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Oregon Public Utility Commission
VIA Email

March 17, 2022

RE: Joint comments responding to the AR 654 draft rule language distributed March 3, 2022

The undersigned organizations appreciate the opportunity to comment on the draft rule language updating Division 87 rules to establish a Transportation Electrification Investment Framework. We understand Staff has worked to incorporate input provided by stakeholders throughout the UM 2165 process and the initial AR 654 workshop. We recognize stakeholder input reflected in the draft rule language and our comments seek to expand on this work.

I. Definitions (860-087-0010)

We appreciate that the definitions reflect many of the comments we submitted to Staff. In particular, we appreciate that the draft regulations incorporate our suggested definitions for communities of color and tribal communities.

We do recommend developing additional flexibility around the proposed definition for “communities experiencing lower incomes.”¹ As we indicated in our comments dated November 5, 2021, building flexibility into the definition could support increased access and outreach, as well as equitable outcomes. We note that partner organizations have recommended that flexibility is key in defining income thresholds for participation, depending on who the program is trying to assist and how complicated the program is.² We understand that the Interim Process guidance reflects an intention to use state median income, suggesting that the guideline is “inherently flexible and can be readily converted into a geographic designation.”³ If that is the intention of the measure, **we suggest 120 percent of state median income set the floor for the definition of communities experiencing lower incomes and language be included in the regulation or the implementation-level guidance to allow for program specific flexibility.**

Similarly, we note that the definition for “communities adversely harmed by environmental and health hazards” may be overbroad. In our comments of November 5, 2021, we recommended tying the definition to environmental and health indicator tools, such as the EPA EJScreen Tool. Consider, too, how the Environmental Justice mapping tool, mandated by HB 4077 this session, might inform which

¹ Draft OAR 860-087-0010(8).

² Defining and Verifying Low Income Participants, Community Energy Project (Nov. 18, 2021), available at <https://www.communityenergyproject.org/wp-content/uploads/2021/11/Self-Verification-and-Income-Levels.pdf>

³ Docket No. UM 2165, Staff Report, Item No. RA2, at 8 (Nov 24, 2021), available at <https://edocs.puc.state.or.us/efdocs/HAU/um2165hau1331.pdf>.

communities are deemed adversely harmed by environmental and health hazards.⁴ We understood from the Interim Process guidance that Staff supported our suggestion to use a tool like the EPA EJScreen Tool, but without reference to such a tool (or one like it) in the regulations, it may be difficult to encourage utilities to consider consulting such demographic indicators. **We suggest that the regulation incorporate language requiring that utilities “use a Commission-approved tool” to more precisely identify communities adversely harmed by environmental and health hazards.**

Finally, we suggest that the terms proposed for definition in the draft rule, that arise from HB 2165 and its direction that utilities make transportation electrification (TE) investments that benefit underserved communities, should reference that law or the term “underserved communities” to provide context for readers. Without referencing HB 2165, it is unclear why, for example, “residents of rental housing,” “residents of multifamily housing,” and “communities of color” are in need of definition as those terms do not appear in any of the other provisions in Division 87.

II. Transportation Electrification Plan (860-087-0020 (1) through (3))

The draft rule language outlines an expanded role for TE Plans with the goal of integrating the utility’s TE investments into one planning document. When we initiated the process to revamp the TE Investment Framework, our hope was to redirect utility efforts from the narrow opportunities presented by pilots and stimulate investments at a level to match the need for action in the face of the climate crisis. We believe clearer direction for the TE Plans can support necessary investments and help stakeholders provide input to shape the development and implementation of utility TE programs.

A. Filing and Acceptance of TE Plan

We have several suggestions to improve OAR 860-087-0020(1) and (2) to better reflect the purpose of these regulations, and to ensure stakeholders have early access to the proposed TE Plans and are able to better guide TE investments.

As an initial matter, **we invite consideration of whether OAR 860-087-0020(1)(b) accurately captures the purpose of these regulations.** Specifically, as currently drafted, the “TE Plan *should seek* to address areas most affected by market barriers in the electric company’s service territory and to provide benefits for underserved communities.” To incorporate a primary goal of HB 2165⁵ and the legislative intent detailed in ORS 757.357, we suggest the following language instead: “The TE Plan *shall* address areas most affected by market barriers in the electric company’s service territory, *prioritize load management*, and provide benefits for underserved communities.”

⁴ Enrolled House Bill 4077, Section 12 (Mar. 3, 2022), available at <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/HB4077/Enrolled>.

⁵ “An electric company shall make reasonable efforts to expend not less than one-half of the amount collected under subsection (2) of this section each year to support transportation electrification in underserved communities . . .” Oregon Laws 2021, chapter 95 Section 2.

We request some deeper consideration of how stakeholders might be included in TE Plan preparation before a utility files its TE Plan with the Commission. For example, Washington requires utilities to share TE plans and programs with stakeholders at least 60 days before filing with the Commission.⁶ We recognize that our suggestion might be better addressed in TE Plan Guidelines, but we flag this issue now in the event it is appropriate to include a more detailed process in the rules. Specifically, we encourage the utility to facilitate significant involvement in the preparation of the TE Plan. Included in that involvement is the ability to ask for information from the utility, and to contribute information and ideas in an open and public process. **We request that the utility make a draft TE Plan available for public review and comment prior to filing a final plan with the Commission.**

As additional food for thought, consider whether the Utility Community Benefits and Impacts Advisory Group (UCBIAG) required by HB 2021 might be an appropriate group for the utilities (those which are subject to HB 2021) to consult with about TE Plans. Notably, the biennial report developed in conjunction with the UCBIAG is required to cover many of the same concerns we outlined in these stakeholder sessions, such as energy burden, actions to improve resilience, demand side management to maximize customer benefits, as well as social, economic, and environmental co-benefits resulting from utility investments.⁷ To streamline incorporation of critical feedback that will help ensure equity is centered in utility decision making, **we urge the use of existing processes where it makes sense to do so.**

Finally, we request more careful consideration of how and when TE Plan updates occur. For example, is there a time when a TE Plan update would be expected other than when a material change occurs? With this in mind, **we think it would be prudent to explicitly require that a TE Plan update be filed in the event of a material change.**⁸

B. Contents of TE Plan

We look forward to seeing improved and robust TE Plans this year, and we appreciate the consideration Staff has given to stakeholder feedback. The content of the TE Plans outlined in OAR 860-087-0020(3) provides a strong foundation and we offer the following input for Staff's consideration.

We are concerned about eliminating what was numbered OAR 860-087-0020(3)(a)(A): "a discussion of existing state policies and programs." The discussion need not be lengthy, but policies and programs will change and provide context for a reader about why planning for TE is occurring. At a minimum, **the Plans should address any changes in state policies and programs that have occurred since the last TE Plan was filed.**

⁶ Docket No. UE-160799, Policy and Interpretive Statement Concerning Commission Regulation of Electric Vehicle Charging Services (Jun. 14, 2017), available at <https://www.utc.wa.gov/casedocket/2016/160799>.

⁷ ORS 469A.425(2).

⁸ Draft OAR 860-087-0020(2)(f).

We understand OAR 860-087-0020(3)(a) is not meant to be an exhaustive list of market conditions the utility may consider in the development of their plan but we do think it would be valuable to incorporate reliability considerations into OAR 860-087-0020(3)(a)(B). Specifically, **we suggest: “existing data on the availability, reliability, and usage patterns of charging stations.”**

Accurately capturing the performance area categories, proposed in OAR 860-087-0020(3)(c), is critical to successfully implementing an outcome-driven and equitable TE Investment Framework in Oregon. **We think it is worth the time to carefully consider whether the proposed categories sufficiently serve to assess utility progress toward reaching desired outcomes.** We identify some suggestions for further improvement, noting that Staff agreed in its recommendation to the Commission in December that it would work with stakeholders and utilities to “refine these performance areas[.]”⁹ Specifically:

- We are concerned about the inclusion of electric vehicle adoption as a performance measure.¹⁰ While electric vehicle adoption should be monitored to ensure projects within the utility’s portfolio are keeping pace with charging demand, a portfolio-based approach should move away from a strict attribution methodology to determine cost effectiveness. Keeping an eye on EV adoption can help ensure that portfolio investments are being made to proactively manage and integrate EV load in a manner that benefits the system. For example, investments to support fleets can directly lead to additional EV adoption.
- While we agree that infrastructure performance is an appropriate measure to include in the list, we reiterate the suggestion we made in our November 5, 2021 comments that this metric also include accessibility and reliability.¹¹
- We recommend adding an affordability and financial performance area. This will allow for the development of key affordability and financial metrics outside of but complementary to the Division 87 rules.

Finally, recognizing that TE provides additional revenues and serving that load can add additional costs on that system, we seek clarification on the meaning of the provision requiring utilities to include in their TE Plans an “[a]nalysis of the estimated ratepayer impacts of the TE Plan portfolio over the next two calendar years.”¹²

III. Transportation Electrification Budget (860-087-0020 (4) through (6))

The addition of the TE budget requirements is a critical component to address barriers to utility TE investments. Historically, it has not been clear what methods should be used to determine TE portfolio

⁹ Docket No. UM 2165, Staff Report, Item No. RA5, at 16 (Dec. 14, 2021), available at <https://edocs.puc.state.or.us/efdocs/HAU/um2165hau181610.pdf>.

¹⁰ Draft OAR 860-087-0020(3)(c)(B).

¹¹ Maria S. Bocanegra, Ensuring Electric Vehicle Charging is Reliable: A Regulator’s View, Bloomberg Law (Jan. 25, 2022), available at <https://news.bloomberglaw.com/environment-and-energy/ensuring-electric-vehicle-charging-is-reliable-a-regulators-view>.

¹² Draft OAR 860-087-0020(3)(g).

budgets. We are hopeful OAR 860-087-0020(6) will provide the clarity needed for TE programs to be approved and respectfully request Staff respond to two questions regarding this subsection.

- A Commission-approved tool to estimate infrastructure needs is referenced in OAR 860-087-0020(3)(f) but not in OAR 860-087-0020(6) where the utility is required to provide a forecast of all expenditures. Is further clarification needed in OAR 860-087-0020(6) to ensure stakeholders, utilities, and Commission Staff share the same expectations about how budgets will be determined?
- We appreciate that OAR 860-087-0020(6)(a) is not overly restrictive regarding the use of cost tests for evaluating TE portfolios. We are concerned that the ambiguity could create similar barriers to TE program approval that we've seen in the past. How will Staff provide additional guidance regarding benefit-cost analysis for the 2022 TE Plan filings while working with stakeholders to assess the need for a jurisdiction specific test?

IV. Transportation Electrification Programs and Infrastructure Measures (860-087-0020 (8))

The list of items to be included in an application for a TE program or infrastructure measure is robust. We appreciate the inclusion of interoperability, measurement and communication standards.¹³ These are important to foster a fair and reliable customer experience by reducing the risk of stranded assets, ensuring customers receive the fuel they pay for, and increasing reliability. In order to ensure TE programs and infrastructure measures holistically support an accessible customer experience, **we recommend adding requirements for payment method standards at utility owned and supported public charging stations, requirements to make languages other than English available for public charging transactions, and reliability requirements.**

The programs and infrastructure measures should also indicate how EV load will be managed, how it will be shifted off-peak, ways to optimize EV charging, and programs to provide the greatest benefit. This may be partially captured in the performance area category, "grid integration benefits," in OAR 860-087-0020(3)(c)(E). We are generally supportive of keeping the rules high level, but **a greater level of detail regarding load management is necessary in the TE program and infrastructure measure guidelines** outlined in OAR 860-087-0020(8) and the filings themselves.

Finally, we recommend the following be added to OAR 860-087-0020(8):

- Where applicable, an explanation of how the program/infrastructure measure will benefit underserved communities and low-income customers.
- Estimated net revenue attributed to the portfolio of programs/infrastructure measures.

V. Transportation Electrification Plan Report (860-087-0030)

We understand the need for consistent reporting and want to highlight the importance of including performance metrics as a means to measure TE portfolio outcomes. We hope specific guidance on how

¹³ Draft OAR 860-087-0020(8)(a)(A)(xi) and (xii).

metrics should be reported as a part of the performance area category discussion will be developed alongside more detailed metrics.

VI. Conclusion

We understand that these rules are not necessarily the appropriate place to reflect detailed metrics, and that implementation-level guidance will be an important method to assist utilities and stakeholders in properly executing TE planning. However, to avoid unnecessary confusion that may delay implementation of important TE investments, we do ask Staff to carefully consider any calls for clarification to ensure that regulations set clear expectations for utilities and stakeholders. Additionally, we note Staff's suggestion for future workshops to address implementation, and it would be helpful to us to understand what topics Staff plans for discussion.

We want to thank Staff for their commitment to addressing TE program barriers throughout the UM 2165 and AR 654 process. We appreciate the opportunity to provide comments on the draft rule language and look forward to reviewing any updates.

Respectfully submitted,

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