

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1953

In the Matter of)
)
PORTLAND GENERAL ELECTRIC)
COMPANY)
)
Investigation into Proposed Green Tariff)
_____)

RESPONSE TESTIMONY OF

ROBERT D. KAHN

ON BEHALF OF THE

**NORTHWEST AND INTERMOUNTAIN
POWER PRODUCERS COALITION**

July 18, 2018

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 **II. TESTIMONY**

23 **Q. Please summarize your testimony.**

24 **A.** Generally, my testimony supports allowing Portland General Electric Company
25 (“PGE”) to proceed with its proposed Voluntary Renewable Energy Tariff

1 (“VRET”) tariff as a pilot program, subject to insuring that PGE meet the
2 obligations set forth in the Oregon Public Utility Commission’s (the
3 “Commission”) prior orders. This will require PGE to modify its Direct Access
4 program to ensure that various program attributes, such as thresholds for
5 participation, timing and frequency of offerings, included in the VRET proposal
6 are “mirrored” in PGE’s Direct Access program. I also urge the Commission to
7 require PGE to modify its Green Tariff program to provide the opportunity for
8 customers to “bring their own PPA,” rather than forcing all participants to
9 negotiate PPA terms solely with PGE.

10 **Q. Could you provide any relevant background on prior proceedings that**
11 **informs NIPPC’s analysis of PGE’s current VRET proposal?**

12 **A.** NIPPC believes it is important that the Commission evaluate the VRET proposal
13 through the framework developed in that Docket No. UM 1690. That docket
14 was opened pursuant to HB (“House Bill”) 4126 (2014), in which the legislature
15 directed the Commission to consider whether to allow utilities to offer a VRET,
16 including directing that the Commission to expressly consider the effect of
17 allowing electric companies to offer voluntary renewable energy tariffs on the
18 development of a competitive retail market.¹ In Docket No. UM 1690, over the
19 course of 18 months, Staff conducted the VRET study through several highly
20 engaged stakeholder workshops, and ultimately the Commission allowed for
21 PacifiCorp or PGE to file a VRET, but only if the VRET met robust requirements
22 to protect the competitive retail market and nonparticipating customers.

¹ HB 4126 (2014) Section 3(3)(b).

1 Specifically, in Order No. 15-405, the Commission included nine requirements
2 for any VRET.

3 **Q. Are there any specific requirements in Order No. 15-405 that are**
4 **particularly important to NIPPC?**

5 **A.** Yes. All nine requirements are important for the Commission and its Staff to
6 carefully apply to PGE's proposed VRET, but NIPPC would like to draw
7 particular attention to the requirement designed to protect the competitive retail
8 marketplace created by Senate Bill 1149 and Oregon's retail direct access laws.
9 Specifically, the Commission ordered:

10 VRET terms and conditions (including the timing and
11 frequency of VRET offerings), as well as transition costs,
12 must mirror those for direct access. PGE and PacifiCorp may
13 propose VRET terms and conditions that differ from current
14 direct access provisions but must propose changes to their
15 respective direct access programs to match those changes.²

16 Based on this provision, NIPPC assumes that PGE will not oppose
17 corresponding changes to its current direct access offerings that reasonably mirror
18 the terms and conditions of the current VRET proposal, if the VRET proposal is
19 approved. The Commission must require PGE to do so to the extent it approves
20 PGE's proposal.
21

22 **Q. Please describe your understanding of PGE's VRET proposal.**

23 **A.** In general terms, PGE's VRET proposal has the following key components:

24 **PPA-Based:** As proposed in PGE's filing, the service will be PPA-based, rather
25 than utility-owned generation.

² Re In the Matter of OPUC, Voluntary Renewable Energy Tariffs for Non-Residential Customers, Docket No. UM 1690, Order No. 15-405 at 2 (Dec. 14, 2015).

1 **Eligibility Threshold:** Nonresidential customers sized as small as 30 kW annual
2 peak load may participate, with aggregation of smaller loads allowed to reach this
3 threshold.

4 **Contract Term:** Participating customers commit to a term of 5, 10, 15, or 20
5 years.

6 **Program Cap:** PGE has not proposed a program cap, but acknowledged the
7 Commission order that a VRET program be limited to 300 aMW for PGE and
8 indicated it did not foresee reaching that level.

9 **Interaction with Direct Access:** Participating VRET customers not eligible for
10 Direct Access service and vice versa.

11 **Rates:** Participating customers will pay the normally applicable cost-of-service
12 rate with the following modifications:

13 **Plus** additional charges to account for the additional costs for renewable
14 resource acquisition (i.e., the cost per MWh of the PPA), administrative
15 costs, and a “risk premium;” and

16 **Minus** a rate credit that reduces the overall rate on account for certain
17 energy and capacity credits that reflects the benefits to the system of the
18 customer opting out of the normal cost-of-service supply. The energy credit
19 will be the market value of the energy supplied by the PPA, and the capacity
20 credit will be the approved capacity value in Schedule 201 (i.e., PGE’s
21 avoided cost rates for capacity) for the PPA resource. If the utility is in a
22 period of resource deficiency, as defined in PGE’s most recently
23 acknowledged IRP, subscribers will also receive the capacity credit, whereas

1 no capacity credit will be applied during periods where PGE's system is
2 resource sufficient.

3 **REC Ownership:** Participating customers own the renewable energy certificates
4 of the PPA resource.

5 **Q. Do you have any comments on PGE's proposal?**

6 **A.** PGE's VRET proposal offers certain features and advantages that are not included
7 in PGE's currently approved direct access programs. PGE offers a long-term
8 cost-of-service opt out program known as the five-year direct access program. In
9 the five-year direct access program, the customer pays substantial transition
10 charges for five years and commits to leave cost-of-service rates to purchase its
11 generation supply from the market through an electricity service supplier, waiving
12 the right to return to cost-of-service rates unless the customer provides PGE two
13 years prior notice.

14 Despite their conceptual similarities, PGE's VRET proposal offers certain
15 features that are lacking in the five-year direct access program. One important
16 difference is that the VRET proposal includes a capacity credit that offsets the
17 rates paid for PGE's cost-of-service portfolio by the VRET customers. The
18 transition charges assessed in the five-year program and other direct access
19 programs include only an energy credit for the avoided energy costs caused by the
20 direct access customer, and the transition charges do not include any credit to the
21 direct access customer for the avoided capacity costs that direct access customers'
22 opt-out elections allow PGE and non-participating customers to realize. As a side
23 note, NIPPC remains concerned with the calculation PGE is proposing to use to

1 determine its energy and capacity charges in this docket, and urges the
2 Commission to evaluate them further, but it is clear that direct access customers
3 should be entitled to the same level of capacity and energy crediting as offered
4 under the VRET program.

5 Another significant difference is the provision of the VRET proposal that
6 allows customers on the smaller nonresidential rate schedules the ability to
7 participate in a multi-year alternative generation portfolio program by allowing
8 participation by any customers that can aggregate their meters to 30 kW. In
9 contrast, PGE's five-year program is limited to customers with minimum demand
10 thresholds of 250 kW per site that can aggregate to 1 MW.

11 Giving customers who elect direct access these added provisions (as well
12 as other provisions necessary to ensure that the terms and conditions of direct
13 access "mirror" the terms offered in a VRET) will expand the range of customer
14 choice and will help address the potential for discriminatory treatment between
15 customers that elect the direct access program versus customers that elect PGE's
16 VRET offering. Assuming PGE is required to enhance its five-year direct access
17 opt-out program with these same beneficial terms, we do not object to the VRET.

18 **Q. Do you anticipate PGE will make these changes to its VRET program absent**
19 **direction from the Commission?**

20 **A.** No. Despite clear direction that the terms of any VRET Proposal must mirror the
21 terms of Direct Access, PGE indicates that does not intend to do so. With respect
22 to the threshold for eligibility to participate in the program, for example, PGE
23 states that "it does not intend to lower the threshold for Direct Access Programs,
24 as the proposed green tariff does not represent an opt-out from cost of service

1 rates.”³ But this distinction is irrelevant. To the extent PGE desires to offer a
2 VRET service with a 30 kW participation threshold, it must modify its Direct
3 Access program to allow for a 30 kW threshold. Alternatively, PGE can propose
4 to use its existing direct access program threshold for its VRET. But PGE cannot
5 pick and choose provisions more favorable for its VRET program than available
6 under its direct access program. That action would be directly contrary to the
7 Commission’s orders in the VRET proceedings and contrary to the Commission’s
8 statutory obligation to remove barriers to the development of a competitive retail
9 market.

10 **Q. Do you recommend any other conditions be placed on PGE’s VRET**
11 **proposal?**

12 **A.** Yes. I recommend the Commission require PGE to accept pre-negotiated
13 agreements where a customer can supply their own renewable PPA entered into
14 with a third-party power provider, and sometimes referred to as a “Bring your
15 own PPA” model. The “bring your own PPA model offers a number of
16 advantageous over PGE’s proposal. For example, this mechanism would allow a
17 given customer to tailor its PPA to its load size and start date. The customer
18 would not be dependent on PGE to aggregate load to meet its desired renewable
19 energy, nor place PGE or any other customers at risk if a given PPA were not
20 sized exactly to the customer load. The Bring Your Own PPA model would also
21 better align with the Commission’s obligation to remove impediments from the
22 development of a competitive retail market, by allowing generators to negotiate

³ NIPPC/101, Kahn/2 (PGE Response to NIPPC Data Request 2).

1 directly with prospective customers, and not be subject to the monopsony power
2 of the utility.

3 **Q. Has PGE evaluated the “Bring Your Own PPA” model?**

4 **A.** No. As set out in PGE’s data response to NIPPC Data Request No. 1, PGE has
5 undertaken no evaluation of the “Bring Your Own PPA” model whatsoever.⁴

6 **Q. Do you have additional concerns with the mechanics of PGE’s proposed**
7 **contracting for its VRET service?**

8 **A.** Yes. PGE has reserved for itself extremely wide discretion in setting the terms
9 under which it will contract with prospective renewable power suppliers and with
10 prospective VRET customers. PGE indicates that it may structure contracts with
11 a variety of different terms and conditions for different customers, including
12 significant issues such as portability of subscription, creditworthiness obligations,
13 termination and damage charges, and other matters.⁵ Although PGE proposes to
14 ultimately file executed agreements with the Commission, it has made no
15 commitment to treat all prospective customers identically and appears to have
16 reserved to itself the ability to discriminate among both customers and power
17 developers with respect to the terms of any agreement PGE chooses to enter into.
18 Again, allowing customers and power developers to negotiate directly with each
19 other, using the “bring your own PPA” model, would go a long way to mitigate
20 this concern.

21

⁴ NIPPC/101, Kahn/1 (PGE Response to NIPPC Data Request 1).

⁵ PGE Exhibit 201, Sims-Tinker/4; NIPPC/101, Kahn/3 (PGE Response to NIPPC Data Request No. 3).

1 **III. CONCLUSION**

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

3 **A. Yes.**

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EXHIBIT NIPPC/101

PGE RESPONSES TO NIPPC DATA REQUESTS

July 18, 2018

June 22, 2018

TO: Carl M. Fink
Blue Planet Energy Law, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1953
PGE Response to NIPPC Data Request No. 001
Dated June 08, 2018**

Request:

Reference PGE Exhibit 200, p. 16 and PGE Exhibit 202, pp. 24-25.

- a. Has PGE evaluated allowing customers to bring pre-negotiated PPAs similar to the “Bring your own PPA” program in Michigan? Please provide all documents and communications related to this analysis.**
- b. Please provide a comparison of the benefits, costs and risks of PGE’s proposed model to the Consumers Energy/Bring Your Own PPA Model.**

Response:

- a. PGE has not evaluated allowing customers to bring pre-negotiated PPAs.
- b. PGE has not conducted any analysis regarding a comparison of the benefits, costs, and/or risks of the Green Tariff model proposed by PGE in our April 13 filing with Consumer Energy’s “Bring Your Own PPA” model.

June 22, 2018

TO: Carl M. Fink
Blue Planet Energy Law, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1953
PGE Response to NIPPC Data Request No. 002
Dated June 08, 2018**

Request:

Reference PGE Exhibit 201, page 2, “Applicability”, and PGE Exhibit 200, p. 4, lines 19-23:

- a. Please explain in detail why PGE chose 30 kW for a threshold to participate in the green tariff program. Did PGE consider or perform any analysis of anticipated impact on the program from selecting a higher or lower threshold? If so, please provide.**
- b. Is PGE intending to contemporaneously lower the threshold for its Direct Access Programs to 30 kW? If not, please describe how selection of this threshold is consistent with the obligation for green tariff terms to mirror Direct Access offerings.**

Response:

- a. Residential customers and nonresidential customers 30 kW and below have portfolio options available within Schedules 7 and 32 with renewable options as required by ORS 757.603. The green tariff is meant to be available to those customers not covered by the renewable portfolio options.
- b. No. PGE does not intend to lower the threshold for Direct Access Programs, as the proposed green tariff does not represent an opt-out from cost of service rates. Currently, all nonresidential customers are eligible to purchase electricity from an alternate provider.¹ This opt-out selection is made during an annual window. Customers with greater than 1aMW of load are eligible to opt-out for multiple years at a time, while customers who are below that threshold must select their direct access participation on a yearly basis.

¹ https://www.puc.state.or.us/Pages/electric_restruc/consumer/nonres.aspx

June 22, 2018

TO: Carl M. Fink
Blue Planet Energy Law, LLC

FROM: Karla Wenzel
Manager, Pricing & Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1953
PGE Response to NIPPC Data Request No. 003
Dated June 08, 2018**

Request:

Reference PGE Exhibit 201, page 4. The draft tariff states (emphasis provided): “If the Customer requests an amendment to or termination of the service agreement, or defaults on the service agreement before the expiration of the term of the agreement, the Customer shall pay to the Company an early termination charge equal to the bill amount due *under the termination and damages as agreed to in the contract between the Company and the subscribing customer.*”

- a. What contract would be applicable?**
- b. Will all customers be required to execute an identical form of contract, or does PGE anticipate individually negotiating such contracts?**
- c. What other terms and conditions of service will be controlled by the contract?**
- d. Will such contracts be subject to filing with the Commission?**

Response:

- a. PGE will enter into contracts individually with customers if the program is approved.
- b. Although the Company anticipates using a form contract, PGE may individually negotiate contract provisions as necessary to ensure that non-participating customers are protected from program risks and/or potential for cost-shifts.
- c. PGE may structure contracts that include (but are not limited to) terms and conditions such as portability of subscription, creditworthiness, subscription term, and nameplate load.
- d. Yes. Per PGE/200, page 1, all contracts will be filed with Staff of the Public Utility Commission of Oregon for approval that the contract meets the requirements and conditions set forth in the Green Tariff.