ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 5, 2017

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** **Commission Approval**

DATE: November 3, 2017

TO: Public Utility Commission

FROM: Jason R. Salmi Klotz and Nolan Moser

THROUGH: Jason Eisdorfer and JP Batmale

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1826) Staff Investigation into Electric Utility Participation in Clean Fuels Program.

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the Credit Monetization Principles proposed in this memo for the purpose of providing guidance to electric companies on participation in the Oregon Department of Environmental Quality's (DEQ) Clean Fuels Program, specifically with regard to CFP credit monetization and market participation.

DISCUSSION:

Issue

What credit monetization principles should the Commission establish to provide high-level guidance for electric companies as they begin to participate in the Clean Fuels Program as residential credit generators?

Applicable Rule or Law

At the April 18, 2017 regular public meeting, the Commission opened a Staff-led investigation into electric company participation in Oregon DEQ's Clean Fuels Program pursuant to its broad investigatory authority under ORS 756.515(1). In its order, the Commission directed Staff to first address whether electric company participation in the Clean Fuels Program is in the "public interest."[1] As a result, Staff hosted a well-attended workshop with stakeholders and requested written comments on the public

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

interest question. Staff prepared a public meeting memo addressing the public interest question.

At the July 11, 2017 regular public meeting, the Commission found that electric company participation in the Clean Fuels Program (CFP) as a credit generator is in the public interest.[2] Further, the Commission directed PacifiCorp and Portland General Electric (PGE) to register 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. Lastly, the Commission directed that the investigation process continue as outlined by Staff in its April 13, 2017 Staff Report, with a slight modification allowing Staff to address the electric company's "role" in the CFP in Phase II of the investigation.

Therefore, the following five questions were to be resolved in the "Phase II" process:

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?

Since July 11, 2017, Staff has hosted two stakeholder workshops, primarily on Question #4. As the workshops progressed, Staff and stakeholders decided to break apart the questions into discrete parts for Commission decision. Therefore, the only issue to be decided by the Commission at this time is what Credit Monetization Principles should be adopted (Question #4). The remaining questions and issues will continue to be investigated.

<u>Analysis</u>

Background on DEQ'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, 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 CFP's 10 percent reduction out to 2025. The CFP

[2] Order 17-250 at 1 (July 12, 2017).

rules are found in OAR Chapter 340 Division 253, and compliance is administered by DEQ. 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.[3]

Under DEQ rules, "Regulated Parties" (all persons that produce in Oregon, or import into Oregon, any regulated fuel) can comply in two ways. The first option is to generate credits through the purchase or import of fuels with lower carbon intensity when compared to the clean fuel standards. The second option is to purchase the credits from "Credit Generators," or even regulated parties, to offset any deficits generated from higher carbon intensity fuel as compared to the clean fuel standards. Pursuant to DEQ rules, a Credit Generator is an entity that provides non-regulated, lower carbon intensity fuels, such as liquefied petroleum gas, natural gas, electricity, renewable natural gas, or hydrogen.

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.

Additionally, an electric utility may register as the entity to generate credits for any *non-residential* charging infrastructure (i.e., publically available charging stations, fleet charging, and workplace charging stations) that its owns, or even unregistered non-residential charging infrastructure under OAR 340-253-0330(3)(a) and (b) respectively.[4]

Regardless of whether the electric utility is acting as a generator of residential charging credits, or an owner and operator of public charging infrastructure that generates credits, the CFP credits that are generated can be sold by the utility to any other registered party, including a Regulated Party needing credits (credit deficit) to achieve its annual carbon intensity reduction consistent with the DEQ rules.

Currently DEQ has been working on a new CFP rulemaking. Just recently, on November 3, 2017, the EQC adopted new rules for the CFP. With respect to electricity as a fuel, the new rules: 1) create a Backstop Aggregator for unclaimed residential charging credits, applicable only if the electric utility declined to register as the generator (the utilities remain first-in-line to claim credits in the residential charging context);[5] 2)

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[3] HB 2017 (2017) also modified some aspects of the CFP.
[4] Please see OAR 340-253-0330(3) for the hierarchy of entities.
[5] Regarding CFP credits for residential charging, the new applicable rules begin at 340-253-0330, designating eligible generators as (a) Electric Utility (the utility *can* designate an aggregator to act on its

allows electric utilities that register for year 2018 to retroactively generate residential charging credits from 2016 and 2017; 3) adds multi-family housing to non-residential charging; 4) adds credits generated from public transit; and 5) changes the method to calculate the carbon intensity of electricity from a one-year value to a rolling 5-year average.

Finally, this past October, in compliance with Commission direction, PGE and PacifiCorp registered with the DEQ as CFP generators. Staff understands that DEQ then created accounts for each utility where residential charging-generated CFP Credits will be deposited. As a result of the new rules adopted by DEQ this November, DEQ will be depositing credits in utility accounts as follows: 2016 credits deposited in Q1 2018, 2017 credits deposited in Q2 2018, 2018 credits deposited in Q2 2019, and annually thereafter. This means that by Q1 of 2018, PGE's and PacifiCorp's DEQ CFP accounts may be holding a number of credits, posing a near-term opportunity to monetize the credits. Therefore, the stakeholder meetings have been more focused on what guidance the utilities need to feel prepared to operate in the CFP market, especially with regard to what strategy they should deploy in monetizing credit value.

Background on Staff-Led Investigation to Date
In its last order, the Commission directed PacifiCorp and PGE to register with the Oregon Department of Environmental Quality in order to generate and aggregate CFP credits.[6] The Commission also directed Staff to continue the investigation as outlined in the April 13, 2017 Staff Report, which included hosting workshops in an effort to develop guidance for the utilities regarding participation in the CFP credit market *and* objectives of CFP credit funded programs and subsequent program development. The workshops were well attended by stakeholders (in person or by phone) including PGE, PacifiCorp, Idaho Power, Oregon Department of Energy, Oregon Citizens' Utility Board, Tesla, NW Energy Coalition, Natural Resources Defense Council, and ChargePoint.

Since that order was issued, Staff hosted two workshops to identify the remaining work to be conducted in the investigation and narrow the immediate focus to credit monetization issues to address stakeholder concerns:

- ***Workshop One*** was held on August 29, 2017 at the PUC. A productive discussion was held and concluded with a request from Staff that stakeholders send staff informal comments in two areas: 1) Guiding principles on credit monetization and 2) Guiding principles on CFP program objectives. Staff

behalf if it wants) and (b) Backstop Aggregator that must be a nonprofit. The primary change here from the prior CFP rules is that Brokers and the Owner of the electric-charging equipment are no longer eligible to claim the credits produced from residential charging.
[6] Order No. 17-250 at 1 (July 12, 2017).

requested this work product from stakeholders in order to drill down on stakeholder perspectives, identify areas of consensus, and to ensure the progress made at the workshop was captured and distilled down into workable principles. Staff then proposed to compile the input received into one document for further discussion at the next workshop.

- ***Workshop Two*** was held on October 12, 2017 at ODOE. The discussion was productive and the stakeholders appeared to be reaching general consensus on credit monetization principles. It was agreed to at the end of the workshop that Staff would post this Staff Report in the docket by November 21, 2017 recommending Credit Monetization Principles based on the constructive input received from all stakeholders at the workshops and Staff's independent assessment. Rather than include all of the informal written comments sent to Staff, many of which were issued primarily for discussion launching purposes, Staff proposed filing this Staff Report well in advance of the public meeting in order to provide a window for stakeholder written comments specifically addressing the Credit Monetization Principles in this Staff's Report, rather than the panoply of issues discussed overtime at the workshops. Staff notified stakeholders through the UM 1892 service list that their written comments should be sent to the filing center to be posted in this docket no later than November 28, 2017 in preparation for the December 5, 2017 public meeting.

Staff has endeavored to capture and incorporate the ideas and concerns put forth by stakeholders to develop a concise set of helpful and appropriate Credit Monetization Principles. Staff understands that consensus was reached around the broader principles, such as the goal of market stability over long-term holding of credits for the purpose of gaining maximum value. However, if stakeholder comments in response to this Staff Report raise alternative views to specific principles, Staff plans to respond to those comments at the December 5, 2017 public meeting.

Question to Answer at the December 5 Public Meeting
Staff developed the principles below in response to the following question:

"What credit monetization principles should the Commission establish to provide high-level guidance for electric companies as they begin to participate in the CFP market as residential CFP credit generators pursuant to DEQ's Clean Fuels Program rules?"

At this time, Staff and stakeholders are recommending principles that govern electric company generation of CFP credits *from residential electric vehicle chargers only* (not for example, credits generated from electric company-owned charging infrastructure). Therefore, credits generated through other programmatic efforts such as SB 1547 Transportation Electrification Programs are not addressed here given that they can be viewed as different "buckets" of CFP credits, and the particular SB 1547 program activity already speaks to the specific use of the credit value. Staff feels it is important avoid conflating the two "buckets" of CFP credit generation: (a) the electric company as a "residential credit generator" and (b) the electric company as "owner and operator of non-residential, public charging infrastructure" that also generate CFP credits).

Recommended Principles
As discussed above, Staff worked with stakeholders and utilities over the course of two workshops to identify high-level guidance that would provide reassurance to the utilities, while also protecting ratepayers, as the utilities begin to engage in the CFP credit market and monetize credits deposited into their respective accounts by DEQ. Stakeholders, Staff, and the utilities focused their input on roughly two broad questions:

1. What should the electric company's overall monetization strategy be? Meaning, should the electric company monetize credits with the goal of maximizing the dollar value of each credit sale, thereby potentially holding credits for a long period of time, perhaps even years? Or, alternatively, should the electric company monetize credits with the goal of creating a steady stream of revenue to fund programs that can be used to accelerate transportation electrification?

2. Broadly, how should electric companies conduct themselves in the market? For example, should the electric company be concerned with market health? What is the electric company ultimately responsible for? How will the electric company's actions regarding credit sales be reviewed at the Commission?[7]

In developing the Credit Monetization Principles, PGE, PacifiCorp, and stakeholders emphasized that flexibility and discretion should be afforded to the utilities with regard to participation in, and evaluation of, the nascent CFP credit market, as well as the determination of when to monetize credits and at what price. One area where stakeholders did not reach alignment was whether Program Principles should be adopted before Credit Monetization Principles because the type of programs may inform the strategy for credit monetization. However, the majority of stakeholders agreed that developing monetization principles first made practical sense given that the utilities will be soon be issued credits from DEQ and be eligible to sell them, and frankly, Program Principles presents a more complex and challenging discussion. Further, although stakeholders and utilities did put forth ideas regarding program principles, objectives, and specific program actions, Staff explained that it would table these ideas for the next workshop that will likely be structured around designing Program Principles.

[7] These Credit Monetization Principles questions primarily address question three from Staff's prior Staff Report: "What guidance would be helpful to the utilities as they participate in the nascent CFP credit market?"

Staff therefore offers the following recommendations on Credit Monetization Principles for Commission approval or modification.

CREDIT MONITIZATION PRINCIPLES FOR ELECTRIC COMPANY PARTICIPATION IN THE CLEAN FUELS PROGRAM

1. **These Credit Monetization Principles apply only to monetization of *residential* charging CFP credits that the electric company has aggregated.**

    Explanation: Under current DEQ rules, the electric company is the first-in-line generator for all CFP credits generated from residential electric vehicle charging.[8] To be clear, the generation of residential CFP credits differs from those CFP credits generated from electric company ownership of public charging or workplace charging stations.[9] Therefore, the principles developed here only apply to residential charging credits.

2. **Credit monetization and electric company market participation strategies should focus on establishing revenue stream stability rather than absolute credit value maximization. Establishing revenue stream stability and timely realization of revenue is more important than maximizing credit price.**

    Explanation: CFP credits are expected to become more valuable as the CFP market matures and importantly, as the requirement to offset high carbon content fuels becomes more pressing. However, one of the reasons for the passage of Oregon's Low Carbon Fuel Standard/Clean Fuels Program was to stimulate the use of less carbon intensive transportation fuels like electricity. At the workshops, stakeholders reached consensus that the utilities' monetization of residential CFP credits should be used to accelerate adoption of electricity as a transportation fuel in *the near-term*. In other words, stakeholders agreed that holding CFP credits, potentially for several years, simply to maximize monetization value is not a good strategy to get programs off the ground quickly and could have negative effects on the market; instead, a steady revenue stream is a better focus at this time.

[8] OAR 340-253-0330(2)(a).
[9] Where a utility may propose ownership, partial or whole, of EVSE infrastructure through the SB 1547, Section 20 process, the utilization of CFP credits will likely be addressed by the Commission when approving the SB 1547, Section 20 program activity.

3. **An electric company's CFP credit market participation strategy should also generally align with the goals and timelines of any programs the credit revenue has been designated to support.**

   Explanation: An electric company's credit monetization strategy should support the goals and timeline of additional transportation electrification programs. The funds received from sale of the residential charging credits should be used fund such efforts (not default to ratepayer funding). However, this topic requires further development in subsequent stakeholder meetings, i.e., types of programs, process for program approval, additional sources of funding, etc.

4. **Electric company actions taken to monetize CFP credits in the nascent CFP market will be reviewed for reasonableness and should not be entirely based on the amount of revenue generated from the sale.**

   Explanation: The utilities expressed concern in administering the residential charging credit program based on how the Commission would review an electric company's decision on when to sell credits in a market that is new and still developing, and for what price. For example, the electric company must sell CFP credits to fund program activity (program activity has yet to be designed), but the timing of a sale may in retrospect not seem to have maximized credit value. Therefore, the Commission, when reviewing the utilities' credit monetization activities, should apply the typical reasonable person standard based on the information the electric company had, or should have had, at the time of the credit sale. Additionally, the Commission should view the electric company's decision to sell credits in light of the Credit Monetization Principles developed here (where maximization of credit value is not the ultimate goal for each sale), and also in relation to any program guidance developed in the next phase of this proceeding.[10]

5. **Electric Companies are not deemed responsible for the development, health, maturity, or liquidity of the CFP market, and should be held to a reasonableness standard from: 1) market irregularities; 2) potential disputes over eligibility for CFP credits; and 3) potential disputes with**

[10] Additionally, DEQ offers a monthly credit transaction activity report that can be found here: http://www.oregon.gov/deq/FilterDocs/cfp-creditrep.pdf. It includes average credit price transacted in the previous month. DEQ is required by HB 2017 to publish these activity reports.

credit purchasers over the validity of CFP credits.[11] However, electric companies are encouraged to support a healthy market.

- A healthy market means to encourage a stable market by making credits regularly available to entities in the CFP credit market on at least an annual basis.
- It is Staff's and the Commission's understanding that the DEQ will be performing market marketing monitoring, and thus DEQ is responsible (not the Commission or the electric company) for oversight and enforcement of market stability, market engagement policy, and market health.

  Explanation: Electric companies are not the only entities engaging in the CFP credit market, nor (given the amount of credits they will hold) do we expect an electric company to be able to assert market power. However, they are subject to the caprice of the market. DEQ, as the market monitor, is the entity responsible for monitoring market health. Additionally, it is DEQ, not the Commission that tracks all CFP credits and makes credit transfers into the electric company's individual account.

6. **Credit monetization strategy and processes should minimize the administrative costs of participating in the CFP credit market.**

   Explanation: This principle gives guidance requested by the electric companies to seek credit monetization strategies that minimize administrative costs, and also serves to protect ratepayers from unnecessary or burdensome administrative costs.

7. **Electric companies may use consultants or third-parties to assist with the administration of selling or transferring CFP credits. The cost of such consultants will be considered administrative costs.**

   Explanation: This principle allows the electric company to seek the assistance of market experts or brokers as part of the credit monetization strategy. This could also assist the electric company in reducing administrative costs as some brokers may work on proceeds from the sale of credits.

8. **Commission Staff will review administrative costs, including if an electric company uses a balancing account to track administrative costs for later recovery.**

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[11] Staff does not see 3) as a realistic issue given the structure and monitoring of the CFP credit market by DEQ.

Explanation: If the electric company uses a balancing account to track and seek recovery of administrative costs not offset by CFP credit revenue, the Commission has a review process to protect ratepayers and review for reasonableness the recorded administrative costs, and determine whether they are recoverable.[12]

9. **Electric companies are responsible for filing an annual report with the Commission that includes the current balance of credits in its account, the number of sales executed, the amount of revenue gained from each credit sale and number of credits sold, administrative costs, and a general plan that includes strategies to support program funding.**

Explanation: This principle is meant to increase the transparency of electric company activity and to allow the Commission greater insight into the activity of the electric company in the CFP market.[13]

Finally, Staff agrees with the electric companies that the Credit Monetization Principles proposed in this Staff Report will likely require updating or revision as the CFP credit market matures and electric company experience evolves.

Next Steps
This Staff Report on Credit Monetization Principles is a necessary first step to provide direction to the electric companies as they begin to sell CFP credits generated from residential electric vehicle charging for the purpose of creating funds to support additional transportation electrification. The next step is to take on a similar process as to what occurred here—Staff to host stakeholder workshops to develop consensus around a set of Principles for CFP Program Development and the use of CFP credit value. Staff anticipates returning to the Commission in the same fashion as done here with a proposed list of principles by mid-March 2018. This mid-March timeline should provide the electric companies with guidance shortly after DEQ's issuance of CFP credits. The timeline was presented to stakeholders at the last workshop and received support.

In sum, Staff will continue the UM 1826 investigation activities into 2018. The remaining questions from Order No. 17- 250 are: "What is the highest and best public interest use of credit value received by utilities from participation in the CFP"; "What are recommended programmatic and administrative structures for electric company participation in the CFP?"; "What is the electric utility role under the CFP and the

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[12] A deferral will likely be required if future recovery is sought.
[13] Appropriate confidentiality measures may be taken.

Commission's role?"; and "What is the appropriate forum for resolving these and future issues associated with electric company implementation of the CFP?" These questions will be discussed in depth at stakeholder workshops with the intention of resulting in a proposed list of Principles for CFP Program Development to be brought before the Commission.

PROPOSED COMMISSION MOTION:

Adopt the Credit Monetization Principles proposed by Staff based on substantial input and feedback from a range of stakeholders participating in Staff-led workshops for the purpose of providing general guidance to electric companies on CFP credit monetization strategy and market expectations prior to DEQ depositing CFP credits into electric company accounts.