

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1713**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into Large Customer Energy  
Efficiency Limitations.

Opening Comments

Introduction

Energy Trust of Oregon (Energy Trust or ETO) is charged with acquiring cost-effective energy efficiency for Portland General Electric Company (PGE) and PacifiCorp (PAC). Energy Trust forecasts that at some point in the next few years, it will be unable to acquire all cost-effective energy efficiency identified through PGE's Integrated Resource Planning (IRP) process. This is due to funding limitations for large energy users. There is simply more demand for energy efficiency projects for these customers than there are funds to provide program assistance.

Through testimony submitted in Docket No. UE 283, PGE's 2014 general rate case, several parties recognized the importance of acquiring all cost-effective energy efficiency and the need to address the issue identified by Energy Trust. Several parties to Docket No. UE 283 entered into a stipulation in that docket that asked the Commission to open an investigation into the limit on energy efficiency acquisition forecasted by Energy Trust, and specifically, to address six questions.<sup>1</sup> The Commission adopted the parties' stipulation, opening this docket to address the following stipulated questions:<sup>2</sup>

1. Are customers with loads greater than 1 aMW receiving a direct benefit from conservation measures funded by amounts collected pursuant to SB 838?

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<sup>1</sup> The parties to the stipulation are Staff, PGE, the Citizens' Utility Board of Oregon (CUB), the Industrial Customers of Northwest Utilities ("ICNU"), NW Energy Coalition (NVEC) and Fred Meyer and Quality Food Stores, Division of Kroger Company (Kroger).

<sup>2</sup> Order No. 14-422 at 14.

2. What is the meaning of "any direct benefit" as used in ORS 757.689(2)(b)?
3. Are there any barriers that prevent the ETO from obtaining all cost-effective energy efficiency?
4. If such barriers exist, what other options exist to gain all cost-effective energy efficiency, including from customers with loads greater than 1 aMW?
5. Should the ETO approach to funding energy efficiency be flexible to take advantage of energy efficiency savings brought about by changes in technology and the economy?
6. Should there continue to be a cap on energy efficiency funding provided by the ETO to PGE and PAC customers with loads greater than 1 aMW, and if so, what criteria should be used to set such a cap?<sup>3</sup>

With these opening comments, Staff chooses to focus mainly on the first two questions since the balance of the issues can only be addressed once the first two are settled. In addition, we address Question 3 along with two sub-questions to help clarify the importance of the root cause issue driving the need for this docket, and provide some recommendations in response to Question 4. The sub-questions for Question 3:

- 3a) What importance is placed on acquiring all cost-effective energy efficiency?
- 3b) Who is responsible for obtaining all cost-effective efficiency and who pays to do so?

Staff does not specifically address Questions 5-6. Staff prefers to wait until after the opportunity to meet with parties on May 6, 2015, before taking up these questions.

### Background

In July 1999, the Oregon Legislature adopted Senate Bill 1149 (SB 1149) introducing competition into Oregon's electricity markets.<sup>4</sup> Among other things, SB 1149 required PacifiCorp and PGE to collect a Public Purpose Charge (PPC) from customers equal to three percent of their retail electricity sales to fund public purposes, including cost-effective conservation. In 2002, the utilities began transferring a statutorily-required percentage of the funds acquired from the PPC to Energy Trust to acquire cost-effective energy conservation in their service territories.

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<sup>3</sup> Order No. 14-422, Appendix C at 2.

<sup>4</sup> SB 1149, which specifically addresses the public purpose charge, is codified in ORS 757.600, *et. seq.* See ORS 757.612 (public purpose charge).

In 2007, the Oregon legislature adopted Senate Bill 838 (SB 838) implementing a “Renewable Portfolio Standard.” SB 838 authorized PGE and PacifiCorp to acquire cost-effective conservation in addition to that acquired with PPC funds. However, SB 838 funding is limited to energy efficiency for customers with 1aMW energy usage or less. Because large energy users (those with annual electric usage greater than 1 aMW) are not contributing to the SB 838 fund, they are ineligible for efficiency program funding from SB 838. Language describing this efficiency funding mechanism and its limitations in SB 838 legislation reads as follows;

SECTION 46.

(1) In addition to the public purpose charge established by ORS 757.612, the Public Utility Commission may authorize an electric company to include in its rates the costs of funding or implementing cost-effective energy conservation measures implemented on or after the effective date of this 2007 Act. The costs may include amounts for weatherization programs that conserve energy.

(2) The commission shall ensure that a retail electricity consumer with a load greater than one average megawatt:

(a) Is not required to pay an amount that is more than three percent of the consumers’ total cost of electricity service for the public purpose charge under ORS 757.612 and any amounts included in rates under this section; and

(b) Does not receive any direct benefit from energy conservation measures if the costs of the measures are included in rates under this section.

As a way of assuring that large customers do not benefit from SB 838 funding collected from all other retail customers, Staff, Energy Trust, PGE, PacifiCorp, CUB, and ICNU entered into an informal agreement in 2008 to set a limit on the percentage of SB 1149 incentive funding available for customers with loads greater than 1 aMW relative to total SB 1149 collected funds.<sup>5</sup> The resulting methodology sets the baseline funding limit (otherwise known as the “funding cap”) as the sum of SB 1149 incentives allocated to large energy users in base years, 2004-2007 for PGE and 2005-2007 for PacifiCorp, divided by the sum of SB 1149 efficiency revenue to Energy Trust. The methodology was established to avoid reallocating more SB 1149 funds to greater than 1 aMW customers simply because smaller customers were paying more for energy efficiency through SB 838. This value is set as the funding cap, not to be exceeded cumulatively from 2008 forward.

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<sup>5</sup> See Opening Testimony from the Citizens’ Utility Board, CUB/100, Jenks-McGovern/ 27-28, Docket No. UE 283.

- The funding caps differ significantly by utility; it is 27 percent for PacifiCorp and 18.4 percent for PGE.
- The difference is representative of specific project activity that occurred during the baseline period; prior to 2008 and the existence of SB 838 funding.

The methodology agreed upon by all parties in 2008 as a reasonable interpretation of the legislative intent of SB 838, is not implemented through a regulatory order of the Commission. Instead, the methodology continues to be used under the informal 2008 agreement.

Staff responses to the questions.

*Questions 1 and 2*

1. Are customers with loads greater than 1 aMW receiving a direct benefit from conservation measures funded by amounts collected pursuant to SB 838?
2. What is the meaning of "any direct benefit" as used in ORS 757.689(2)(b)?

Both questions relate to the meaning of "any direct benefit" in ORS 757.659(2)(b):

(2) The commission shall ensure that a retail electricity consumer with a load greater than one average megawatt:

(b) Does not receive *any direct benefit* from energy conservation measures if the costs of the measures are included in rates under this section.

Cost-effective energy efficiency has benefits for both participants and non-participants. For program participants, these benefits include receipt of program expenses such as project incentives and technical support for implementation of energy saving projects on site, plus lower energy bills for the life of the project. Participants may also realize additional benefits from specific efficiency projects installed on their site such as lower operations and maintenance expenses, water savings, and increased comfort and safety.

Energy efficiency within the utility system provides benefits to all ratepayers, not just program participants. These benefits include, but are not limited to, reduced operating expenses, avoided transmission and distribution line losses, deferred transmission and distribution capital expenditures, deferred generation capital expense, reduced emissions, and risk avoidance associated with fuel price volatility. Years of integrated resource planning has shown that the combination of the aforementioned benefits result in an overall more efficient, lower cost energy system than if energy efficiency had not been a part of the overall resource mix.

However, in the context of this docket, the question presented is not a general one regarding the character of the benefits energy efficiency provides to all ratepayers but a specific one. The question is what did the Legislature intend when it said that greater than 1 aMW customers should, “not receive any direct benefit from energy conservation measures if the costs of the measures are included in rates under this section”?<sup>6</sup>

In the context of section 46 of SB 838, staff believes the Legislature meant to simply define direct benefits to greater than 1 aMW customers as program incentives received by these customers for energy efficiency projects. If the Legislature had intended to mean that the greater than 1 aMW customers could not benefit from the system benefits of energy efficiency, it is reasonable to assume that the Legislature would have made some reference to or given some guidance on the significant ratemaking adjustments that would have been necessary to remove those system benefits from the rates of greater than 1 aMW customers.

Allocating benefits from specific system resources to specific customer classes would be a complex ratemaking undertaking. At present, Staff knows of no other state or utility system to have undertaken such a level of review; most likely due to the complexity of implementation.

This interpretation of legislative intent is further buttressed by the fact that when stakeholders negotiated the SB 1149 cap in 2008, they agreed that SB 838 program funds were not to be spent on large energy users to support on-site efficiency projects and did not put forth a methodology for how to extract SB 838 efficiency derived system benefits from large energy user rates.

A related question is, if SB 838 specifically says that greater than 1 aMW customers should not receive direct energy conservation benefits (i.e. incentives and lower bills), did this mean that more SB 1149 monies could not be redirected to greater than 1 aMW customers? The parties to the 2008 funding cap agreement seemed to think so. Staff understands that at the time of crafting the agreement, the parties agreed that the availability of SB 838 funding would not imply permission to reallocate SB 1149 funding to greater than 1 aMW customers even though smaller customers were contributing money above and beyond SB 1149.

Thus, it is our understanding that the meaning of “any direct benefit” within the context of section 46 of SB 838 is limited to program incentives funded through SB 838 collections. Further, Energy Trust is managing funds appropriately, according to the method agreed upon by parties as fair and equitable in 2008, such that customers with loads greater than 1 aMW are not receiving direct benefits.

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<sup>6</sup> SB 838 Section 46(2)(b).

### Questions 3 and 4

3. Are there any barriers that prevent the ETO from obtaining all cost-effective energy efficiency?
4. If such barriers exist, what other options exist to gain all cost-effective energy efficiency, including from customers with loads greater than 1 aMW?

Questions 3 and 4 ask if the problem of not acquiring all cost-effective energy efficiency is real and if there are any other possible ways to address the problem. Updated information provided by Energy Trust and the utilities related to forecasting how the potential and demand for cost-effective energy efficiency is allocated between less than or equal to 1 aMW and greater than 1 aMW customers and how this compares to available funding reveals the near-term barrier forecasted by Energy Trust is likely to occur. Accordingly, Staff agrees there may be a funding issue as well as other barriers yet to be identified and it is wise and prudent to review our current tools to look for additional options.

As noted above, Staff also addresses the following sub-questions in connection with its response to Question 3:

- What importance is placed on acquiring all cost-effective energy efficiency?
- Who is responsible for obtaining all cost-effective efficiency and who pays to do so?

Energy efficiency is a resource considered within the utility IRP process. Utility resource plans are expected to identify resources that provide the best mix of cost and risk. All resources, including energy efficiency, must be evaluated on a consistent and comparable basis. Guidelines to the IRP process adopted in Order No. 07-002 include Guidelines 6b and 6c relating to conservation.

b. To the extent that a utility controls the level of funding for conservation programs in its service territory, the utility should include in its action plan all best cost/risk portfolio conservation resources for meeting projected resource needs, specifying annual savings targets.

c. To the extent that an outside party administers conservation programs in a utility's service territory at a level of funding that is beyond the utility's control, the utility should:

- Determine the amount of conservation resources in the best cost/risk portfolio without regard to any limits on funding of conservation programs; and

- Identify the preferred portfolio and action plan consistent with the outside party's projection of conservation acquisition.

Staff interprets this guidance to reflect that acquiring all cost-effective energy efficiency is of high importance to the Commission. Additionally these guidelines provide some insight into the roles of parties when funding is limited. At present, the methodology agreed to in 2008 is leading to a funding shortfall such that not all cost-effective energy efficiency can be acquired. PGE may soon be excluding acquisition of some best cost/risk resource within their portfolio. Energy Trust is a third party administrator of efficiency funds and as described in Guideline 6c, is expected to continue to identify all cost-effective potential regardless of funding limitations. In addition, the utility, in this case PGE, should take this projection into account when determining their preferred portfolio to bring to the Commission for acknowledgement. It would then be up to the Commission to determine if and how the resource acquisition is funded.

### Recommendations

Staff is concerned that acquisition of all cost-effective electric efficiency is in question, particularly acquisition of low cost, lost opportunity measures. SB 838 was intended to raise revenue to acquire additional cost-effective energy efficiency and it has done so. However, SB 838 may now have become an obstacle to facilitating very cost-effective energy efficiency on large customer sites. All customers benefit from cost-effective energy efficiency regardless of whether they are Energy Trust program participants. In addition, the utilities are expected to acquire all cost-effective energy efficiency in accordance with least cost/least risk planning.

One resolution to this issue is to see if the allocation of SB 1149 funds, as currently followed, is still reasonable and appropriate solely from an SB 1149 viewpoint. Staff recommends that parties take a look and see if a revision is appropriate. If SB 1149 allocation will not or cannot be revisited, then the cap in SB 838 should be revisited. In the meantime, cost-effective energy efficiency is left on the table to the detriment of all customers.

This concludes Staff's opening comments.

Dated at Salem, Oregon, this 21st day of April, 2015.



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