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October 31 2017

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
PO Box 1088
Salem OR 97308-1088

Re: UM 1811– PGE’s Application for Transportation Electrification Programs

Attention Filing Center:

Enclosed for filing in Docket UM 1811 is the **Joint Opening Brief of Portland General Electric Company, Oregon Citizens’ Utility Board, and Greenlots** to be filed electronically today. The signature page from Jeanette Shaw at Forth will be filed as soon as possible.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barbara W. Halle", written in a cursive style.

Barbara W. Halle
Associate General Counsel

BWH:ds
Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1811**

In the Matter of

**PORTLAND GENERAL ELECTRIC
COMPANY,**

**Application for Transportation
Electrification Programs.**

**JOINT OPENING BRIEF OF PORTLAND
GENERAL ELECTRIC COMPANY, OREGON
CITIZENS' UTILITY BOARD, FORTH, AND
GREENLOTS**

I. INTRODUCTION

On December 27, 2016, pursuant to Oregon Statute SB 1547¹, Portland General Electric Company (“PGE”) filed its December 2016 Application for Transportation Electrification Programs for approval with the Oregon Public Utility Commission (“Commission”). The purpose of that filing was to describe PGE’s long-term strategy for increasing transportation electrification in our service area and to describe how the proposed programs fit within a longer-term framework. Subsequently, Industrial Customers of Northwest Utilities (“ICNU”), Oregon Citizens’ Utility Board (“CUB”), ChargePoint, Inc. (“ChargePoint”), Drive Oregon (now known as “Forth”), Oregon Department of Energy (“ODOE”), Tri-Met, Greenlots, PacifiCorp, and Tesla, Inc. intervened in the docket.

Settlement discussions between PGE, Staff of the Commission (“Staff”), CUB, ICNU, ChargePoint, Forth, ODOE, Tri-Met, Greenlots and Tesla, Inc. were held on May 12, 2017. As a result of those discussions, all of these parties with the exception of ChargePoint, reached an agreement resolving

¹ SB 1547 § 28(20) and (21).

all issues in this docket. The parties that reached the agreement (collectively the “Stipulating Parties”) completed a stipulation and supporting joint testimony and filed them with the Commission on June 27, 2017.

On July 12, ChargePoint filed an objection to the Stipulation and recommended that the Commission reject it. ChargePoint also requested a hearing in this matter pursuant to OAR 860-001-0350(8). On the same day, the Electric Vehicle Charging Association (“EVCA”), which had not been involved in the settlement discussions that led to the Stipulation but had been granted intervenor status on June 30, filed comments objecting to the Stipulation and also asked the Commission to reject the Stipulation. A hearing took place on October 10, 2017 pursuant to a schedule established on July 27, 2017 and revised on August 15. Siemens, a charging infrastructure manufacturer, intervened on August 31, 2017 and has been generally supportive of the settlement reached by the Stipulating Parties. PGE and CUB files this Opening Brief of the legal issues in accordance with that schedule to explain why the Commission should reject ChargePoint’s and EVCA’s objections to the Stipulation and how the law supports approval of the Stipulation as filed.

II. THE LEGISLATURE CREATED A ROLE FOR UTILITIES IN TRANSPORTATION ELECTRIFICATION IN OREGON

A. To Determine the Legislature’s Intent, the Commission should Follow the Oregon rules of Statutory Construction Based On The Text And Context Of The Statute and, If Necessary, The Legislative History.

Statutory interpretation requires discerning the intent of the legislature. *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610 (1993) (citing ORS 174.020). The first step in doing so is examining "both the text and context of the statute." *Id.* If the legislature's intent is not clear from the text and context inquiry, the next step is considering legislative history. *Id.* at 611. If legislative intent is still unclear, the next step is to apply maxims of statutory construction. *Id.* at 612.

In the State of Oregon v. Gaines, the Oregon Supreme Court said:

...there is no more persuasive evidence of the intent of the legislature than "the words by which the legislature undertook to give expression to its wishes." *State ex rel Cox v. Wilson*, 277 Or 747, 750, 562 P2d 172 (1977) (quoting *U. S. v. American Trucking Ass'ns.*, 310 US 534, 542-44, 60 S Ct 1059, 84 L Ed 1345 (1940)). Only the text of a statute receives the consideration and approval of a majority of the members of the legislature, as required to have the effect of law. Or Const, Art IV, § 25. The formal requirements of lawmaking produce the best source from which to discern the legislature's intent, for it is not the intent of the individual legislators that governs, but the intent of the legislature as formally enacted into law".²

In this case, the text and context of SB 1547 clearly indicate the legislature's intent that transportation electrification is necessary to meet certain state and federal goals, and that electric companies have a role to play in achieving these goals.

B. SB 1547 Expressly Supports Transportation Electrification as a Statewide Goal

SB 1547 states in the finding and declaration in subsection (2)(a):

(a) Transportation electrification is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state's greenhouse gas emissions reduction goals described in ORS 468A.205 and improve the public health and safety;

The language is clear that the Legislature sees transportation electrification as necessary to achieve the listed goals, which are codified in Oregon Statutes. Examples of statutes that relate to these goals include, but are not limited to, ORS 468A.025 (Air Purity Standards); ORS 468A.275 (Low carbon fuel standards); ORS 469.960 et. seq. (Alternative Fuel Vehicles); ORS 469.010 (General Provisions for programs administered by Oregon State Department of Energy); and ORS 469B.100(Alternative Energy Devices).

² *State v. Gaines*, 346 Or 160, 171 (2009).

C. In SB 1547, the Legislature Specifically Called Out That Electric Utilities Must Increase Access to the Use of Electricity as a Transportation Fuel in Order to Achieve that Statewide Goal.

After stating that transportation electrification is necessary to achieve state goals, the Legislature goes on to state how, in order to achieve widespread transportation electrification, electric companies must do certain things. No other entity or person is subject to these requirements in the statute; these requirements are specifically directed at electric companies. An electric company is defined the same way as ORS 757.600: “an entity engaged in the business of distributing electricity to retail electricity consumers in this state...” PGE is an electric company, by this definition. The roles are described as follows:

(b) Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel; [and]

(c) Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel in low and moderate income communities; (emphasis supplied)³

In addition, the statutory language describes ways that transportation electrification should help electric companies achieve operational goals that fulfill expectations in other state programs and initiatives, such as the Renewable Portfolio Standard in ORS 469A.050 et. seq.:

(e) Transportation electrification and the purchase and use of electric vehicles should assist in managing the electric grid, integrating generation from renewable energy resources and improving electric system efficiency and operational flexibility, include the ability of an electric company to integrate variable generating resources.⁴

To sum up, SB 1547 sets the stage for the effort to increase the electrification of transportation in Oregon, and puts electric companies squarely in the middle of that effort.

D. The Statute Requires the Public Utility Commission to Direct Electric Utilities to File Applications for Programs that Accelerate Transportation Electrification

³ SB 1547 § (2)(c).

⁴ SB 1547 § (2)(e).

In order to accelerate the statewide goal of transportation electrification, the Legislature gave the Commission a central part to play in how the electric companies would fulfill their roles described in subsections (2)(b) and (2)(c). Specifically, subsection (3) of the statute says that the Commission “...shall direct each electric company to file applications, in a form and manner prescribed by the commission, for programs to accelerate transportation electrification.”⁵ In Docket AR 599, the Commission promulgated rules to carry out this statutory requirement, and these rules were codified in Division 087, pursuant to Order No. 16-447 entered on November 23, 2016. The filing that PGE made on December 27, 2016 was intended to satisfy the requirements in OAR 860-087-0030.

E. The Pilot Programs in the Stipulation Will Help PGE Fulfill The Roles that the Legislature Stated Electric Companies Must Play

The Stipulation awaiting Commission approval in this docket contains three pilot programs, with the potential for two additional pilots to be proposed for approval later⁶. These three pilot programs are: a TriMet Electric Mass Transit pilot program; an Education and Outreach pilot program; and an Electric Avenue Network pilot program.

1. TriMet Electric Mass Transit Pilot Program

PGE is proposing a pilot to install, own and manage six electric bus charging stations for use by TriMet. PGE’s participation will allow TriMet to use grant funding from the Federal Transit Administration to purchase enough electric buses to cover an entire bus route. This pilot is intended to evaluate distribution system impacts and customer service considerations by studying coincident peak, non-coincident peak, feeder voltage dynamics, charging behaviors, and load profiles. It will allow PGE

⁵ SB 1547 § (3)

⁶PGE’s original application contained four transportation electrification programs. As a result of the settlement embodied in the Stipulation, PGE withdrew its “Residential Smart Charging” proposal, but the Stipulation specifies that PGE will propose a residential home charging pilot with rebates for customers installing a connected level 2 home charger within one year of Commission approval of the Stipulation.

to study how to most advantageously integrate the demand that may emerge from future electric bus charging infrastructure.

This pilot will “increase access to the use of electricity as a transportation fuel” by allowing TriMet to purchase an electric bus that it would otherwise not be able to purchase, and by assisting TriMet in fully testing how electric buses can efficiently function as part, or perhaps eventually all, of TriMet’s fleet. The pilot will also “increase access to the use of electricity as a transportation fuel in low and moderate income communities” by helping to develop the use by TriMet of electric bus service in low and moderate income communities where bus service is statistically used by a significant portion of the population⁷. Also, through the study of how to most advantageously integrate the demand that may emerge from future electric bus charging infrastructure, the pilot program will help PGE to manage the electric grid, which is one of the goals for transportation electrification stated in the language in subsection 2(e), and is a goal that an electric company is uniquely suited to pursue.

2. Education and Outreach Pilot Program⁸

The second pilot program was created to increase awareness and adoption of electric vehicles and to encourage smart EV charging. As PGE stated in its application, lack of awareness is the single largest barrier to adoption of electric vehicles, based on PGE’s research.⁹ The component parts of this Pilot Program, as agreed to in the Stipulation, include Technical Assistance, Builders Facilities Outreach, Ride and Drives, and Regional Market Transformation. All of these component parts are designed to increase awareness of electric vehicles and the availability of charging infrastructure, in order to stimulate consideration and subsequent adoption of electric vehicles. This awareness and knowledge, PGE

⁷ TriMet 2016 Title VI Program Update, p. 72, Figure V-8: Vehicle Modes Used by Race/Ethnicity and Income, p. 75, Figure V-12: Personal Vehicle Access by Race/Ethnicity and Income. <https://trimet.org/about/pdf/2016-title-vi.pdf>

⁸ In its original application, PGE proposed to include a 1.0 FTE for “Technical Assistance” in this program. In the Stipulation, the technical assistance FTE is removed, and the Stipulating Parties agreed to support its being added as a single FTE in PGE’s then pending general rate case, UE 319. The Stipulating Parties also agreed that \$1 million originally allocated to Education and Outreach in PGE’s application would be allocated for a future workplace and/or fleet charging program, which will be discussed later in this brief.

⁹ This research includes, but is not limited to, a 2014 PGE customer survey, and the review of Kurani, Ken. “New Car Buyers’ Valuation of Zero-Emission Vehicles: Oregon”. UC Davis 2015.

believes, is necessary for the acceleration of transportation electrification that the Legislature is seeking. The Commission provided an opportunity for utilities to address this by including as a requirement in an electric company's application pursuant to OAR 860-087-0030(1)(a)(G): "Identification of market barriers, program implementation barriers, and program strategies to overcome the identified barriers."

This pilot program is designed to help achieve this result by providing opportunities for potential buyers of electric vehicles to test them out and learn about them ("Ride and Drive"); training and support to non-residential customers considering fleet electrification or planning to install workplace charging infrastructure ("Technical assistance"); collaboration with regional stakeholders to promote regional market transformation through development of standards, best practices and exploring charging network interoperability between regional utilities ("Regional Market Transformation"); and working with builders, electricians, architects and engineers to better understand the simplicity of EV charging and the benefits for their customers, as well as training facility managers' technical staff to ensure they understand key siting considerations, maintenance practices and operating costs for installing, operating and maintaining EV charging infrastructure ("Builders Facilities Outreach"). All of these components of the pilot program are reasonably likely to increase awareness of transportation electrification in the targeted groups and make customers more comfortable with purchasing electric vehicles and installing related infrastructure.

3. Electric Avenue Charging Stations Pilot Program

The third pilot program is an integral part of the Stipulation and PGE's plan to fulfill its role in accelerating transportation electrification in a modest, cost-limited and time-limited way. Of note, this is the only pilot program contested by ChargePoint.¹⁰ PGE will install and own 6 charging stations in its service territory that will each contain up to 4 DCQC chargers and 1 Level 2 charger. This will enable

¹⁰ Staff/401/Klotz/7 (ChargePoint's Response to Staff DR 9).

PGE to help ensure that visible and reliable charging infrastructure is available to electric vehicle users both to increase awareness of electric vehicles and to help users and potential users develop confidence that chargers will be available to them should they decide to make such a purchase. Many studies confirm the reasonableness of the conclusion that the addition of publicly available charging stations will increase adoption of electric vehicles.¹¹ The more electric vehicles there are in PGE's service territory, or passing through from elsewhere in Oregon, the more charging stations will be needed. Thus, the Electric Avenue Charging Stations will make a contribution to increasing access to the use of electricity as a transportation fuel, as the SB 1547 requires electric companies to do.

4. Proposed Future Pilot Programs

In addition to the three pilot programs for which PGE seeks approval from the Commission, paragraph 30 of the Stipulation provides for a PGE residential home charging pilot, which it has agreed to propose in the future as part of settlement in this proceeding.¹² The residential home charging pilot includes rebates for customers installing a connected level 2 charger and going on a time-of-use rate schedule within one year of Commission approval of PGE's transportation electrification program application.¹³ PGE's residential home charging pilot will be beneficial in terms of working with residential EV owners to charge their vehicles during off-peak times to benefit the electric system. This future pilot was an essential component of CUB's support of the stipulation, and was intended to help the program application meet the criteria contemplated in SB 1547 § 20(2)(d)-(e). A majority of EV charging continues to occur at home, and working with residential EV owners to install faster charging infrastructure with flexible tariff schedules will allow PGE to capture the greatest benefits for its electric

¹¹ For example: Li, S. et al., "The Market for Electric Vehicles: Indirect Network Effects and Policy Impacts," Cornell University, June 2015 ("...the increased availability of public charging stations has a statistically and economically significant impact on EV adoption decisions.")

¹² Stipulation at 7.

¹³ Id.

system. Charging on-peak with level 1 chargers can add great costs to the system as transportation electrification continues to accelerate in the state.

Finally, Section 31 of the Stipulation includes an allocation for a workplace charging and/or fleet charging program that PGE will propose within one year of the date of the Stipulation, conditioned on Commission approval of the Stipulation. ICNU requested, and the Stipulating Parties supported, that the program as proposed would be open to both cost-of-service and direct access customers. This will provide additional opportunities to increase customer awareness of electric vehicles and support acceleration of transportation electrification through access to charging that is not home-based.

F. The Pilot Programs in the Stipulation Will Also Assist the Commission in Fulfilling The Role that the Legislature Stated the Commission Must Play

The Stipulation requires that a list of specific and detailed learnings for each of the three pilot programs be developed through meetings with the eight Stipulating Parties. A draft of these learnings was attached to the Stipulation as Appendix 1 based on prior input from the Stipulating Parties, and the list will be further refined if the Stipulation is approved by the Commission. These learnings can be seen as an underpinning to the role that the Commission has been given in subsections (3), (4), (5) and (7) of the law to carry out the legislative intent, and will create the knowledge base to assist the Commission in evaluating whether these pilot programs are on the right track to achieve the Legislature's articulated goals.

In addition, section 26 of the Stipulation contains a required list of information that PGE has to report on an annual basis regarding the Electric Avenue Charging Station pilot which demonstrates PGE's commitment to sharing information with the Commission that will help it evaluate the pilot program. The Commission has the authority to specify what form this report should take and what process might be used to make sure that interested parties receive access to this information.

III. THE COMMISSION HAS AUTHORITY UNDER THE STATUTE AND ITS ENABLING LEGISLATION TO APPROVE THESE PILOT PROGRAMS

A. The Commission Has Broad Authority to Consider What to Include in Utility Rates

Contrary to the unfounded assertions made by ChargePoint in its Response Testimony Opposing the Stipulation, the Commission has the authority and discretion under SB 1547 to approve PGE’s application for transportation electrification programs as filed. Further, as a preliminary matter, the Commission generally has broad authority and discretion to determine what to include in utility rates. Generally speaking, the Commission was given the powers to “represent the customers of any public utility . . . in all controversies respecting rates, valuations, [and] service” and to protect these customers “from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.”¹⁴ Importantly, the Commission “shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.”¹⁵ The Commission has distilled the general powers granted to it by the Oregon Legislature into its mission to “ensure Oregon utility customers have access to safe, reliable, and high-quality utility services at just and reasonable rates.”¹⁶

To put the ability of the Commission to place the \$2.6 million dollar maximum allowable cost associated with the Electric Avenue Charging Station Pilot¹⁷ into utility rates into perspective, a discussion of the Commission’s authority to do so is necessary. Since 1911, the Oregon Legislature has delegated its authority to regulate public utilities exclusively to the Commission.¹⁸ Within this delegation,

¹⁴ ORS 756.040(1).

¹⁵ ORS 756.040(1).

¹⁶ Oregon Public Utility Commission, Mission-Values-Actions, *available at* <http://www.puc.state.or.us/docs/Mission-Values-Actions%20-02092016.pdf>

¹⁷ UM 1811 – Stipulation at 3.

¹⁸ *In the Matters of The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement; Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company; Portland General Electric Company’s Application for an Accounting Order and for Order Approving*

the Commission is provided “the broadest authority—commensurate with that of the legislature itself—for the exercise of [its] regulatory function.”¹⁹ However, the Commission’s broad authority is not without limits. Since the Commission was created by the legislature, its authority is limited by the boundaries of the legislature’s delegation.²⁰ It is also limited by the confines of the state and federal constitutions, and governmental regulation has implied limits that preserve the private rights of public utilities as for-profit businesses.²¹ In determining how to set rates to meet its mandate to establish fair and reasonable rates, the Commission employs a comprehensive and flexible regulatory scheme.²² The legislature has expressed no specific process or method that the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use.²³ In the end, the Commission must set rates within a reasonable range that protects the competing interests of the utility and its customers.²⁴

B. SB 1547 Gave the Commission a Role to Play in Transportation Electrification

In passing SB 1547, the Oregon Legislature sent a clear signal to the Commission and to Oregon’s investor-owned electric utilities that “[t]ransportation electrification is *necessary* to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state’s greenhouse gas emissions reduction goals . . . and improve the

Tariff Sheets Implementing Rate Reduction, OPUC Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 at 4 (Sep. 30, 2008).

¹⁹ OPUC Order No. 08-487 at 4, citing *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or. App. 200, 214, 534 P2d 984, *rev den* (1975).

²⁰ OPUC Order No. 08-487 at 4, citing *see, e.g., Pacific Northwest Bell Tel. Co. v. Katz*, 116 Or App 302, 309-10, 841 P2d 984 (1992) (an agency’s authority cannot go beyond the authority expressly conferred upon it by the legislature), citing *Sabin*, 21 Or App at 213.

²¹ OPUC Order No. 08-487 at 4, *see, e.g., Hammond Lumber Co. v. Public Serv. Comm’n*, 96 Or 595, 604, 189 P 639

²² OPUC Order No. 08-487 at 5, *see Multnomah County v. Davis*, 35 Or App 521, 525, 581 P2d 968 (1978).

²³ OPUC Order No. 08-487 at 5, *see, e.g., Pacific Northwest Bell Tel. Co. v. Eachus*, 165 Or App 41, 56, 898 P2d 774 (1995), citing *Sabin*, 21 Or App at 224 (Commission is “not obligated to use any single formula or combination of formulas to determine what are, in each case, just and reasonable rates.”).

²⁴ OPUC Order No. 08-487 at 5.

public health and safety.”²⁵ The legislature also declare that “widespread transportation electrification requires that electric companies increase access to the use of electricity as a fuel[.]” and that the companies do so in low and moderate income communities.²⁶ Additionally, the legislature contemplated several goals that widespread transportation electrification *should* achieve. Among these are stimulating innovation and competition, increased customer options in the use of charging equipment, assisting in managing the electrical grid, integrating renewable resources, and improving electric system efficiency and operational flexibility.²⁷ No party to this docket contests that the Commission was clearly given a role to play in transportation electrification by the legislature. However, disputes remain surrounding the level of discretion given to the Commission, and the criteria that the Commission may or may not apply in deciding to approve or deny a given utility’s transportation electrification program application. PGE and CUB believe that the Commission has the discretion and authority to approve the stipulation reached by the Stipulating Parties in this docket.

C. The Language in the Statute Provides Direction for the Commission in Approving Utility Program Applications, but Left the Commission Discretion

Aside from the goals contemplated by the legislature in achieving widespread transportation electrification, the legislature also gave the Commission direction when examining the transportation electrification program applications put forth by the electric utilities. In this instance, the Commission was delegated authority and directed by the legislature to “direct each electric company to file applications, *in a form and manner prescribed by the commission*, for programs to accelerate transportation electrification.”²⁸ Enabling the Commission to prescribe the form and manner of utility transportation electrification gave it significant discretion to work with a broad range of stakeholders in a rulemaking proceeding to determine the integral components of a transportation electrification program

²⁵ SB 1547 § 20(2)(a) (emphasis added).

²⁶ SB 1547 § 20(2)(b)-(c).

²⁷ SB 1547 § 20(2)(d)-(e).

²⁸ SB 1547 § 20(3) (emphasis added).

application. In that proceeding, AR 599, the Commission sought to implement section 20 of SB 1547 after being directed by the legislature to do so.²⁹ Numerous parties participated in workshops and filed comments in that docket, including ChargePoint.

The Commission finalized the rules associated with electric utility program applications on November 23, 2016.³⁰ One of the final transportation electrification program requirements promulgated by the Commission requires the utility to include a “[d]escription of the electric company’s role and, if applicable, a discussion of how the electric company *proposes to own* or support charging infrastructure.”³¹ Despite misguided claims by ChargePoint and EVCA that allowing utility ownership of the charging stations in PGE’s Electric Avenue pilot runs counter to the legislature’s intent in SB 1547, the legislature clearly delegated the authority to decide how to administer transportation electrification applications to the Commission. In the rules promulgated by AR 599, the Commission decided, under its discretionary power, that utility ownership of charging infrastructure is a distinct and feasible possibility. Further, the vast majority of parties to this docket believe that PGE’s transportation electrification program application is reasonable and furthers the goals of SB 1547.

Given the broad authority of the Commission to determine what to include in rates, the discretion given to the Commission by the legislature to prescribe the form and manner of utility program applications, and the plain meaning of SB 1547’s language that the Commission “shall consider” the six factors in SB 1547 § 20(4)(a)-(f), the Commission is well within its discretion to approve the stipulation reached by parties in this docket.

²⁹ *In the Matter of Rulemaking to Prescribe Application Requirements for Transportation Electrification Programs*, OPUC Docket No. AR 599, Order No 16-447 (Nov. 23, 2016).

³⁰ See OPUC Order No. 16-447.

³¹ OAR 860-087-0030(1)(a)(G) (emphasis added).

IV. THESE PILOT PROGRAMS ARE CONSISTENT WITH THE LETTER AND THE SPIRIT OF SB 1547

A. The Pilot Programs, as Outlined in the Stipulation, Are Consistent with SB 1547.

When the Commission considers PGE's pilot programs, PGE believes that it will see that (a) they are within PGE's service territory; (b) they are prudent as submitted in the Stipulation; and (c) they are reasonably expected to meet the "used and useful" standard. In addition, the learnings that the Stipulating Parties have drafted and will finalize should lead to the sort of information that is reasonably expected to enable PGE to support its electrical system and to help it improve its electrical system efficiency and operational flexibility, including the integration of variable generating resources. Finally, the Commission should find that these programs, in the form of pilots, are reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services.

ChargePoint has challenged whether the Electric Avenue Charging Station Pilot in particular is "reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services."³² As PGE and CUB stated in their respective Reply Testimony in this docket, ChargePoint's use of the term "customer" is too narrow and does not fit with either PGE's use of the term in these pilot programs taken together, nor the expectations or direction of the Stipulating Parties in supporting the Stipulation as a whole.³³ The pilot programs enable competition, innovation, and choice for a wide range of potential "customers," which include EV drivers, drivers who have not yet chosen to drive an EV, site-hosts, fleet managers, transit agencies, municipalities, homebuilders, TNCs, underserved communities, and businesses interested in offering workplace charging opportunities.

³² ChargePoint Objection to Stipulation and Request for Hearing p. 2, filed 7/12/2017

³³ PGE 200, p. 7, lines 3-14. See also CUB Reply Testimony, p. 4, lines 9-29 and p. 5, lines 1-3.

Also, in the Joint Testimony supporting the Stipulation, the Parties³⁴ have explained how the Electric Avenue Charging Station pilot will stimulate competition and innovation in electric vehicle charging and related infrastructure and services by increasing electric vehicle adoption, creating a platform for innovation, creating a competitive RFP process for charging infrastructure and network service providers, and demonstrating a model of co-located chargers that can be replicated both inside and outside PGE's service territory.³⁵ ChargePoint's exaggerated statements alleging that approving this pilot program will lead to PGE crowding out other market participants³⁶, or dominating and controlling the market³⁷, are simply not supported by the testimony of other market participants themselves and are unlikely to happen when viewing the actual four corners of the Electric Avenue Charging Network Pilot that is before the Commission for approval as part of the Stipulation.

B. While the Legislature Listed Several Criteria that the Commission Is to Consider in Evaluating the Electric Company Programs for Cost Recovery, It Did Not Limit the Commission to a Requirement that Every One of these Criteria Be Met by Every Program That An Electric Company Proposes.

In the text of subsection 4 of the law, the Legislature listed 6 criteria that the Commission “shall consider” when evaluating transformation electrification programs and determining cost recovery for the investments and expenditures related to the programs. The words “shall consider” should be given their plain meaning. In ordinary usage, the word “consider” means “to think carefully about (something)” or “to take into account; bear in mind.” The American Heritage Dictionary of the English Language, (5th Ed., 2016). The Legislature did not say “shall only consider” or “shall apply the following list of criteria” or focus on any one of these criteria over the others. In accordance with ORS 174.010, the Commission

³⁴ ICNU did not participate in this portion of the Joint Testimony.

³⁵ Joint Testimony in Support of Stipulation, pp. 10-12. See also Reply Testimony of Forth, pp 4-5; .

³⁶ Testimony Opposing Stipulation of David Packard p. 19, line 4.

³⁷ Testimony Opposing Stipulation of David Packard p. 12, line 18; p. 18, line 16.

may not read into the statute words that the Legislature did not choose to insert.³⁸ Therefore, despite Chargepoint's attempt to assert to the contrary, the Commission is not required by the statute to make sure that all of the pilot programs that the Stipulation be approved meet all six of the criteria in subsection 4(a) – (f) of the statute.

The Commission itself has acknowledged that this evaluation of Legislative intent is appropriate. For example, in Order No. 16-447, the Commission concluded that “the legislature intended for transportation electrification to be accelerated in low- and moderate income communities but not necessarily be a requirement of each and every program.”³⁹ In the same vein, when promulgating the rules in Division 87, rather than expecting to decide up front if a program proposed by the utility will stimulate innovation, competition and customer choice, the Commission decided simply to require an electric company to provide an evaluation of "whether and how" the program has met these objectives for the Commission's consideration.⁴⁰

V. ADDITIONAL MATTERS

A. At The Hearing, the Judge Requested Parties To Address Participation by EVCA In Certain Points Of Discussion As Described In The Stipulation

Input into the specific learnings as described in Section 4 of the Stipulation and the development of a cost recovery method in Section 6 are both limited by their terms to the Stipulating Parties. As stated in oral testimony by Jason Salmi Klotz, witness for Staff, who participated in the meeting and discussions that led to the Stipulation, the learnings are understood by the Stipulating Parties as having been developed by them as part of the compromise that the Parties reached as a group. EVCA could have

³⁸ ORS 174.010 states, in pertinent part "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted ..." (Emphasis added.)

³⁹ AR 599, Order

⁴⁰ OAR 860-087-0040(1)(h).

intervened sooner in this docket, participated in the discussions and signed on to the Stipulation, but it did not choose to do so.

The language in Section 17 of the Stipulation addresses a commitment made by PGE not to undertake any future action that commits ratepayer funding to a mass transit electrification project. It does not establish a process that applies to approval for the TriMet Electric Mass Transit Pilot Program in front of the Commission in this docket. The language requires PGE to discuss any future proposal for a mass transit electrification project with Staff and the Stipulating Parties in advance of making any commitments, but that does not preclude PGE from having such discussions with other parties that express an interest, whether during the pendency of this docket or otherwise⁴¹. Moreover, the language in this Section 17 specifies that PGE must file any such proposal with the Commission for review. The Commission is free to invite EVCA, as well as other interested parties, to give input during the review process.

Finally, with regards to the reference in Section 29 of the Stipulation to review of tariff charges for public charging, the language specifically contemplates the Stipulating Parties participation in the review process, but the language is permissive (i.e. “may” is used instead of “shall”). Should PGE decide to file for changes in its tariff, the Commission must allow these changes to go into effect. ORS 757.210(1)(a) describes the process available to the Commission that would provide an opportunity for interested parties, such as EVCA and ChargePoint, to give input and participate in the Commission’s review of the tariff filing.

While some portions of the Stipulation are specific to the involvement of the Stipulating Parties, access to the information developed by these pilot programs will generally be available to interested parties, including ChargePoint and EVCA, during the course of the pilots.⁴² In addition, if the Stipulation

⁴¹ See, also, Hearing Transcript at page 43, lines 4-18 (October 10, 2017).

⁴² See Hearing Transcript at page 42, lines 18-20 (October 10, 2017).

is approved, any interested party will be able to participate in the public process that the Commission uses to decide on whether expenditures made under these pilot programs are prudent, subject to the caps on allowable costs contained in the Stipulation.

We also point out that Sections 30 and 31 of the Stipulation describe future filings by PGE that interested parties such as EVCA and ChargePoint may choose to get involved in early in order to provide input in a constructive and timely manner.

B. At The Hearing, EVCA Raised Questions About The Stipulating Parties' Intent Regarding Whether The Stipulation Sets A Precedent For Future Transportation Electrification Programs.

The Stipulation is very clear in its language regarding whether it is intended to set any precedent for future filings PGE may make for transportation electrification programs. With regard to all three of the pilot programs that the Stipulating Parties are recommending that the Commission approve, Section 34 forbids the use of evidence of conduct or statements made or created in the course of reaching the Stipulation without permission of all of the Stipulating Parties because they are “confidential and not admissible in the instant proceeding **or any subsequent proceeding.**” [Emphasis supplied.] Finally, Section 36 states the following: “Except as provided in this Stipulation, no Stipulating Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.” We think that the intent of the Stipulating Parties on this issue is plain.

VI. CONCLUSION

The Legislature expressed the clear intent in SB 1547 that transportation electrification should be accelerated in Oregon in order to achieve a variety of state goals related to carbon reduction, and that electric companies like PGE and the Commission have an important role to play in achieving that result. While we do not have much historical experience in Oregon that can inform what are the best and most effective ways to do this, it is reasonable to expect that the pilot programs described in the Stipulation will help us gather learnings that will provide useful information, help electric companies, stakeholders, the

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Commission and customers make better informed decisions in the future, and allow Oregon to make meaningful progress in increasing transportation electrification. The pilot programs allow us to do this for a modest cost, over a defined period of time, and with specific limits on cost exposure to customers. Importantly, allowing for short-term pilots that provide for concrete takeaways will give the parties sound knowledge on how to shape future pilots to further the goal of accelerating transportation electrification in the state. It is even more important in an industry as nascent as transportation electrification that shorter-term, cost-limited, and time-limited investments be made in a pilot program before larger investments are made.

PGE's program application furthers the goals of SB 1547, and for the reasons described herein, the Stipulating Parties, including PGE, Commission Staff, Oregon Citizens' Utility Board, Industrial Consumers of Northwest Utilities, Oregon Department of Energy, Tesla, Forth, TriMet, and Greenlots request that the Commission approve the Stipulation reached by the Parties and filed in this docket.

DATED this 31st day of October 2017.

Respectfully submitted,



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