ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 9, 2018

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: October 1, 2018

TO: Public Utility Commission

FROM: Rose Anderson

THROUGH: Jason Eisdorfer and JP Batmale

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1826) Revised principles and process for utility use of revenue from Clean Fuels Program.

STAFF RECOMMENDATION:

The Commission should approve the Program Design Principles (Principles) and Program Selection Process (Process) for the use of revenues from utility participation in the Oregon Department of Environmental Quality's (DEQ) Clean Fuels Program (CFP).

DISCUSSION:

Issue

Whether the Commission should approve the Program Design Principles and Program Selection Process intended to guide utilities in their utilization of CFP revenues.

Applicable Rule or Law

Department of Environmental Quality's Clean Fuels Program
In 2009, House Bill 2186 was passed by the Oregon Legislature, requiring the Oregon Environmental Quality Commission (DEQ's policy and rulemaking board) to adopt rules to reduce the average carbon intensity of transportation fuels used in the state by 10 percent over a 10-year period. This program became known as the Oregon Clean Fuels Program (CFP). Later in 2015, the Oregon Legislature passed SB 324, amending provisions of HB 2186 and extending implementation of the DEQ's GHG reduction program out to 2025. HB 2186 and SB 324 as implemented in DEQ rule (collectively the CFP) aim to reduce the carbon intensity of Oregon's transportation fuel mix through

a system of credits and deficits. The CFP rules are found in OAR Chapter 340 Division 253, and compliance is administered by DEQ.

OAR 340-253-0330 contains provisions addressing the use of electricity as a transportation fuel. Specifically, OAR 340-253-0330(2)(a) provides that an electric utility that registers prior to October 1, will be eligible to generate credits from all residentially charged EVs in its service territory. This rule expressly provides that an "Electric Utility" is the first-choice generator of residential charging credits.

Public Utility Commission Investigation into Utility Participation in CFP
At the April 18, 2017 regular public meeting, pursuant to the Commission's broad investigatory authority under ORS 756.515(1), the Commission opened a Staff-led investigation into electric company participation in Oregon DEQ's Clean Fuels Program, including how participation would be structured and how revenues from participation might be allocated consistent with the public interest. In its order, the Commission directed Staff to address whether electric company participation in the Clean Fuels Program is in the "public interest."[1]

At the July 11, 2017 regular public meeting, the Commission found that electric company participation in the CFP as a credit generator is in the public interest.[2] PacifiCorp and Portland General Electric (PGE) registered with the DEQ prior to the October 1, 2017 deadline in order to be eligible to generate and aggregate CFP credits in the coming 2018 year.

<u>Analysis</u>

Background
Phase I of the Investigation
Phase I of the investigation into utility participation in DEQ's Clean Fuels Program was completed with Order No. 17-250, when the Commission found that utility participation in the CFP is in the public interest. The Commission directed that the investigation process continue, allowing Staff to address the electric company's "role" in the CFP in Phase II of the investigation, in addition to the four questions originally designated for Phase II.

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[1] Order No. 17-152 at 1 (April 20, 2017).
[2] Order No. 17-250 at 1 (July 12, 2017).

Phase II of the Investigation
The following five questions were to be resolved in "Phase II" of the investigation:

1. What is the electric utility role under the Clean Fuels Program and the Commission's role?
2. What is the highest and best public interest use of credit value received from participation in the CFP by utilities?
3. What are appropriate programmatic and administrative structures for utility participation in the CFP?
4. What guidance would be helpful to the utilities as they participate in the nascent CFP credit market?
5. What is the appropriate forum for resolving these and future issues associated with utility implementation?

To provide guidance for utilities on participation in the CFP credit market (question four), Staff utilized stakeholder input to develop credit monetization principles for utility participation in the CFP. Nine recommended principles for credit monetization were adopted by the Commission in Order No. 17-512.

To help address questions one, two, and three, Staff held two stakeholder workshops on April 23 and June 29 of 2018. Staff listened to stakeholders' views on the principles that could guide utilities in spending CFP credit revenue and the procedural process that could be followed to identify new programs in a transparent and collaborative way. The stakeholders that participated in the workshops or provided written informal comments include Portland General Electric, PacifiCorp, Idaho Power, Department of Environmental Quality, Union of Concerned Scientists, NW Energy Coalition, Department of Energy, Oregon Citizens' Utility Board, Northwest Energy Coalition, Forth, Oregon Environmental Council, Natural Resources Defense Council, and Tesla.

The following draft principles were suggested at the June 29 stakeholder workshop for utilities seeking to use CFP credit revenues.

1. Increase transportation electrification in Oregon.
2. Provide benefits to EV owners.
3. Provide incremental benefits over existing SB 1547 Commission-approved transportation electrification programs.
4. Maximize benefits for traditionally underserved communities.
5. Coordinate with other state programs, taking into consideration the broader picture of EV programs in Oregon.

Staff added refinements to the draft principles where necessary to help balance the interests expressed by stakeholders with the interests of public utility customers.[3] Staff provided a revised draft of the principles and procedural process to stakeholders and received informal written feedback on the draft.

Staff filed a Staff Report (memo) on August 23, 2018 for the Regular Public Meeting on August 28, 2018. Staff's memo detailed the Principles and Process recommended based on the previous stakeholder workshops. In the memo, Staff tried to address all stakeholder feedback by either incorporating it into the proposed Program Design Principles and Program Selection Process, or explaining why it was not incorporated.

PGE and PacifiCorp filed comments on Staff's memo on August 27, 2018. At the Regular Public Meeting on August 28, 2018, a Commission decision was not reached on whether or not to adopt the proposed Principles and Process.

Since that meeting, Staff reached out to all stakeholders on the service list to see where consensus could be found. Based on additional feedback from the utilities and stakeholders received through email and at an additional, well-attended stakeholder workshop that was held in Portland on September 17, 2018[4], Staff has revised its recommendation on the Principles and Process. The updated Principles and Process found below reflect agreement reached by all of the parties that attended the September 17 stakeholder workshop. Further, the Principles and Process below were circulated to the UM 1826 service list and no comments were received from any stakeholders; PGE and PacifiCorp submitted minimal clarifying comments that have been addressed.

The resulting Principles have been designed by Staff, the utilities, and stakeholders to guide utilities in spending CFP credit revenues without being overly proscriptive. Staff's intention is to allow flexibility to fund a variety of programs that align with the Principles that were developed by the utilities, stakeholders, and Staff.

The Principles should serve as an important guide for program design and development. However, the Principles are not intended to hold utilities or third parties responsible for affirmatively achieving the intended goals of the program. In other words, if a program is designed according to the Principles, but does not achieve the intended results, then the program results should inform the collaborative program development process in future years.

[3] See ORS 756.040. The Commission is directed to represent the interests of public utility customers and the public generally, and to obtain for them adequate service at fair and reasonable rates.
[4] Attendees included: Staff, PGE, PacifiCorp, Idaho Power, CUB, NWEC, Greenlots, Tesla, DEQ, and Union of Concerned Scientists; Forth and OEC declined to attend but sent feedback by email.

Taking into consideration the valuable feedback from stakeholders and utilities, Staff recommends the following Program Design Principles and Program Selection Process that are designed to allow for a wide range of programs while encouraging stakeholder collaboration and consensus.

PROGRAM DESIGN PRINCIPLES FOR THE USE OF CFP CREDIT REVENUES

1. **Support the goal of electrifying Oregon's transportation sectors.**
    - Programs should be designed to: increase access to or use of electric vehicles (EV) and electric vehicle charging in Oregon; increase data collection for use in designing efficient EV integration (load management) into the utility's system; or increase the value of electric transportation for utility customers.
    - Programs should seek to consider, leverage, and coordinate with other electric vehicle programs in Oregon to maximize the effectiveness of the CFP credit revenues.
    - Programs should seek to use learnings from programs in other states to inform program design and selection.
    - Where barriers to transportation electrification exist, programs may be designed to study and move past those barriers.[5]

2. **Provide majority of benefits to residential customers.**
    - Programs should be expected to create a benefit for residential customers in Oregon.
    - While benefits may flow to residential electric customers as a class, programs that provide a more direct benefit to residential EV users may be considered as well.
    - This principle does not preclude incidental benefits from flowing to third-party entities[6] whose involvement in a program results in benefits to residential customers as the end user.
    - With regard to incidental benefits, the utility should give first consideration to programs where any incidental benefits accrue to public agencies, low-income groups, or underserved communities.

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[5] For example, EV grid impacts may limit the number of electric vehicles that can charge in a given location.

[6] One example is that incidental benefits may flow to an entity such as Tri Met if it was participating with the utility in a bus electrification project.

3. **Provide benefits to traditionally underserved communities.**[7]
    - Utilities should strive to use available data, and data collected from CFP programs, to identify potential benefits that could flow to communities traditionally underserved by access to electric vehicles and electric vehicle charging infrastructure.
    - Utilities and stakeholders should endeavor to engage traditionally underserved communities in program development. [8]

4. **Programs are designed to be independent from ratepayer support.**
    - Programs should be designed and selected so that revenues from the sale of CFP credits are sufficient to pay for all CFP costs (program, administrative and any other CFP-related costs). However, if the utility so desires, it may also include CFP credit revenues reasonably expected to be available during the program year(s).
    - Utilities may carry forward excess CFP revenues from a prior program year to pay for program and administrative costs in later years. Likewise, utilities may use future CFP revenues to pay for cost overruns from a prior year.
    - In the instance that CFP program costs exceed the revenues from the sale of CFP credits, the utility will first seek to borrow against expected future CFP revenues. However, if a cost overrun cannot be recovered from future CFP revenues, the utility is not precluded from arguing for rate recovery of such cost overruns. The Commission may deny any or all CFP costs from customer rates. The utilities are aware that Staff does not support the ability to collect CFP costs or overruns in customer rates.[9]
    - Program proposals should be designed for efficiency and efficacy but, because they are not designed to involve ratepayer funds, will not be held to traditional cost effectiveness rules or a prudence review process.

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[7] Communities traditionally underserved by access to electric vehicles include but are not limited to multi-family housing, low-income communities, and areas with a low density of public charging stations.
[8] The party that hosts the program workshops, either Staff or the utility, will notify low-income groups by email of the opportunity to participate in program workshops. Low-income groups for purposes of this docket are defined as groups that advocate for or assist households that are 1) already receiving benefits from the state from low-income programs, 2) at or below 200 percent of the federal poverty level, or 3) at or below 50 percent of area median income, whichever definition is broader.
[9] Staff has articulated throughout the UM 1826 stakeholder process that CFP program costs are not includable in rates based on the structure of the CFP and because they are not ORS 757.357 approved programs, however, the utilities would like the opportunity to make an argument at a later date should a cost overrun situation arise.

- Utility employee time spent implementing the CFP program and any associated administrative costs will be reimbursed through the funds from CFP credits, and should be tracked[10] for transparency of administrative costs. To be clear, the CFP revenues should be used for any costs that are not already included in customer rates or that are incremental to the authorized revenue requirement for utility employee time.[11]

5. **Programs are developed collaboratively and transparently.**
    - Utilities, stakeholders, and Staff must work toward the goal of reaching consensus on desired programs through stakeholder workshops, with meaningful and accessible participation.
    - Should consensus on a final program proposal not be achievable, the utility has the discretion to propose the final program of its choice, as long as it is consistent with the Program Principles.

6. **Maximize use of funds for implementation of programs.**
    - Funds should be predominantly used for programmatic efforts and reduce to the greatest extent possible administrative costs.
    - Utilities will report annually to the Commission, notifying the UM 1826 service list or applicable CFP docket, on the use of CFP revenues, including how funds were utilized, efficacy of the program, and the percentage of revenues spent each year that goes toward administration costs. If the utility contracts with a third-party to administer a program, the third-party responsible for spending the CFP credit revenues should report this same information to the utility.[12]

Principle Design

The Program Design Principles are intended to allow programs to adapt to changing markets and conditions over time, and to allow for the maximum range of effective programs. Although different programs will align with each principle to varying degrees, any program that utilizes CFP revenues should be designed to align with the principles.

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[10] The utility must track these costs so that they are reviewable in other contexts, such as a rate case proceeding, to confirm that utility CFP time is not paid from both CFP funds and from customer rates.

[11] This principle is intended to ensure that only the costs not already in rates are paid with CFP funds. This approach was agreed to by the stakeholders at the August 17 workshop.

[12] Should the third-party fail to provide the information to the utility listed in this principle, the utility will report this fact and provide the information to which is has access.

CFP programs should be designed and managed up to existing funds in the CFP annual budget and, if the utility desires, forecasted monetized credits.[13] Based on substantial workshop discussions, stakeholders propose that the utility not be precluded from arguing to include CFP cost overruns in customer rates. However, stakeholders also agree that the Commission has the authority to exclude any CFP costs from customer rates.

The Principles direct the majority of benefits to residential customers, but do not restrict incidental or additional benefits from flowing to other customer classes or third-parties. This allows the consideration of benefits like increased air quality, more access to information, or additional transportation options that might accrue to residential customers other than just current EV drivers. Although benefits do not need to go exclusively to residential customers, they should predominantly accrue to residential customers.

In Staff's memo dated July 5, 2017, Staff pointed out that "It is feasible that based on the feedback produced through this investigation, initial utility programing may rely entirely or in part upon third party aggregators." Principles have been designed to allow for both utility administered programs and stakeholder or third-party administered programs. Therefore, a utility may propose that the CFP credits or CFP credit revenues go to another party for a program which follows the Principles outlined in this memo.

Program Finance and Funding
At this time, administrative costs for CFP programs should be targeted at or below 10 percent of total program costs in a program year. However, it is reasonable that administrative costs may vary based on the program and the community being served. Programs should be designed and selected so that revenues from the sale of CFP credits are sufficient to pay for all CFP costs (program, administrative and any other CFP-related costs). If a multi-year program is selected, forecasted CFP credit revenues may be used in budget projections and the utility does not have to resubmit a program proposal annually. However, a multi-year program should run for no longer than three years, without a reapplication process.

CFP Credit Revenue Program Selection Process
Staff proposes the following Program Selection Process for the use of CFP credit revenues. The Process is designed to be a collaborative effort between the utilities and stakeholders. The program is designed is to start with utility proposal(s) for specific program(s) to expend the annual CFP revenues. Utilities will propose a program or

[13] The utility may include reasonably anticipated revenues in its program design, but does so at its own risk.

programs run by the utility or another party[14] and present their proposal at one of two stakeholder workshops. At the second stakeholder workshop, stakeholders will share feedback on the proposals or suggestions for alternative programs.

Stakeholders and utilities are expected to collaborate to clarify or modify a proposal in such a way as to align all perspectives to the extent possible with the goal of presenting the selection of a program or programs to the Commission. If consensus cannot be achieved in advance, the utility has discretion to select the final program to implement that aligns with the Program Principles.

Staff will serve as a facilitator throughout this process. The final program will be brought for discussion at a regular public meeting, for informational purposes. The Staff Report will provide an overview of the stakeholder process, the elements of the utility's program or programs, whether the programs is aligned with the Program Principles, and summarize stakeholder positions on the final project or projects. Staff will present its Report to the Commission and the utilities will be available for questions. At this time, because Staff's Report will be informational only, the Commission need not take any action on the filing.

PROGRAM SELECTION PROCESS

In response to stakeholder requests to promptly allow utilities to begin using CFP credit revenues, but weighing the utilities' concerns about the currently limited availability of CFP funds, there may be an expedited schedule in the first program year.

First Program Year:
No later than March 31, 2019: Utilities file a proposal for the first program year that utilizes funds according to the Principles. Should circumstances arise where development of the first-year program is not possible due to the timing of CFP credit monetization, in the filing, the utilities will provide: the number of CFP credits the utility possesses at the time of filing; the amount of monetized CFP credit revenue currently available for program implementation; and a suggestion of what type of program could be achieved using that level of monetized funding. The utility should also explain why it is not appropriate to offer a program by March 31 due to the level of funds available.

[14] The credit revenue will likely be more effective if utilized by a party that has designed or is already familiar with the proposed program(s).

Process After the First Program Year[15]
September 2019: Utilities provide any program design and expenditure plans to everyone on the UM 1826 service list for the upcoming program year by the second Friday in September.

September 2019: At least one week after the program design and expenditure plans are provided, either the utility or Commission Staff will notify the service list and host a stakeholder workshop at which the utility will present its program(s) proposals to stakeholders. After the utility presentation, the second half of the workshop will be reserved for stakeholder feedback to the utility on its program(s), and for stakeholders to offer alternative programs for utility consideration.

October 2019: Either the utility or Commission Staff will notify the service list and host a second workshop for the utilities to present their final revisions to their CFP offerings. The workshop's purpose will be for the utilities to discuss their proposed program(s) design and expenditures and receive any final feedback from stakeholders. The workshop's goal is to achieve some level of consensus on the final CFP program(s) to implement for the coming year.

Following the second workshop, the utility will file its final program(s), following the Proposal Guidelines, in the docket in November. If there is not a consensus, the utility has discretion to select the final program, following the Proposal Guidelines, and file it in the docket.

December 2019: Staff prepares a public meeting memo summarizing the collaborative process, describing the final program and proposed expenditures, applying the Program Principles, and relaying stakeholder and staff positions on the program. This informational Staff Report will be presented by Staff, with the utilities available for questions, at a regular public meeting in December.

The Program Selection Process repeats each year.[16] The Process may be amended in future years based on experience or changing availability of CFP revenues.

Proposal Guidelines
Provided below are general outlines for program proposals. Staff may work with utilities and stakeholders to establish more detailed proposal outlines if such a process appears necessary after the first year.

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[15] This is Staff's proposed schedule, but the amount of time available for the August through October process may be extended as necessary.

Any proposal by a utility:

- Should include a full description of the program(s), including the overall budget, how the money will be used, how the money will be administered, the likely recipients, and the overall goals and objectives of the program(s).
- Should include projections of expenses throughout the entire program duration, including administrative expenses.
- Should include an explanation of how any program(s) aligns with the Principles.
- Should describe how the party intends to report on the efficacy of the program(s).
- Describe stakeholder outreach and participation, including who attended based on sign-in sheets.
- If there is not a consensus, the utility filing should include an explanation of why the utility pursued its chosen program(s).

Any proposal for a third-party-run program:

- Should also include a description of any arrangements between the utility and a third-party, an explanation of how money will get to the third-party, the schedule of payments, and other information necessary for transparency of accounting.
- Utility provide background on third-party purpose and why selected.

Clean Fuels Program Funds as a Testbed
The Clean Fuels Program may serve as a testbed for viable EV programs, and as a result, successful programs could be pursued on a larger scale by utilities through a future transportation electrification application under SB 1547.

Reporting
The forthcoming Transportation Electrification Plan rulemaking may propose connections to the utility CFP electric vehicle programs, namely with regard to reporting on CFP EV programs.

Idaho Power's Participation in CFP
In Order No. 17-250, the Commission directed Staff to work with Idaho Power Company (IPC) to determine the appropriate extent of participation in programs under CFP. Staff participated in a phone conversation with Idaho Power and determined that, at this particular point in time, IPC does not have sufficient electric vehicles in its Oregon service territory to warrant the expense of administering a program using CFP revenues. Idaho Power will continue to monitor its rates of EV penetration, and the Commission may consider Idaho Power participation to be reasonable at a later time.

Conclusion

The Commission should approve the proposed Program Design Principles for the use of CFP Credit Revenues and the proposed Program Selection Process.

PROPOSED COMMISSION MOTION:

Approve the proposed Principles for the use of CFP Credit Revenues and the CFP Program Process.