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To: Janet Fairchild
From: Lynn Frank
Subject: ETO Performance Measures

The opportunity to review and comment on the draft ETO Performance Measures is very much appreciated and the following thoughts are respectfully offered for your consideration.

Context

There may be issues more appropriately addressed in the grant agreement than in the performance measures, but the review of the performance measures may provide a context to address those issues.

Public Accountability

The legislature clearly provided that the “commission may also direct that funds collected by an electric company through public purpose charges paid to a nongovernmental entity for investment in public purposes...” Less clear is any legislative intent that the entity be held to lesser standards of public accountability than the Commission itself would be obliged to meet. Such standards include open meetings, public records, public decision-making, conflict of interest (including propriety in use of public funds), and public contracting (including reciprocal preference). The commitment to honor such standards defines public accountability in Oregon’s governance. It is not clear why the Commission has chosen to hold the ETO accountable to lesser standards.

Illustrations that some may perceive as inconsistent with the Oregon commitment include:

- Staff rebuke of public testimony as “disrespectful of decisions made in the (non-public) strategic planning sessions.”
- Reimbursement of personal expenses (public request by the chair for an ETO credit card to pay for lunches in Portland), which it is understood that even Commission members could not claim.
- Non-competitive award of a multi-million dollar, long-term contract to NEEA.
- Refusal to voluntarily honor provisions of Oregon’s reciprocal preference law when Oregon businesses are denied opportunities to participate in public purpose programs in other states due to local preference, in spite of the Governor’s clear mandate to reach out to Oregon business.
- Common non-public Board meetings with quorums, including retreats, pre-meeting meetings, and executive sessions.
- Unwillingness to honor public record provisions.

Financial Integrity

The concept of financial integrity in the public sector comprises more than an unqualified audit. It also includes financial propriety. The question then becomes by what standards is financial propriety defined? Concerns expressed by Oregon's Attorney General and Congress about standards now in place for non-profits argue that the issue merits of further review, whether in the context of the public accountability issue discussed above or otherwise, including the full scope of issues now receiving national attention such as compensation, benefits, expense reimbursements, and so on. Given that the Commission is essentially the sole provider for this non-profit, presumably the Commission would have an interest in ensuring that it meets the highest standards of propriety.

Operational Efficiency and Effectiveness

There are a number of issues that may warrant further review and consideration.

Independent Review

The initial review of the ETO conducted by the PUC and Energy was performed by a consultant with continuing financial interest in the ETO. Whether this review was colored by that continued financial interest and relationship is a question that should not arise. The independent review should be truly independent of both the ETO and continuing financial interest. This issue has gained national attention in the context of audit firms that have other financial interests in the customers for whom they perform the audit.

Customer Satisfaction

Customer satisfaction may be measured in different ways depending on how one defines the "customer". The ETO has been willing to leave significant market segments unserved, a practice less common in Oregon public purpose programs where "universal service" is often the goal (just as it is in PUC's Universal Service Program for telecommunications). Given the understanding that the ETO's charter is derived from the public will, not of just those served, but of all Oregonians represented in the Oregon Legislature, a narrow definition of "customer" may be shortsighted. If one defines for example the residential sector as a customer, it may be insightful to assess the perceived benefits of the ETO programs among those who have not been served as well as among those who have. Similarly, if one is measuring customer satisfaction among trade allies who actually implement the actions needed to achieve the savings sought by the ETO, it might be insightful to survey as well the trade allies who have chosen not to participate, not just the two or three responsible for nearly all of the residential sector participation. If only two or three local trade allies are delivering most of the results, by definition all of Oregon is not being served.

Administrative Cost

While the definitions of "administrative costs" may conform to GAAP standards for non-profits, such definitions may be less common in the public sector. That difference may unnecessarily raise questions about the integrity of reporting when the administrative

costs are compared on a more common basis with other public purpose programs financed by the State of Oregon. For the executive and legislative decision-makers and the fiscal staff that support them, it may be counterintuitive to be told that ETO administrative costs are less than 6% of expenses if for example more than 30% of a program's budget allocation is withheld by the ETO and then direct program management and administrative costs are deducted from the balance. There may be value in adding another measure based on definitions more commonly understood by those decision-makers. It might also be prudent to establish corollary measures for the proportion of the funding that is ultimately delivered to the end customer, which would certainly be much less than 94% as one might otherwise deduce.

Savings Targets

In their simplest terms, the savings targets can be achieved most efficiently with urban and commercial/industrial initiatives. The passing reference to "including those that have been historically underserved" may not fully account for the Commission's, the legislature's, or the public's expectations regarding the reach of the ETO programs.

It may be appropriate for the Commission to establish performance measures that more clearly state that the public purpose program should reach Oregonians throughout the service areas of PGE, Pacific Power, and Northwest Natural. That might include expectations clearly addressing geography, cultural diversity, and low-income households – all of which are underserved markets.

Savings Measure

The measure of savings is perhaps less direct than implied by the "easily measured" reference. It is not clear for example how the ETO ascribes energy savings to its investment in NEEA and allocates those benefits throughout the service areas of utilities that fund the ETO but may not participate in some or all of NEEA's initiatives. In that context, the "savings" may appear to some to be illusory – albeit achieved at significant cost through a non-competitive contracting process, precluding other investments. Perhaps behind the measure or otherwise, there should be some expectations established for some reasoned threshold in how the savings will be documented.

Equitable Distribution of Programs

It is not clear whether equitable distribution of programs is intended to be synonymous with equitable distribution of benefits. It may be appropriate for the Commission to consider performance measures that state that each sector should receive economic benefits equal to or greater than its respective contribution to the ETO funding and the source of such benefits.

The Commission might also give further consideration to changing or adding to the draft funding allocation measure to at least encourage funding allocations commensurate with the sector contribution. The argument has been made that the residential sector, while the greatest contributor, offers the least opportunity for cost-effective savings. If one were constrained to repeat the past that might well be true. That assessment may be too simplistic, discouraging initiatives to pursue innovation and partnerships that could well deliver cost-effective savings.

This Commission might instead adopt a goal that seeks investments in each sector commensurate with its contribution to achieve cost-effective savings. Simply adopting minimum allocations presumes the past is our future instead of inspiring innovation.

Least Cost Planning

There is a perception at least that utilities will meet future loads through comprehensive least cost planning and yet it is understood that recent submissions defer to the ETO for energy efficiency initiatives in Oregon, with the explanation that if there is opportunity, the ETO rather than the utility should seek it. It is not clear however, whether or when the connection is made between least cost planning for future resources and the ETO initiatives or even whether or how the ETO initiatives are considered in the planning. If it is indeed state policy that the ETO is responsible for that aspect of least cost planning and resource delivery, it may be prudent for the Commission to adopt a performance measure that supports that outcome, even if only to ensure effective participation in the least cost planning process.

Performance Measure Structure

The Commission might consider the value of establishing performance measures at different levels to guide not only acceptable, but exceptional performance. This approach helps the ETO define success as something more than “acceptable” and may provide clearer guidance on the Commission’s interests than simple “pass/fail” criteria. Such an approach might spur innovation, creativity, and leadership beyond the past practice utility benchmarks. On its own, “acceptable” performance may be a more modest expectation than that truly sought by the Commission.

If you have any questions or would like more information, just let me know.