BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UM 1810

In the Matter of Pacificorp d/b/a Pacific Power Application for Transportation Electrification Programs	)))	CHARGEPOINT, INC.'S POST-HEARING REPLY BRIEF

I. Introduction

Through its the Public Charging program proposal, Pacific Power seeks the Commission's blessing to embark on a dramatically new business venture: providing EV charging services to the public for a fee. As evidenced by the prevalence of venture capital-backed technology companies in this industry, the public EV charging business has very little to do with the traditional, vertically integrated monopoly utility function of providing safe and reliable service to any customer within its service territory at just and reasonable rates. Under Pacific Power's proposal, ratepayers would fund Pacific Power's new Public Charging program business venture at up to $1.85 million.

Finding that it is necessary to accelerate transportation electrification in Oregon, the Legislative Assembly, in Senate Bill 1547 (SB 1547), required Pacific Power to file an application, in a form and manner prescribed by the commission, for programs to accelerate transportation electrification.[1] A program proposed by an electric company may include prudent investments in or customer rebates for electric vehicle charging and related infrastructure.[2] Crucially, the

[1] SB 1547, § 20(3).
[2] *Id*.

Legislative Assembly directed the Commission to approve such a proposal only if it found that the proposal could reasonably be expected to meet six listed criteria. Among others, these criteria include stimulating innovation, competition, and customer choice; supporting the utility's electrical system; improving the utility's efficiency and flexibility, including the ability to integrate variable generation; and being prudent.[3] A plain reading of SB 1547 indicates that each criterion is important either to ensure that a program actually accelerates transportation electrification over the long-term, or to ensure that the utility plays a role that is proper for a public utility, or both. The Legislative Assembly also stated that its intent in involving utilities such as Pacific Power in transportation electrification was, among other things, to provide customers with increased options in charging infrastructure and services, attract private capital investment, and create high quality jobs.[4]

With the Public Charging program, Pacific Power and the Stipulating Parties have largely ignored the conditions that SB 1547 placed on Pacific Power's ability to compete in the public EV charging market and the goals that the Legislative Assembly sought to achieve with the utilities' transportation electrification efforts. Largely because it fails to include any element of customer choice in EV charging infrastructure and services, the Public Charging program is much more likely to dampen the competitive public charging market than stimulate it. With the backing of ratepayer money and access to low-cost capital, Pacific Power's anticompetitive advantages will distort the market and make it dependent on ratepayer subsidies for years to come. The best that the Stipulating Parties can argue is that the Public Charging program would not damage the market too significantly because of its relatively small size, and that Pacific Power and the Commission need more data to fully vet future transportation electrification (TE) programs. However, limiting

[3] *Id.* at § 20(4).
[4] *Id.* at § 20(2).

the size of the Public Charging program cannot transform it into a program that will actively stimulate innovation, competition, and customer choice. Likewise, there is no reason to collect data from a program that could not be approved on a large scale because of its market distorting effects and its failure to meet the statutory requirements of SB 1547.

The Commission should reject the Stipulating Parties' argument that Pacific Power must study the public charging market by competing in that market with its Public Charging program proposal before it can design an effective and compliant TE program. Accordingly, and because the Public Charging program does not meet SB 1547's criteria, the Commission should deny Pacific Power's Public Charging program proposal. The Commission is well-equipped to provide Pacific Power with the guidance it needs to design a TE program now that would meet SB 1547's criteria and achieve the Legislative Assembly's goal to accelerate the use of electricity as a transportation fuel in Oregon. Accordingly, the Commission should direct Pacific Power to reallocate the $1.85 million it has proposed to spend on the Public Charging program to the Demonstration and Development program, which is consistent with the goals and requirements of SB 1547.

II. The Commission should not allow Pacific Power to use ratepayer money to fund the Public Charging program and become the dominant player in the public charging market in its service territory.

A. By participating directly in the market with the anticompetitive advantage of using ratepayer money, Pacific Power is likely to dampen, rather than stimulate, innovation, competition, and customer choice.

When evaluating the Public Charging program, the Commission must consider whether Pacific Power's proposed investments and expenditures "[a]re reasonably expected to stimulate innovation, competition, and customer choice in electric vehicle charging and related infrastructure

and services."[5] The Commission should assume that the Legislative Assembly chose the word "stimulate" deliberately, and with that word choice intended that Pacific Power would proactively encourage the development of innovation, competition, and customer choice in EV charging infrastructure and services.[6]

If the Commission were to approve the Public Charging program, Pacific Power would become the dominant provider of public EV chargers in its service territory. Specifically, based on its budget, Pacific Power estimates that each Public Charging program site would include four DC fast chargers and one Level 2 charger, for a total of 28 DC fast chargers and seven Level 2 chargers, or 35 total chargers.[7] By contrast, there are only eleven public ChargePoint DC fast chargers in all of Oregon, most of which are in the Portland metro area.[8] Pacific Power and the Stipulating Parties have provided no evidence that allowing Pacific Power to become the most dominant player in the public charging market would somehow stimulate innovation, competition, and customer choice in that market. The well-reasoned arguments of ChargePoint's witness Dave Packard – the only witness to this proceeding with nearly two decades of experience in the EV charging industry – demonstrate that Pacific Power's ratepayer-funded dominance of the market would actively harm it.

i. Regardless of how "customer" is defined, the Public Charging program does not incorporate any element of customer choice, much less stimulate it.

SB 1547's requirement that TE programs "stimulate … customer choice," refers to electric vehicle service equipment (EVSE) site-hosts – entities such as convenience stores, big-box

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[5] SB 1547, § 20(4)(f).
[6] See definition of "stimulate," Oxford English Dictionary, ("encourage development of or increased activity in (a state or process)"), available at: https://en.oxforddictionaries.com/definition/us/stimulate.
[7] Pacific Power's Application for Transportation Electrification Programs – Supplement (Supplemental Application), filed April 12, 2017, p. 51. ChargePoint notes that Pacific Power could install more than 35 total chargers across its seven proposed sites, subject to the proposed $1.85 million budget cap.
[8] PAC/409, ChargePoint Response to Data Request PAC-11.

retailers, multi-unit dwelling (MUD) owners, municipalities, and employers. Site-hosts can also include residential customers who purchase EVSE to charge their vehicles at home. Since site-hosts are the most common purchasers of electric vehicle charging infrastructure and services, it makes sense that the Legislative Assembly wanted to protect site-hosts' ability to choose the EVSE that best fits their unique needs, and thereby ensure a robust competitive market. Further, a site-host is also the utility customer-of-record that pays the electric bill for a charging station, so it makes sense that the site-host should be the one to choose the brand and features of the charging station.[9]

SB 1547 itself supports the conclusion that "customer" refers to site-hosts, as indicated by a separate provision establishing that "[a] program proposed by an electric company may include … *customer* rebates for electric vehicle charging and related infrastructure."[10] This provision could not possibly refer to EV drivers in the context of publicly available chargers. The only potential "customer" who would need a rebate for public electric vehicle charging and related infrastructure is a site-host. Further, SB 1547 also refers to "consumers," who must be different from the "customers" referred to in the competition provision, and the context indicates that "consumers" refers to utility ratepayers or EV drivers, or both.[11] In short, SB 1547 directs the Commission to consider whether the Public Charging program can be reasonably expected to stimulate site-hosts' available choices for charging infrastructure and services, which it does not even attempt to do.

Although a plain reading of SB 1547 indicates that "customer choice" refers to "site-host choice," it is also plausible that "customer" refers to EV drivers, since drivers are the ultimate end-users of EVSE. As ChargePoint discussed in testimony, different types of EV drivers have

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[9] ChargePoint/200, Packard/8, lines 4 – 16.
[10] SB 1547, § 20(3).
[11] SB 1547, § 20(2)(d) ("Widespread transportation electrification should … provide *consumers* with increased options in the use of charging equipment and in procuring services from suppliers of electricity" (emphasis supplied).)

different charging needs, and these needs can vary depending on when and where a driver needs to charge.[12] Even under this interpretation, the Public Charging program would still fail to stimulate customer choice, because it would offer only one choice to drivers – the choice that Pacific Power would make through its Request for Proposals (RFP) process.

Regardless of whether the relevant customers are site-hosts or drivers, it is clear that Pacific Power is not the customer intended by SB 1547's reference to "customer choice," and no party has argued that it is. Nevertheless, Pacific Power proposes to be the only entity to choose the EVSE in the Public Charging program. The Commission should reject the Stipulating Parties' arguments that Pacific Power would be stimulating customer choice simply by offering EV drivers a choice that they do not have today.[13] Pacific Power does not need to own and operate EVSE procured through an RFP in order to offer drivers a choice that they do not currently have – any program that resulted in the deployment of new public charging stations would achieve that modest goal. By way of contrast, Pacific Power will provide EV drivers with *multiple* charging options that they do not currently have through its Demonstration and Development program.

Similarly, the Commission should reject Pacific Power's argument that denying the Public Charging program would somehow limit customer choice by excluding Pacific Power as a new service provider.[14] Pacific Power forgets that SB 1547 only allows it to participate in the public charging market if its participation stimulates customer choice in that market, which Pacific Power would not do by becoming the dominant player and offering only one choice of EVSE (which Pacific Power would choose, not customers). By contrast, the market role Pacific Power would assume for the Demonstration and Development program would stimulate customer choice by

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[12] ChargePoint/200, Packard/8, line 4 – Packard/9, line 2; ChargePoint/100, Packard/7, lines 6 – 23.
[13] *See, e.g.,* CUB/200, Jenks/7, lines 13-16.
[14] PAC/300, Morris/4, lines 1 – 10.

allowing each prospective site-host to determine the type and brand of EVSE that best meets its particular needs. If Pacific Power reallocates the $1.85 million it proposed to spend on the Public Charging program to the Demonstration and Development program, as ChargePoint advocates, that money would lead to the deployment of *multiple* types of charging stations chosen by site-hosts, rather than the one type that Pacific Power would select through an RFP. In short, Pacific Power simply cannot "stimulate … customer choice" in EVSE by choosing the EVSE for everyone.

ii. Ensuring customer choice in charging infrastructure and services is the lynchpin of a successful utility TE program, and protecting choice will ensure that the public charging market is self-sustaining.

In ChargePoint's extensive experience in North America and Europe, ensuring that site-hosts can choose the brand and features of EVSE is the most important program design element that determines a transportation electrification program's success. As ChargePoint explained comprehensively in testimony, the EV drivers that visit a particular location will have different needs and preferences that depend on where and when they are charging.[15] Because the drivers that will charge at their charging station are also their customers, tenants, employees, and constituents, site-hosts are far better equipped than a utility to determine these unique needs, and site-hosts, too, have their own unique reasons for installing EVSE.[16] Pacific Power's proposed "one-size, fits-all" RFP proposal for the Public Charging program could not possibly account for the diverse needs of different types of EV drivers at different times and at different locations.

When site-hosts choose the brand and features of the EVSE that is installed on their property, and when they have "skin-in-the-game" through sharing the cost of the EVSE, site-hosts

[15] ChargePoint/200, Packard/8, line 4 – Packard/9, line 2; ChargePoint/100, Packard/7, lines 6 – 23.
[16] *Id*.

are motivated to maximize the utilization of the charging stations.[17] Site-hosts should have the freedom to experiment with different driver pricing options to best meet the needs of the drivers who use the EVSE on their property, and could be required to share their data and insights with the utility as a condition of participating in a utility TE program. Active site-host involvement in managing EVSE is essential to demonstrate the business case for hosting charging stations, which depends on more than the revenue generated from driver payments.[18] Without a sustainable business case for charging stations, the publicly available charging market in Pacific Power's service territory is likely to stall and become dependent on ratepayer funds over the long-term.

iii. Effective innovation revolves around customers' needs and preferences.

As indicated by Pacific Power's promise that its RFP process "will encourage bidders to propose innovative solutions," Pacific Power fails to understand how innovation occurs.[19] As an initial matter, such encouragement falls far short of SB 1547's directive that Pacific Power "stimulate innovation." If the Legislative Assembly merely wanted to encourage innovation by electric vehicle service providers (EVSPs), it could have done so directly.

Companies such as ChargePoint work to create innovative products that they believe will excite and satisfy the needs of the purchasers of those products (such as site-hosts) or the end-users of those products (such as EV drivers). Competitive companies typically do not innovate simply because they are encouraged to do so. Rather, companies are motivated to innovate when they believe that they can create new market opportunities for themselves by offering features that potential customers want and that their competitors do not offer.

[17] ChargePoint/100, Packard/8, lines 15 – 23; ChargePoint/200, Packard/16, lines 3 – 19.
[18] *Id*; ChargePoint/100, Packard/7, lines 6 – 20; ChargePoint/200, Packard/15, lines 3-14; ChargePoint/200, Packard/17, line 21 – Packard/18, line 4.
[19] Joint Opening Brief of PacifiCorp, CUB, Forth, and Greenlots (Joint Opening Brief), p. 12.

Additionally, companies in the competitive private sector innovate their products and services at a faster pace than that of the regulatory environment in which utilities operate. Traditionally, utilities rate base capital assets and amortize those costs over several, sometimes tens of years. This model works when there is very little change in the products that utilities are deploying, such as a service transformer or a utility pole. The pace of innovation and change of EV charging infrastructure and network services, such as those offered by ChargePoint, are much more akin to the fast-changing pace of consumer electronics' product cycles. As an analogy, if Pacific Power had proposed to take a similar approach and jumped into the mobile phone business in 2007 and rate base assets over ten years, their ratepayers would still be stuck using flip-phones today. Such a market approach would fail to stimulate customer choice, competition, and innovation, and it should not be adopted for the EV charging infrastructure market either.

In the case of the Public Charging program, the RFP would be the only market opportunity that the program offers.[20] Vendors would be unable to create new market opportunities for themselves within the program through innovation, and therefore their motivation to innovate would be greatly diminished. Rather than designing products with customers and/or end-users in mind, vendors would be motivated only to design according to the specifications of the RFP. The RFP's specifications would be designed by the utility, which does not have the collective qualifications or experiences of an established market participant such as an EVSP. Both Pacific Power's plan to "encourage bidders to propose innovative solutions," and the continuing ability of other service providers to install EVSE outside of the program, fall far short of Pacific Power's obligation to actively stimulate innovation.

[20] Pacific Power, CUB, Forth, and Greenlots argue that the Public Charging program would not prohibit or prevent other entities from installing public charging infrastructure in Pacific Power's service territory. Joint Opening Brief, pp. 12-13. While technically true, this argument misses the point because each of Pacific Power's TE programs themselves must stimulate innovation, competition, and customer choice.

iv. *The Public Charging program would offer an RFP as the only opportunity for competition. Pacific Power's ability to provide ratepayer-funded charging stations would discourage other potential site-hosts from investing in publicly available chargers.*

Pacific Power's proposed RFP process for the Public Charging program would admittedly involve a one-time competitive bid, but it falls short of actively stimulating competition. As ChargePoint pointed out in testimony, utility RFPs tend to focus competition on the cost of the goods or service the utility is procuring, which is why RFPs work well for purchasing commodities like utility poles and transformers.[21] Though Pacific Power could potentially select a more expensive option through the RFP, doing so would increase Pacific Power's burden to demonstrate the prudency of its investment in the Public Charging program.

More importantly, Pacific Power's participation in the public charging market is more likely to discourage competition in that market than stimulate it because Pacific Power would be participating in that market with a massive anti-competitive advantage over other market participants: access to ratepayer money. If the Public Charging program were approved, Pacific Power would install charging stations either on its own property or a right-of-way, or at no cost to a site-host.[22] Importantly, because Pacific Power would be authorized to spend up to $1.85 million of ratepayer money, Pacific Power would not need to demonstrate a business case for these charging stations the way a private vendor would, as long as Pacific Power can demonstrate that they meet the minimal "used-and-useful" standard.

It would be exceedingly difficult for competitive EVSE providers such as ChargePoint to compete against "free" charging stations. For example, why would a convenience store invest in charging stations to attract customers to its store if Pacific Power would install one at no cost to

[21] ChargePoint/100, Packard/8, lines 1-10; Objections to Stipulation and Request for Hearing of ChargePoint, Inc., p. 8.
[22] Pacific Power's Supplemental Application, p. 36.

the convenience store, or if Pacific Power installed one down the street at no cost to anyone except ratepayers? Despite Pacific Power's insistence that "only" seven Public Charging program sites would not distort the competitive market, Pacific Power's proposal to deploy approximately 35 new chargers would have a dramatic effect on the market for the precedent it would set. In this nascent market, customer expectations are still being established, and the Public Charging program would teach the market that the utility will provide charging stations at ratepayer expense, so there is no reason for anyone else to invest in them. The market will care little about the Stipulating Parties' insistence that the Stipulation is non-precedential from a legal perspective. The precedent set by the Public Charging program would set the public charging market up for long-term dependency on ratepayer dollars.

Pacific Power undoubtedly has an important role to play in accelerating transportation electrification, and ChargePoint supports Pacific Power having a role. However, that role should not require Pacific Power's ratepayers to become the primary funders of transportation electrification efforts indefinitely. Pacific Power's initial TE programs should begin accelerating transportation electrification by supporting the public charging market in such a way that it will eventually be able to sustain itself without repeated infusions of ratepayer money.

B. Pacific Power's proposed Demonstration and Development program will stimulate innovation, competition, and customer choice, but ChargePoint's recommendation to reallocate the Public Charging program budget to the Demonstration and Development program was rejected by the Stipulating Parties.

Pacific Power's Demonstration and Development program, through which Pacific Power will provide grant funding to customers interested in hosting charging stations to reduce the upfront cost of EVSE, will be much more effective at accelerating transportation electrification than the Public Charging program.[23] For purposes of complying with the goals and criteria of SB

[23] ChargePoint/100, Packard/6, line 7 – Packard/10, line 5.

1547, the Demonstration and Development program will allow a site-host to choose the brand and features of the charging stations that would be installed on its property. A site-host will be motivated to choose the type and number of stations that would best meet the needs of the EV drivers who visit that location. The site-host will also be motivated to maximize the stations' utilization in order to recoup its investment.[24] Because site-hosts will have choices, EVSE vendors will begin competing to sell charging stations to site-hosts and will innovate to try to create the most exciting and desirable product. EVSE vendors will also deploy teams of sales and marketing professionals to Pacific Power's service territory, furthering SB 1547's goal of creating high-quality jobs.[25]

The Demonstration and Development program will also further the legislative goal of attracting private capital investments, because site-hosts will (in most cases) contribute their own resources to helping accelerate transportation electrification.[26] Because most site hosts will share in the upfront cost of the charging stations, the $1.685 million of ratepayer money that Pacific Power will spend on the Demonstration and Development program will likely result in the deployment of double or triple the 35 total stations that Pacific Power has proposed for the Public Charging program.[27] The number of stations deployed could be doubled again if Pacific Power allocated the Public Charging program's $1.85 million budget to the Demonstration and Development program, as ChargePoint has recommended.[28]

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[24] Pacific Power has proposed to fund up to 100 percent of a program applicant's eligible expenses, but ChargePoint expects that those projects in which site-hosts share in the cost of the project will be the most successful. Supplemental Application, p. 84. *See also* ChargePoint/100, Packard/8, line 15 – Packard/9, line 4; ChargePoint/200, Packard/16, lines 3-19.
[25] SB 1547, § 20(2)(d).
[26] *Id*.
[27] ChargePoint/200, Packard/24, lines 15-20.
[28] *Id*.

Finally, Pacific Power and the Stipulating Parties could make a few minor modifications to the Demonstration and Development program to achieve other goals of the Public Charging program. Specifically, as a condition of participating in the Demonstration and Development program, Pacific Power could require both the site-host and participating charging station vendors to provide any and all of the data that Pacific Power needs to achieve the learnings that it plans to develop.[29] Pacific Power could also use contracts to require participating site-hosts to surrender Clean Fuels Program credits generated by the charging stations to help offset the cost of the grants for ratepayers. In short, the Demonstration and Development program could achieve each of the goals Pacific Power and the Stipulating Parties say they want to achieve with the Public Charging program, while also stimulating innovation, competition, and customer choice as directed by SB 1547. Unfortunately, Pacific Power and the Stipulating Parties rejected ChargePoint's recommendation to reallocate the Public Charging program's budget to the Demonstration and Development program.

C. Utility ownership is not prohibited by SB 1547, but is allowed only if the program meets SB 1547's criteria, which the Public Charging program does not.

SB 1547 does not technically prohibit Pacific Power from proposing to own EVSE as part of its TE program application. Contrary to Pacific Power's and Staff's many accusations, ChargePoint has never argued that SB 1547 prohibits utility ownership of EVSE.[30] However, a utility ownership program must meet SB 1547's six criteria, including that it stimulates innovation, competition, and customer choice. For example, Pacific Power could propose a program in which it would own charging stations but a site-host would choose the brand and features of the charging stations from a list of qualified vendors and equipment. The site-host would still have "skin-in-

[29] Stipulation, ¶ 4.
[30] Joint Opening Brief, pp. 2,6, 7-9; Staff's Opening Brief, p. 10.

the-game" by giving up part of its property to host the charging stations, and ideally would have some input into the pricing options offered to drivers. By giving site-hosts a choice, the program would also stimulate innovation and competition for the same reasons that the Demonstration and Development program can be expected to do so, as discussed above. Accordingly, if Pacific Power continues to insist on an EVSE ownership model, it should design a TE program that incorporates customer choice, rather than asking the Commission's approval to choose the EVSE for the entire program through an RFP process.

III. According to unrebutted evidence, the Legislative Assembly intended that SB 1547's competition provision would protect the competitive EVSE industry.

The Oregon Supreme Court has held that a court may look to the legislative history of a statute if the "legislative history appears useful to the court's analysis," regardless of whether or not the statute is ambiguous.[31] Here, ChargePoint's expert witness Ms. Anne Smart was the only witness to provide testimony about the legislative history of SB 1547, which is based on her on-the-ground experience with the negotiations leading up to the bill's passage. Ms. Smart's testimony regarding SB 1547's history stands unrebutted in this proceeding. Ms. Smart's understanding of SB 1547 and its history is grounded in her extensive experience appearing before several state public utility commissions and in developing policy for EV charging in other states.[32]

According to Ms. Smart's unrebutted testimony, "legislators desired numerous changes to the [originally filed] bill in order to pass it into law."[33] One of these changes, which was also important to ChargePoint, was to require the Commission to consider whether a utility's proposed

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[31] *State v. Gaines*, 346 Ore. 160, 172, 206 P.3d 1042, 1050 (2009) (holding that, contrary to the Oregon Supreme Court's earlier pronouncement in *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or. 606, 610; 859 P.2d 1143, 1145 (1993), it is not necessary to find an ambiguity in the text of the statute in order to consider pertinent legislative history).

[32] ChargePoint/300, Smart/3, lines 9 – 21.

[33] ChargePoint/300, Smart/7, line 7.

TE program could reasonably be expected to stimulate innovation, competition, and customer choice, which now appears at SB 1547, § 20(4)(f). "This language … was intended to protect the consumer/ratepayer and *the competitive EV charging marketplace* in Oregon by ensuring that customers would be able to choose among different charging station infrastructure and services."[34]

In other words, the requirement that a TE program "stimulate … customer choice in electric vehicle charging and related infrastructure and services" in SB 1547 means exactly what it says: customers (whether site-hosts or EV drivers) must be allowed to choose among different types of charging stations and services. Pacific Power does not comply with this provision when it chooses the EVSE for the entire Public Charging program through an RFP process. Pacific Power also does not comply with this provision merely by offering a charging choice that does not exist today, because an additional choice would result from any public charging station program.

Based on Ms. Smart's experience with the development and passage of SB 1547, the Commission should resolve any ambiguity it finds with respect to the meaning of SB 1547's competition provision in favor of protecting the ability of customers (both drivers and site-hosts) to choose, and in favor of the competitive EVSE industry's ability to compete in a sustainable market over the long-term rather than just an RFP process. Pacific Power's proposed RFP process for the Public Charging program would actively undermine those legislative goals.

IV. Pacific Power and the Stipulating Parties have failed to meet their burden to explain why the Public Charging program is consistent with SB 1547 or in the public interest.

As the proponents of the Public Charging program proposal, the burden is on Pacific Power and the Stipulating Parties to show that the Public Charging program complies with the legislative directives in SB 1547 and the Commission's implementing regulations, and is in the public

[34] *Id*. at lines 7 – 11 (emphasis supplied).

interest. As indicated by their collective statement in the Stipulation that "Commission approval of this Stipulation does not imply that these pilots meet the six statutory factors established in Section 20(4) of Senate Bill 1547," even the Stipulating Parties recognize that they have not met their burden.[35] The Commission should find that none of the justifications that the Stipulating Parties provide for the Public Charging program not meeting SB 1547's criteria can excuse this failure.

A. The Stipulating Parties provide no evidence that the Public Charging program would stimulate innovation, competition, and customer choice, arguing instead that the small size of the Public Charging program means it will not meaningfully harm the market.

ChargePoint concurs with the Stipulating Parties that deploying additional public charging stations is a crucial part of accelerating transportation electrification in Oregon, and that doing so will increase the number of EV drivers and thereby further increase the overall demand for charging stations.[36] However, *any* TE program that involves the deployment of public charging stations would result in additional public charging stations, so there is no reason to presume that Pacific Power should own and operate those stations or procure them itself through an RFP process. In other words, the fact that the Public Charging program would result in additional public charging stations is not, by itself, a sufficient basis to approve the program.

Rather than simply direct Pacific Power to deploy charging stations and hope that doing so would indirectly increase demand for even more charging stations, SB 1547 established six criteria by which the success of any TE program would be measured. If the Legislative Assembly were merely concerned with increasing the number of and overall demand for charging stations by encouraging drivers to purchase EVs, it would not have needed to include the competition provision in SB 1547. The Legislative Assembly notably decided not to leave innovation,

[35] Stipulation, ¶ 18.
[36] Joint Opening Brief, p. 13.

competition, and customer choice to the wisdom of the free market; rather, it directed Pacific Power to stimulate innovation, competition, and customer choice with each of its TE programs, and thereby stimulate the development of a sustainable market for the long term.

Because they cannot plausibly argue that the Public Charging program would actively stimulate innovation, competition, and customer choice, the Stipulating Parties instead focus on the allegedly "modest" size of the investment Pacific Power has proposed for the Public Charging program[37] and argue that the "small size" of the program "should alleviate concerns of unforeseen detrimental effects to the electric vehicle market, market actors, the utility, and its ratepayers."[38] The Stipulating Parties apparently forget that not being "detrimental" to the market is not the standard for TE programs established by SB 1547.

If the best that Pacific Power and the Stipulating Parties can say about the Public Charging program's expected effect on the competitive EVSE market is that it would not "stifle competition," the Commission should be confident that the program would fail to actively *stimulate* competition in the market, as it is required to do by SB 1547.[39] The Legislative Assembly expected more from Pacific Power's TE programs than that they would try to avoid harming the competitive market too much, and the Commission should expect more, too.

B. <u>The size of the Public Charging program and the fact that it would be limited in cost, time, and scope do not change the standard under which the Commission evaluates the Public Charging program.</u>

The Stipulating Parties, particularly Staff and CUB, place considerable importance on the fact that the Public Charging program would be limited in cost, time, and scope.[40] As an initial

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[37] *See, e.g.*, Joint Opening Brief, pp. 12, 14; Staff/200, Klotz/10, line 18 and Klotz/13, line 9; .
[38] Stipulating Parties/100, Morris-Klotz-Mullins-Jenks-Allen-Ashley-Avery/18, lines 19 – 21.
[39] Joing Opening Brief, p. 12.
[40] Stipulation, ¶ 18; Stipulating Parties/100, Morris-Klotz-Mullins-Jenks-Allen-Ashley-Avery/17, line 12; CUB/200, Jenks/4, lines 9 – 16 and Jenks/8, lines 11 – 13.

matter, the only time limitation in the Stipulation is a statement that the pilot period will be from 2017 to 2019,[41] which matches the period that Pacific Power had stated it would deploy charging stations in its Supplemental Application.[42] Presumably Pacific Power is not planning to shut down its Public Charging program stations after 2019, so it is unclear how exactly the program is time-limited, or what Pacific Power conceded in settlement.

Pacific Power also did not make any concessions with regard to the cost of the Public Charging program; the Stipulation caps Pacific Power's expenditures at the same $1.85 million of ratepayer money that Pacific Power had originally estimated for the cost of the program.[43] ChargePoint recognizes that $1.85 million is not very significant relative to other capital expenditures that Pacific Power makes, but that is not the appropriate yardstick. Allowing Pacific Power to spend $1.85 million of ratepayer money, with no obligation to recoup that money, will have a major impact on the nascent EVSE market. Even Pacific Power's "limited" amount of spend gives it a massive anti-competitive advantage in this market, because private competitive entities such as ChargePoint typically do not have $1.85 million available to spend without expecting to recoup it. Site-hosts similarly cannot invest in EVSE unless they see a value proposition for doing so, such as increased customers, more loyal employees, or more satisfied tenants.[44] The Stipulating Parties also offer no rationale for why limiting ratepayers' financial risk exposure to the Public Charging program should change the standard by which the Commission evaluates the program. As discussed above, if this money were deployed through the Demonstration and Development program, it would actually stimulate innovation, competition, and customer choice, so "limiting"

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[41] Stipulation, ¶ 2.

[42] Supplemental Application, p. 36.

[43] Supplemental Application, p. 51; Stipulation ¶ 2.

[44] CUB has argued, without providing any evidence, that a charging station rebate or grant program like the Demonstration and Development program "would fund a profitable business model for the site host." CUB/200, Jenks/9, line 18. In ChargePoint's experience, site-hosts typically install charging stations as a value-add for their customers, employees, tenants, or constituents, and not to make a profit on selling charging services to EV drivers.

the amount of ratepayer money that Pacific Power can spend does not excuse the Public Charging program's failure to do so.

Further, the Stipulating Parties inconsistently argue on the one hand that the Commission can safely approve the Public Charging program because it is "only" $1.85 million dollars, and, on the other hand, argue in favor of the Public Charging program because ratepayers would have the opportunity to recoup some of their investment. If the $1.85 million is too little to worry much about, then the Commission should ensure that it is spent in a way that results in the maximum number of charging stations and is consistent with the goals of SB 1547, such as through the Demonstration and Development program. If it is important that ratepayers have the opportunity to recoup the $1.85 million, then the Commission should likewise ensure that it is spent in a way that results in the maximum number of charging stations because more EVs on the road will increase Pacific Power's total sales and put downward pressure on its rates.

Finally, the Stipulating Parties have confusingly argued that the Public Charging program would result in "only" seven charging "stations."[45] As mentioned above, ChargePoint has a total of eleven public DC fast chargers (dual-head), while the Public Charging program would result in the deployment of approximately 28 new DC fast chargers across seven *sites*, with no actual cap on the number of chargers.[46] The Public Charging program, if approved, would allow Pacific Power to become the most dominant player in the public charging market in its service territory virtually overnight, even if it were to deploy the chargers in phases. The proposed limit on the amount of money that Pacific Power can spend on the Public Charging station program means very little when that limit would result in Pacific Power having a market share so much greater than any other competitor in the market.

[45] Staff/200, Klotz/7, lines 17-18.
[46] PAC/409, ChargePoint Response to Data Request PAC-11; Supplemental Application, p. 51.

C. Characterizing the Public Charging program as a pilot program does not change the standard under which the Commission evaluates the Public Charging program.

In Staff's initial Reply Testimony, Staff found that "the only way Staff can recommend approval of these first-round proposals is to evaluate them as *pilot* programs and not hold them to the standard of the six statutory criteria" in SB 1547.[47] Staff did not explain why characterizing the programs as pilot programs would change the standard under which the Commission should evaluate them or why SB 1547's six statutory criteria would not apply to pilot programs. Though Staff states that its "position in this docket has evolved over time,"[48] the only substantive changes that have been made to the Public Charging program proposal since Staff's initial Reply Testimony have been to make it "time-limited, cost-limited, and require specific learnings," consistent with Staff's initial recommendations.[49] Finally, despite Staff's initial Reply Testimony indicating its opinion that a pilot program would not need to meet SB 1547's criteria, Staff admitted in briefing that "[t]he Commission has not expressed a specific approval standard for pilot programs."[50]

The purpose of a pilot program is typically to test a new program design that holds promise as a potential new utility offering.[51] Typically, a utility will use a pilot program to collect data and test hypotheses about a program design that will allow the utility, the Commission, and other stakeholders to determine whether the pilot (or a substantially similar program) should be rolled out to customers on a large scale.[52] The Stipulating Parties place great importance on the fact that Pacific Power would collect data and explore specific learnings through the proposed the Public Charging program, but they forget that the data and learnings that the Public Charging program

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[47] Staff/100, Klotz/8, lines 9 – 11 (emphasis in original).
[48] Staff's Opening Brief, p. 2.
[49] Stipulation, ¶ 18.
[50] Staff's Opening Brief, p. 9.
[51] ChargePoint/200, Packard/21, lines 1 – 9.
[52] *Id*.

would produce would not be relevant to any other TE program except the Public Charging program, or a program substantially similar to the Public Charging program.

Unless Pacific Power intends to expand the Public Charging program into a large-scale program in the future, there is no point in Pacific Power conducting a pilot on this business model. Any data and learnings produced by the pilot program would have questionable applicability to a different TE program involving site-host choice of public charging stations, such as grants for public charging stations through the Demonstration and Development program, or a rebate or make-ready program. If Pacific Power has no plans to expand the Public Charging program, the value of the data and learnings that would be collected by the Public Charging program cannot justify the cost of the program to ratepayers. Such purposeless data also cannot justify approving the Public Charging program despite its failure to comply with SB 1547's criteria. Finally, because the Public Charging program could not be approved on a large scale – and Pacific Power has not attempted to demonstrate that it could be – there is no point in allowing Pacific Power to spend ratepayer money to pilot the Public Charging program business model.

D. The Commission should reject assertions that it can or should ignore any of SB 1547's criteria with respect to the Public Charging program.

i. The requirements of SB 1547 apply to the Public Charging program.

Pacific Power filed its Application for Transportation Electrification Programs pursuant to the Commission's directive to file such an application by December 31, 2016.[53] Until Staff filed its Reply Testimony responding to ChargePoint's testimony opposing the Stipulation, there was absolutely no indication from Pacific Power or any of the other parties that the requirements of SB 1547 and the Commission's implementing regulations at OAR 860-087-0001, *et. seq.*, would not

[53] Order No. 16447, Docket No. AR 599; PacifiCorp's Transportation Electrification Public Charging Pilot Program, filed December 27, 2016; Supplemental Application, filed April 12, 2017.

necessarily apply to the Public Charging program.[54] At this late stage of the proceeding, Staff now argues that the Commission can and should approve the Public Charging program *without regard to any of* SB 1547's criteria.[55] ChargePoint acknowledges Staff's point that SB 1547 did not remove the Commission's ability to approve pilot programs, but the Public Charging program is not just any pilot program – it is a program that was proposed pursuant to SB 1547 and the Commission's regulations, which specify the criteria the Commission must use to evaluate any transportation electrification program. The Commission should decline Staff's invitation to disregard statutory directives and its own regulations.

It is telling that Staff makes this argument at all. If Staff were confident that the Public Charging program satisfied each of SB 1547's six criteria, it would not need to suggest to the Commission that it could approve the program using its existing authority and without reference to the statute or its own rules.

ii. The Commission can and should expect each TE program to meet each criterion.

As an alternative to ignoring SB 1547 altogether, Pacific Power, Staff, CUB, and several other Stipulating Parties argue that the Public Charging program does not need to meet each of the criteria, even suggesting that *no* TE program could possibly meet all six factors.[56] The Commission should decline the parties' invitation to second-guess the mandate of the Legislative Assembly. SB 1547 states that the Commission "shall consider" the six criteria and uses the word "and," indicating that the Commission's evaluation of a TE program with respect to each factor is not discretionary, and that it must consider each and every factor in its evaluation.[57] The Legislative

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[54] Staff/200, Klotz/16, lines 4 – 7. As discussed above, Staff did suggest that the Commission could evaluate the TE programs without strictly adhering to SB 1547's six criteria, but it did not, at the time, suggest that none of the criteria should apply. Staff/100, Klotz/8, lines 9 – 11.
[55] *Id.*; Staff's Opening Brief, pp. 9 – 10.
[56] Staff's Opening Brief, pp. 5 – 9; Joint Opening Brief, 9 – 11.
[57] SB 1547, § 20(4)(a)-(f).

Assembly believed that it was reasonable to expect a TE program to meet the six factors in order to effectively accelerate transportation electrification, otherwise it would not have listed all six factors with the conjunctive "and." If the Legislative Assembly intended to give the Commission discretion to pick and choose which of the six criteria to apply to a given program, it would have used the disjunctive "or."

The Stipulating Parties offer no plausible explanation for why the Commission should ignore any of the factors, except that they apparently believe that it would be very difficult for a TE program to meet each one. Staff nonsensically posits in its Opening Brief that factor (c), the "used and useful" requirement, would not apply to a rebate program or the Stipulation's Outreach and Education program.[58] If Pacific Power designed a rebate program properly in such a way that it was able (through contracting, for example) to ensure that any charging station purchased with a rebate remained operational and available to drivers, the Commission would find that those rebates were reasonably expected to result in used and useful assets and therefore complied with factor (c) of the statute. Likewise, Pacific Power's educational materials can reasonably be expected to be used and useful, unless Pacific Power neglects to provide them to customers, for example. Similarly, while a final prudency determination occurs after a project is completed as Staff points out, the Commission only approves a project if the project's proposed budget would be a prudent use of ratepayer funds.[59] Staff's suggestion that it is not reasonable to expect a TE program to meet all six of the factors it is required to meet is simply incorrect. Staff's wholesale abdication of the relevant statutory and regulatory standards indicates that Staff is unwilling to

[58] Staff's Opening Brief, p. 8.
[59] *Id*.

push Pacific Power to propose a public charging station program that actually complies with the law.[60]

Finally, SB 1547 directs the Commission to consider the statute's six criteria "[w]hen considering a transportation electrification program *and* determining cost recovery for investments and other expenditures related to a program proposed by an electric company."[61] Here again, the conjunctive "and" indicates that the Commission must consider all six criteria both when a program is proposed and when the utility seeks cost recovery for the programs.

iii. The Commission must not ignore any of SB 1547's criteria.

The Commission undoubtedly has discretion to consider the extent to which a TE program meets each factor, and how much weight to give each factor. However, the statutory language does not give the Commission discretion to ignore any one factor altogether, or approve a program despite failing to meet a factor. Though the statute does not explicitly say that a TE program must "meet" each and every criterion, the Commission would not have the authority necessary to approve a program if it found that it did not meet one or more criteria. To take a hypothetical example, if the Commission found that a utility's proposed TE program investments would not be "within the service territory of the electric company," (factor (a)) the Commission could not approve such a program – even if the program promised to produce valuable data and learnings.[62] Likewise, if the Commission found that a proposed TE program – say, an EV discount program – would not result in used and useful assets (factor (c)) because the owners of the discounted EVs could move out of the state, it would not make sense for the Commission to then approve the program in spite of that failure.[63]

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[60] *Id*.
[61] SB 1547, § 20(4) (emphasis supplied).
[62] SB 1547, § 20(4)(a).
[63] SB 1547, § 20(4)(c).

Moreover, the Stipulating Parties' position that the Commission can choose which of SB 1547's six criteria to apply to a given TE program would quickly lead to absurd results. Under the Stipulating Parties' position, the Commission could approve a program that met only one factor, or perhaps none of the factors, as Staff suggests. The Legislative Assembly would not have listed the six criteria if it intended for the Commission to approve any TE program without respect to any of these factors. The Commission itself indicated that it also believes a TE program must meet each of the six criteria, otherwise it would not have required each program application to contain a description of how the program addresses the six criteria in its implementing regulations.[64] If a program did not meet any of SB 1547's six criteria (or if it met only one or two criteria), there is no reason to think that it would do anything to accelerate transportation electrification in Oregon.

The competition provision of SB 1547 that concerns ChargePoint invokes the Commission's discretion to evaluate the *extent to which* a TE program is "reasonably expected to stimulate innovation, competition, and customer choice." With respect to the Public Charging program, Pacific Power has not even tried to involve any aspect of customer choice – regardless of how "customer" is defined – because Pacific Power and Pacific Power alone would choose the EVSE. As a result, the Commission could not, even with all its discretion, find that the program would stimulate customer choice. As discussed above, merely providing a choice that drivers do not have today would occur as a result of any program involving the deployment of public charging stations, and so falls far short of any reasonable definition of "customer choice." Because Pacific Power and the Stipulating Parties cannot offer any plausible explanation for how the Public Charging program would actually stimulate customer choice, the Commission cannot find that it would do so and must therefore deny the program.

[64] OAR 860-087-0030(1)(h).

E. The Legislative Assembly reasonably found that utilities should only expand their business models into TE if they could meet the six criteria, and the Commission should not allow Pacific Power to do so if it does not believe the Public Charging program meets these criteria.

The Commission should reject any suggestion from the Stipulating Parties that more data on transportation electrification is needed before Pacific Power can design a TE program that would meet each of SB 1547's criteria, including the competition provision.[65] The Legislative Assembly would not have specified the six criteria if it did not believe that it was reasonable to expect a utility to meet each of them. While additional data will doubtless improve the value and effectiveness of TE programs, Pacific Power is perfectly capable of designing TE programs that meet the six criteria now, as indicated by its Outreach and Education proposal and its Demonstration and Development proposal. The early stage of the market is not an excuse for Pacific Power not meeting the six criteria with respect to the Public Charging program.

ChargePoint supports Pacific Power taking an active role in stimulating transportation electrification in its service territory, consistent with the statutory mandate. Recognizing that stimulating transportation electrification would be a new role for utilities, the Legislative Assembly was careful to specify and limit the conditions under which it would be appropriate for Pacific Power to do so. If Pacific Power cannot meet those conditions – SB 1547's six criteria – then it should not and cannot assume this new role. Pacific Power's customers and the competitive EVSE market would be better served by Pacific Power focusing on its outreach and education efforts and reallocating the Public Charging program budget to the Demonstration and Development program, which will actually stimulate innovation, competition, and customer choice. Because the Public Charging program does not even attempt to comply with SB 1547's

[65] Staff's Opening Brief, p. 14 – 15; Staff/200, Klotz/3, lines 1 – 8 and Klotz/8, line 14 – Klotz/9, line 3; Joint Opening Brief, pp. 8 – 9; PAC/300, Morris/7, lines 2 – 5.

statutory criteria, it will fail to accelerate transportation electrification in the manner intended by the Legislative Assembly.

V. Pacific Power does not need to own its own public charging stations in order to collect useful data or recoup value for ratepayers, and any data that it collects will reflect Pacific Power's own market distortions.

A. The Stipulating Parties have provided no evidence demonstrating that utility ownership is necessary. Pacific Power does not need to own charging stations to collect useful data.

The Stipulating Parties' justification for supporting Pacific Power's proposal to own the Public Charging program stations seems to be simply that ownership is Pacific Power's preference, and they would prefer Pacific Power's market distorting investment over no utility investment. Given the severe distortions that Pacific Power's proposed ownership and RFP selection process will cause in the market, the Commission should reasonably expect that Pacific Power and the Stipulating Parties would seek to justify the proposed ownership structure and the proposed RFP procurement process, but they cannot do so under SB 1547's statutory scheme.

The primary rationalization for utility ownership that the Stipulating Parties have offered is that Pacific Power and other stakeholders need additional data to learn about public charging stations and "to evaluate how to best structure future programs."[66] As discussed earlier, any data produced by the Public Charging program would only be relevant to another RFP-based, utility-owned public charging station program. The Stipulating Parties have provided no explanation for how learnings from the Public Charging program would translate to other TE programs in which Pacific Power played a different role that actually complied with SB 1547's requirements. Furthermore, the Stipulation does not specify any of the learnings that Pacific Power plans to produce from the program. The Stipulating Parties seem to be asking the Commission for

[66] Staff/200, Klotz/6, line 6.

authorization to spend $1.85 million of ratepayer money to kick the proverbial tires of the public charging market.

More importantly, utility ownership of charging stations is not necessary to collect data or produce useful learnings from public charging stations. For example, ChargePoint's charging stations collect the following types of data: charging station utilization, energy usage, real-time power consumption, peak power curves, unique drivers, average charging session length, and avoided greenhouse gas emissions.[67] As ChargePoint pointed out in a data response to Staff (which Staff declined to include with its testimony), the stations are capable of collecting both charger-specific and customer-specific data and of sharing that data with the utility in near real-time pursuant to properly executed contracts, confidentiality agreements, and data security protocols.[68]

Unfortunately, ChargePoint was unable to provide Staff with actual data from its existing DC fast chargers in Oregon because its existing customer agreements prevent it from doing so, even under a protective order.[69] Under a different type of customer agreement, however, there would be no issues with ChargePoint's charging stations providing data to the utility, the Commission, and any other stakeholder who signed the agreement. Nevertheless, Staff has attempted to use ChargePoint's inability to provide proprietary and confidential information as evidence that private market actors such as ChargePoint cannot be relied on to provide necessary data to the Commission and other stakeholders.[70] Staff's suggestion that ChargePoint has been unwilling to provide data in this docket is not only inaccurate and unfair; it also ignores the fact that, even if Pacific Power owned its own charging stations, it would rely on similar technical capabilities and security protocols as ChargePoint uses to collect data from whichever vendor won

[67] ChargePoint/400, ChargePoint Response to OPUC Staff Data Request 23.
[68] *Id*.
[69] *Id*.
[70] Staff/200, Klotz/6, lines 3 – 6; Staff/200, Klotz/14, lines 1 – 2; Staff/200, Klotz/14 line 22 – Klotz/15, line 2.

the RFP. Utilities such as Pacific Power often rely on third-party vendors and contractors, and there is no reason to think that EVSE vendors such as ChargePoint cannot be trusted or relied on simply because they are not regulated by the Commission.[71]

As ChargePoint stated in its discovery response to Staff, ChargePoint would support any utility TE incentive program that allowed site-hosts to choose the EVSE that best fit their needs and that required the site-host, as a condition of participating in the program, to provide the type of data listed above to the utility and other stakeholders.[72] By contracting with site-hosts and EVSE vendors, Pacific Power could collect the data that it and the Stipulating Parties believe is needed to accelerate transportation electrification in Oregon, without causing any of the severe market distortions that Pacific Power's direct participation in the market would cause. The Commission should find that Pacific Power has failed to meet its burden to demonstrate that utility ownership and RFP procurement of charging stations is necessary to the success of the Public Charging program, while ChargePoint has demonstrated that this structure would actually impede transportation electrification efforts in Pacific Power's service territory.

B. Pacific Power does not need to own charging stations or procure them through an RFP in order to monetize Clean Fuels Program credits for ratepayers.

Staff also makes much of the fact that Pacific Power has committed to monetizing any Clean Fuels Program (CFP) credits that the Public Charging program stations would generate and use those funds to offset the cost of the program to ratepayers.[73] However, Pacific Power does not need to own charging stations or procure them through its proposed RFP process in order to monetize these credits. Pacific Power could use contracting to require site-hosts and/or EVSE vendors participating in the Demonstration and Development program to aggregate CFP credits

[71] Staff/200, Klotz/14 line 22 – Klotz/15, line 2; Joint Opening Brief, p. 2.
[72] ChargePoint/400, ChargePoint Response to OPUC Staff Data Request 23.
[73] Staff/200, Klotz/14, lines 3 – 8.

and use the value of those credits to offset the cost of the grants. Pacific Power's willingness to monetize CFP credits for the benefit of ratepayers does not justify Pacific Power's proposal to disrupt the competitive EVSE market through its the Public Charging program.

C. Pacific Power's plan to analyze its proper market role would not be objective because any such analysis would reflect Pacific Power's direct participation the market.

Though such a provision does not appear in the Stipulation itself, the Stipulating Parties state in testimony that the TE programs, including the Public Charging program, will allow Pacific Power, Staff, and stakeholders to better understand "the proper and most effective role of the utility within the electric vehicle market, [and] the most effective programmatic efforts a utility can undertake to accelerate adoption and utilization of electrified transportation without overburdening the market or competitors."[74] The Stipulating Parties provide no explanation for why they would assess Pacific Power's proper role sometime in the future, rather than now, when Pacific Power is seeking Commission approval for a dramatic new role in the transportation electrification market. Effectively, Public Power has proposed to put the cart before the proverbial horse by making a direct investment of $1.85 million to compete in the public charging market now in order to understand "how best to guide investment by the utilities" in this market in the future.[75]

Pacific Power cannot objectively or fairly evaluate the health of the public charging market if it is directly participating in that market, as it would be with the Public Charging program. Any assessment of the market would reflect Pacific Power's participation, and Pacific Power could use any analysis to justify continuing to directly compete in the market if it so desired. For example, if the Commission approved the Public Charging program contrary to ChargePoint's recommendations and the Public Charging program discouraged private competitors from

[74] Stipulating Parties/100, Morris-Klotz-Mullins-Jenks-Allen-Ashley-Avery/16, lines 9 – 13.
[75] *Id*. at 17, lines 5 – 6.

competing in Pacific Power's service territory (as ChargePoint has predicted), then Pacific Power's assessment would likely conclude that the competitive market is unhealthy and requires Pacific Power's continued direct participation to keep it afloat. If, on the other hand, the competitive charging market remained relatively healthy in spite of the Public Charging program's distorting effects (perhaps because EV adoption occurs faster than predicted, for example), Pacific Power's assessment would be that its participation in the market had not been harmful, so there is no need for it to exit the market.

Since there would never be a "control group," it would be difficult if not impossible for Pacific Power to objectively determine whether the role it has proposed for itself with the Public Charging program is appropriate, and whether its direct participation in the market has had a positive or negative effect on the market. Instead, the Commission should look to SB 1547's six criteria, which establish the conditions under which Pacific Power may permissibly participate in the public charging market. As discussed extensively above, since the Public Charging program does not incorporate any aspect of customer choice, the Public Charging program fails to satisfy the conditions that the Legislative Assembly imposed on Pacific Power's participation in the public charging market, and must therefore be rejected.

VI. The Commission should only approve TE programs that hold promise for the future.

As mentioned, ChargePoint supports Pacific Power having an active role in transportation electrification efforts in Oregon. As the monopoly utility with captive ratepayers and access to low-cost capital, Pacific Power should play a role in transportation electrification that only Pacific Power can play. Any EVSE vendor can compete in the market to build and own charging stations or to sell charging stations to interested and willing site-hosts. Only Pacific Power, however, can provide incentives to site-hosts who want to install charging stations (which Pacific Power would

do through the Demonstration and Development program), or make a business case for installing make-ready infrastructure for its customers (by putting the costs in its rate base).

Contrary to Staff's accusations, ChargePoint has not intervened in this docket because it is hoping that reallocating dollars from the Public Charging program to the Demonstration and Development program would allow ChargePoint to "make more money selling EVSE to site-hosts."[76] As an initial matter, this unsupported assumption of Staff's is simply incorrect; at least one EVSE vendor, potentially including ChargePoint, stands to make a substantial amount of money by winning Pacific Power's proposed RFP if the Public Charging program were approved contrary to ChargePoint's recommendations.

ChargePoint's advocacy in this docket has focused consistently on supporting the Demonstration and Development program, in which Pacific Power would work with any interested ratepayer to subsidize *the ratepayer's* installation of charging infrastructure in a way that will stimulate innovation, competition, and customer choice among as many EVSE vendors as possible (not just ChargePoint) in the nascent public charging market.[77] The goal of such a program is that the market eventually be able to sustain itself *without* ratepayer subsidies, consistent with the goals of SB 1547.[78] Based on its extensive experience, ChargePoint has found that the best way for a utility to promote the development of a self-sustaining market is for the utility to stimulate the market through site-host rebates, grants, and make-ready incentives, rather than use ratepayer money to compete directly in that market. If the Commission shares Staff's concern with unwarranted wealth transfers from ratepayers, it should find that it would be better for ratepayers

[76] Staff/200, Klotz/17, lines 16 – 18.
[77] ChargePoint/100, Packard/17, lines 8-17 and Packard/21, line 9 – Packard/24, line 21; ChargePoint/200, Packard/12, line 21 – Packard/13, line 12.
[78] ChargePoint/200, Packard/23, line 22 – Packard/24, line 14.

not to fund TE efforts at all than for them to fund Pacific Power's proposal to dominate this nascent market through the Public Charging program.

Despite the Stipulating Parties' attempts to characterize the Public Charging program as a non-precedential first step for Pacific Power to study how best to accelerate transportation electrification, the Public Charging program, if approved, would set the stage for the future.[79] As mentioned, the market will care little for whether or not the Public Charging program has precedential value from a legal perspective; the Public Charging program would set customer expectations that Pacific Power will use ratepayer money to fund public charging stations, so there is no reason for anyone else to invest in EVSE. If Pacific Power has no intention to expand the Public Charging program beyond the seven sites and approximately 35 total stations it has proposed in the Stipulation, then it should not set such misleading customer expectations. If, on the other hand, Pacific Power hopes to expand the Public Charging program in the future, then the Commission should require it to demonstrate now that the program would comply with SB 1547, which, for all the reasons discussed herein, it cannot do.

Pacific Power undoubtedly has a lot to learn about how to most effectively accelerate transportation electrification in its service territory, but Pacific Power, the Stipulating Parties, and the Commission already have all the resources and information they need to design a public charging program that complies with SB 1547. Limiting the Public Charging program's scope and cost impact to ratepayers, and requiring Pacific Power to collect some data, cannot transform the program from one that the Stipulating Parties hope will not cause too much harm to the market into a program that would actually stimulate customer choice, as it is required to do. The

[79] Staff/200, Klotz/16, lines 19 – 20; PAC/300, Morris/6, lines 20 – 21.

Commission should find that even Pacific Power's first-step TE program must comply with the clear directives of SB 1547, and should reject the Public Charging program for its failure to do so.

VII. Conclusion

Despite SB 1547's requirement that Pacific Power stimulate customer choice in EV charging and related infrastructure and services, Pacific Power and the Stipulating Parties ask the Commission to authorize Pacific Power to choose the only EVSE that would be deployed through its proposed Public Charging program. By failing to involve any aspect of customer choice into the design of its program, Pacific Power would also fail to stimulate innovation or competition. Pacific Power would actively discourage competition by entering the market with ratepayer backing – a massive anti-competitive advantage unavailable to private market participants. The best that the Stipulating Parties can say about the Public Charging program's impact on the market is that it would not "stifle" competition.[80]

That the Public Charging program would generate some data and be limited in its scope and its cost to ratepayers do not justify its failure to comply with SB 1547. The Public Charging program would set a market precedent that would discourage private investment and set the public charging market up for long-term dependency on ratepayer funds.

As discussed extensively herein and in ChargePoint's advocacy in this docket, Pacific Power must stimulate customer choice in charging station infrastructure and services in order to comply with SB 1547 and to achieve the Legislative Assembly's goals for SB 1547. Stimulating customer choice can be achieved most expediently through a grant-based program such as the Demonstration and Development program, or a site-host rebate program or a make-ready incentive program, which allow a site-host to choose the EVSE that best meets its needs. These compliant

[80] Joint Opening Brief, p. 12.

programs that can even accommodate utility ownership, if that is Pacific Power's goal. The Commission should reject the Public Charging program proposal and direct Pacific Power to reallocate the $1.85 million it has proposed to spend on the Public Charging program to the Demonstration and Development program. The Commission should further provide Pacific Power with guidance and direction on the appropriate role of a utility in transportation electrification consistent with SB 1547 to guide Pacific Power's future applications for TE programs.

Respectfully submitted this 9th day of January, 2018,

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