's proposed GEAR tariff. Instead, this restriction

14 appeared for the first time when PGE posted conditions for Customer Supply

15 Option PPAs on its web site, and as such PGE has imposed these conditions

16 unilaterally and without customer input or Commission approval. PGE has

17 provided no explanation as to why firm transmission is a requirement for

18 participation, whether it is possible to obtain incremental long-term firm

19 transmission rights, or whether it is appropriate to include this limitation when

20 alternative and sufficiently reliable transmission solutions—such as conditional

21 firm—are available. Conditional firm is a firm transmission product, and there is

22 no reason why a customer that is willing to agree to the specific terms of

23 conditional firm should not be able to purchase their power using conditional

1 firm. Similarly, if a customer wants to take the risks associated with any other
2 type of transmission under a customer supplied PPA option, then it should be
3 allowed to do so. It is also unclear whether this criterion would enable PPAs on
4 PGE's own network to qualify as long-term firm if they were using Network
5 Integration Transmission Service. As the Commission expressly noted in its order
6 acknowledging the shortlist for PGE's 2018 Request for Proposals for Renewable
7 Resources, the requirement for long-term transmission can – and in fact did –
8 severely limit the resources eligible to compete to participate in PGE's
9 programs.¹⁵ Here again PGE has placed strict limitations on participation by
10 requiring PPAs for the Customer Supply Option to include long-term firm
11 transmission. This requirement is not appropriate, and serves to limit options
12 available to customers seeking to purchase renewable power. The Commission
13 should direct PGE to eliminate this provision.

14 **Q. Does PGE acknowledge these concerns?**

15 **A.** Yes, PGE acknowledges these concerns, including the difficulty in obtaining
16 long-term firm point to point transmission rights on the BPA system.¹⁶ PGE also
17 commits to making changes to this transmission requirement for “future tranches”
18 of its program “to the extent long-term firm transmission requirements evolve in a
19 future RFP docket.”¹⁷

20 **Q. Does PGE's acknowledgement of the constraints placed on the Customer**
21 **Supply Option portion of its GEAR proposal resolve your concerns?**

¹⁵ See Docket UM 1934, Order No. 18-483 (December 19, 2018).

¹⁶ PGE 500 at p. 33, lines 8-16.

¹⁷ PGE 500, Page 34, lines 3-7.

1 **A.** No. While I appreciate that PGE has acknowledged the concerns regarding a
2 requirement for the Customer Supply Option to have firm transmission, that does
3 not resolve the existing problem. PGE has not shown that there would be any
4 operational effect on the system to the extent a customer using conditional firm
5 for delivery of power into PGE’s system or other mechanisms that would allow
6 PGE to adequately meet its service obligations. PGE is requesting permission to
7 recover a very substantial risk premium from customers participating in its GEAR
8 program. The revenue from the risk premium should be more than sufficient to
9 hold PGE harmless for the limited risk PGE outlines with respect to transmission.
10 While I agree with PGE that issues related to transmission are regional and may
11 ultimately require new policy frameworks and or infrastructure investment, there
12 is no need to hold this program hostage pending such future developments.

13 **Q.** **What is your concern with respect to PGE’s requirement that generation**
14 **capacity eligible for the VRET program be “built for” the program?**

15 **A.** PGE has imposed a requirement on its GEAR program that renewable generation
16 resources eligible for the program must be new facilities, or expansions of
17 existing facilities, “built for” the GEAR program. As with the transmission
18 requirement described above, this issue was not addressed in the Phase I
19 proceeding nor in PGE’s tariff, but was first set forth unilaterally by PGE in a web
20 posting.¹⁸ My concern is that this condition artificially limits opportunities for
21 developers to participate in the GEAR program, and gives too much discretion to

¹⁸ I understand that, after informal discussions, PGE agreed to remove this requirement as a condition of the Customer Supply Option with respect to Phase I of its GEAR, pending Commission action in this Phase II Proceeding.

1 PGE to determine what generation assets are “built for” its program. Consider,
2 for example, a 200 MW generation asset that has been in development stages for
3 the past few years, has a contract to supply 150 MW to a customer through direct
4 access, but has not yet broken ground on its facility because it is not yet
5 sufficiently subscribed. If that asset wanted to participate in the GEAR program
6 with respect to its remaining capacity, would the project be “built for” the GEAR
7 program? I do not believe PGE should have discretion to turn down a project on
8 this basis, especially where it is part of a Customer Supply Option proposal.

9 **Q. What are your concerns with respect to PGE’s limitations on customer**
10 **eligibility to participate in the Customer Supply Option?**

11 **A.** PGE has limited eligibility for the Customer Supply Option to customers with
12 loads greater than 10 MWa, which represent the very largest customer loads on its
13 system. This is an unnecessary restriction that limits opportunities for customers
14 interested in receiving renewable power and limits opportunities for developers to
15 expand the regional fleet of new renewable generation.

16 **Q. What is PGE’s rationale for this limitation?**

17 **A.** PGE’s sole rationale for this limitation appears to be administrative
18 inconvenience.¹⁹

19 **Q. Do you agree with this concern?**

20 **A.** No, I do not. PGE is a sophisticated utility with substantial experience
21 negotiating agreements. PGE has not demonstrated that administrative expense

¹⁹ PGE 500, Page 10, lines 7-18.

1 for negotiating agreements will be substantial. PGE also is recovering costs of the
2 program from participants.

3 **COMPETITIVE BIDDING RULES FOR VRET PROGRAMS**

4 **Q. What is PGE's proposal for procuring resources for its GEAR Program?**

5 **A.** PGE is proposing either a waiver of, or an exception to, the competitive bidding
6 rules for acquisition of capacity for its GEAR program.²⁰

7 **Q. Has the Commission addressed the applicability of the competitive bidding**
8 **rules for PGE's GEAR program?**

9 **A.** Yes. The Commission previously determined that the competitive bidding rules
10 clearly apply to PGE's GEAR program, but granted PGE a waiver of those rules
11 with respect to the capacity available for the first phase of its program.²¹ This
12 waiver was fact-specific, and took into consideration the fact that PGE recently
13 completed an RFP and is therefore in a position to identify a resource on an
14 expedited basis as well as concerns expressed by PGE that waiver was necessary
15 given the imminent decrease in the value of the federal tax credits for renewable
16 energy.²²

17 **Q. Should the Commission grant PGE a further waiver of the competitive**
18 **bidding rules for its GEAR program at this time?**

19 **A.** The Commission should not grant waiver of the competitive bidding rules to the
20 extent PGE is allowed to own a VRET resource. NIPPC supports waiver of the
21 competitive bidding rules to the extent PGE is purchasing power through PPAs.

²⁰ PGE 500, Page 30, lines 8-15.

²¹ Docket UM 1953, Order No. 19-213 (June 20, 2019).

²² Order No. 19-213, Staff Report at page 8.

1 However, I also recommend that the Commission require that PGE utilize a
2 standard-form base contract pre-approved by the Commission with input from
3 interested parties. Absent a pre-approved form of agreement, granting PGE
4 waiver of bidding rules could allow for discrimination against individual
5 developers. A pre-approved base form of PPA will also allow all potential power
6 suppliers to understand up front the terms and conditions under which it will be
7 expected to sell power, so it can price its offering appropriately.

8 **UTILITY OWNERSHIP OF VRET RESOURCES.**

9 **Q. What is PGE’s position with respect to whether it should be permitted to**
10 **own VRET Resources?**

11 **A.** PGE expressly agreed that it would not own VRET assets for the first phase of its
12 GEAR program, and indicates that it does not have current plans for utility
13 ownership for the second tranche of its program. Nonetheless, PGE appears to be
14 seeking express authority to own a VRET resource in this docket.²³ As addressed
15 above, PGE also seeks to modify the ownership condition within the Nine
16 Conditions, including elimination of the existing condition that prevents a utility
17 from including the cost of such assets in rate base and the requirement that it
18 compensate other utility customers for ratepayer-funded assets used to assist the
19 VRET offering.

20 **Q. Do you agree that PGE should be authorized to own a VRET resource?**

²³ See PGE 500, Page 11, at lines 1-7 (“Q: . . .Is PGE seeking ownership of a green tariff resource? A: We affirm that ownership is an option.”).

1 **A.** No. To the contrary, I urge the Commission to expressly direct that PGE may not
2 own a VRET resource as part of its GEAR program. PGE’s commitment not to
3 own VRET resources in the initial phase of its GEAR program was one of the
4 factors that makes the program palatable to competitive generation resources. To
5 the extent PGE desires to own a VRET resource, many of the terms and
6 conditions of the GEAR program would need to be reconsidered from the start,
7 including any risk premiums, competitive bidding waivers, limitations on the
8 customer supplied PPA options, and the degree to which a proposal must mirror
9 direct access. NIPPC believes that a VRET based on the GEAR program, but also
10 allowing for utility ownership, would not be in the public interest, and would be
11 impermissible under the legislative directive that Commission policies must
12 eliminate barriers to the development of a competitive retail market. Whether or
13 not PGE could propose a different VRET program under which utility ownership
14 would be appropriate is unclear, but the Commission should expressly limit its
15 approval of the GEAR program to prohibit utility ownership of a VRET resource.

16 **Q.** **Does the fact that PGE does not currently “plan” to own a VRET resource**
17 **mitigate your concern?**

18 **A.** No. While PGE may not currently have plans to own a VRET resource, those
19 plans could easily – and likely would – change if PGE had authority to do so.
20 This is especially true if PGE were permitted to include VRET assets in its rate
21 base, as it seeks authority to do.

22

1 **III. CONCLUSION**

2 **Q. Does this conclude your testimony?**

3 **A. Yes.**