PACIFIC POWER
A DIVISION OF PACIFICORP

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August 27, 2018

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: UM 1826—PacifiCorp's Comments

PacifiCorp d/b/a Pacific Power provides the following comments on Public Utility Commission of Oregon (Commission) Staff's August 17, 2018 recommendations regarding Clean Fuels Program Design Principles and Program Selection Process (Staff Report). PacifiCorp recognizes and appreciates Staff's hard work in assembling a comprehensive set of principles and a program process but finds that fundamental issues still need to be clarified and addressed before acting on them.

PacifiCorp previously provided comments on Staff's preliminary draft proposed principles and processes in an informal phase of this investigation. For convenience, those comments are attached and incorporated by this reference. To the extent that the proposed principles and processes have not changed from those in the preliminary draft to those in the Staff Report, PacifiCorp continues to support the positions taken in its previous comments.

As detailed below, PacifiCorp is concerned that the Commission is being asked to adopt program implementation details before the fundamental issue in the docket is resolved. Specifically, the Commission has asked Staff and stakeholders to address the Commission's role in the Clean Fuels Program. This issue has been discussed in the various stakeholder proceedings, but Staff's recommendations offer no recommendations or conclusions on this foundational issue. Instead, Staff's detailed program implementation recommendations put the cart before the horse and assume a high degree of regulatory oversight without a discussion of whether such oversight is appropriate.

Given the lack of formal discussion or resolution about the Commission's role in overseeing the Clean Fuels Program, PacifiCorp recommends the Commission order additional deliberations on this threshold issue. Two rounds of written comments (opening and response) should provide the Commission with sufficient information to decide the issue, and the Commission's resolution of the issue would then inform program design. Alternatively, PacifiCorp urges the Commission to adopt program oversight principles consistent with its recommendations in these comments.

I. Background and General Comments on the Commission's Role in the Clean Fuels Program

The fundamental issue the Commission has asked the parties to resolve, namely—clarifying the Commission's role in Clean Fuels Program oversight—remains unresolved. Staff has asked the Commission to adopt detailed program implementation principles and procedures. But those recommendations do not resolve (or discuss) the parties' deliberations regarding the Commission's role. Clarity on this issue is important.

Utility participation in the Clean Fuels Program is unlike other regulated activities overseen by the Commission. The program (as proposed) does not involve utilities providing a service to their customers, utilities are not charging their customers fees or rates, and no customer funds are being implicated. Simply put, utilities are not providing utility service to customers. The unique nature of utility participation in this program, which the legislature adopted to promote state-wide environmental goals, raises foundational questions about what role the Commission, as a utility economic regulatory, should play.

The Clean Fuels Program is an Oregon Department of Environmental Quality (ODEQ) program intended to reduce the carbon intensity of transportation fuels used in Oregon.[1] Generally speaking, electric utilities like PacifiCorp are not directly regulated under the Clean Fuels Program because they do not import or produce regulated fuels like gasoline, diesel, ethanol, or biodiesel.[2]

ODEQ's program rules, however, establish an ancillary role for electric utilities as credit aggregators for residential and non-residential electric vehicle charging.[3] The rules do not compel utility participation; rather, ODEQ's rules provide an avenue by which utilities *may* participate as aggregators. ODEQ's rules define how participating utilities will calculate the number of credits they receive[4] and other aspects of utility participation (as aggregators) in the Clean Fuels Program.

Under the statutory framework and ODEQ's rules, utilities do not have a compliance obligation but *may* aggregate credits associated with electric vehicle charging. The statute and ODEQ's rules do not specify what participating utilities should do with revenue generated from monetizing credits.

The Commission, of its own accord,[5] initiated this investigation into utility participation in the Clean Fuels Program as credit aggregators.[6] From the onset, PacifiCorp expressed reservations about becoming a credit aggregator, particularly since program design and obligations were unclear. In Order No. 17-250, the Commission found that utility participation in the Clean Fuels Program was in the public interest, and ordered PacifiCorp and Portland General Electric

[1] *See generally* HB 2186 (2009) and SB 324 (2015); OAR 340-253-0000(2).
[2] OAR 340-253-0310.
[3] OAR 340-253-0330(2)-(3).
[4] OAR 340-253-1020(3).
[5] The legislation adopting the Clean Fuels Program does not expressly charge the Commission with responsibility for program administration or oversite.
[6] Order No. 17-152, Docket No. UM 1826 (Apr. 20, 2017).

Company to register with ODEQ as credit aggregators. The Commission also ordered an investigation into the following issues related to utility participation in the program:

1. Discussion and guidance regarding the electric utility role under the Clean Fuels Program and the Commission's role;
2. What is the highest and best public interest use of credit value received from participation in the Clean Fuels Program by utilities?
3. What are appropriate programmatic and administrative structures for utility participation in the Clean Fuels Program?
4. What guidance would be helpful to the utilities as they participate in the nascent Clean Fuels Program credit market?
5. What is the appropriate forum for resolving these and future issues associated with utility implementation?[7]

Following a public stakeholder process, the Commission adopted principals that would inform utility monetization of Clean Fuel Program credits.[8] That order addressed Issue No. 4 (What guidance would be helpful to the utilities as they participate in the nascent Clean Fuels Program credit market?). Staff then facilitated another public stakeholder process (Phase II) to address the remaining Issue Nos. 1-3 in this docket, and the Commission will consider Staff's recommendations at the August 28, 2018, public meeting. Staff's recommendations touch on important issues including program design principles for the use of credit revenue, and the process for selecting programs funded by credit revenue.

PacifiCorp is concerned that an overarching policy issue has not been fully addressed—namely, what is the Commission's role in Clean Fuels Program oversight (Issue No. 1). The issue has been discussed at length in stakeholder meetings, and PacifiCorp has consistently shared its perspectives about the relationship between customer funds and Commission oversight. The Staff Report, however, does not directly address that issue or reflect the parties' discussions and comments throughout this docket. Aspects of Staff's recommendations are nonetheless predicated on the assumption that the Commission and utility stakeholders should be intimately involved in aspects of utility participation in the program.

PacifiCorp is not suggesting that the Commission and stakeholders do not have a role in utility participation in the Clean Fuels Program, and PacifiCorp recognizes the Commission's broad public interest jurisdiction. Rather, PacifiCorp suggests that Commission oversight and stakeholder participation should reflect the unique circumstances utilities have been put in. It is important to acknowledge that the Clean Fuels Program is an ODEQ program, and utility participation is driven by ODEQ's rules, not by a legislative or regulatory mandate directed at the Commission. Utilities are not directly regulated under the program, and the role utilities are expected to play in the program is novel. Utilities are not providing a product or service to their customers; instead, they are simply acting as an aggregator for the sole purpose of administrative

[7] Order Nos. 17-152 and 17-250.
[8] Order No. 17-512.

efficiency for ODEQ. Utilities are not levying rates or charges, and as proposed by Staff, customer funds are not being used to support program outcomes.[9] Simply put, utility activities under the Clean Fuel Program are not the type of activities that have historically triggered the Commission's oversight as an economic regulator charged with protecting customers.[10]

Staff has proposed active stakeholder and Commission engagement in the project selection process. Staff suggests a process including multiple workshops designed to achieve consensus over utility program proposals. The goal of the workshops "is to select, amend, and/or modify the plan(s) to achieve consensus." Assuming this process achieves consensus among an open-ended universe of potential stakeholders, utility programs would be submitted to the Commission for approval. If consensus is not achieved, the Commission would consider the utility proposal along with competing proposals advanced by stakeholders. As proposed, such a process has the feel of a contested case where parties with divergent interests are advocating against one another for particular outcomes—a result that is not contemplated in the Clean Fuel Program's enabling legislation or ODEQ's legislatively-mandated rules governing program implementation.

In its informal comments (attached), PacifiCorp recommended an approach where Commission oversight and stakeholder participation would depend on whether customer funds were implicated. If customer funds are used as a program funding backstop, further administrative process and stakeholder input would be warranted. But if customer funds are not implicated, the justification for utility stakeholder input and regulatory oversight is greatly diminished because the utility is simply acting out its role under ODEQ's program. Again, PacifiCorp emphasizes that it is not proposing that the Commission should have no role in program oversight. Instead, the Commission's role and administration should reflect whether there is a nexus to customer funding. If there is no nexus, common sense suggests the justification for regulatory oversight is minimal.

In light of the unresolved question of the Commission's role, PacifiCorp recommends that the Commission instruct Staff and stakeholders to engage in additional deliberations on Issue No. 1.

II. Specific Comments on Principles for the use of Clean Fuel Program Credit Revenues

Principle 1 – Increase transportation electrification in Oregon

Regarding Principle 1 stating the use of Clean Fuel Program credit revenues should increase transportation electrification in Oregon, PacifiCorp re-emphasizes the points made previously in informal comments. Increasing transportation electrification in Oregon is a worthy use for credit revenue, but returning credit value directly to electric vehicle drivers may also be appropriate and should not be precluded.

Principle 4 – Programs are independent from ratepayer support

With regard to Principle 4 stating that programs are independent from ratepayer support, PacifiCorp re-emphasizes the arguments from its informal comments and comments above.

[9] Staff Memo at 5 (Aug. 17, 2018) ("Programs are independent of ratepayer support.")
[10] *See, e.g.*, ORS 756.040(1) (The "commission shall represent the customers of any public utility … in all controversies respecting rates, valuations, services and all matters of which the commission has jurisdiction.").

PacifiCorp believes that separating program funding from ratepayer funds will necessarily reduce the speed and scaling of programs, because, to manage risk, utilities can only rely on monetized credits. This also means that utilities may not want to or be able to (from an available funds perspective) implement programs until a threshold level of revenue is actually received through monetizing credits *i.e.*, utilities will not want to rely on a future revenue stream from a nascent and uncertain market when there is no mitigation if those revenues are not ultimately generated.

Principle 6 – Maximization of funds for implementation of programs

Regarding Principle 6 highlighting the maximization of funds for the implantation of programs, PacifiCorp notes that the proposed process for program selection, which is highly administratively burdensome, is contrary to this principle.

CFP Credit Revenue Oversight Process

Proposal for First Program Year

Staff proposes that utilities file initial proposals October 26, 2018, based on credits already monetized at the time of application and CFP credit revenues reasonably expected to be available during the program year(s). As stated in its informal comments, PacifiCorp appreciates the desire to deploy credit revenue quickly, but is concerned with the need to monetize credits in order to have funding to propose programs in a relatively short timeframe and with the potentially harmful signal this could send to the credit market (i.e., if regulated entities know utilities need to sell credits by a specific date, this could diminish the value of credits in the market). PacifiCorp supports a less rigid process where programs are proposed once a threshold level of revenue has been generated rather than on an arbitrary date.

Proposal for Process After First Program Year

Staff proposes an annual process for developing new programs, beginning with “utilities and any other parties” providing program expenditure plans and ending with Staff recommending programs to fund to the Commission. PacifiCorp continues to have concerns with this approach, as described in its previous informal comments. PacifiCorp believes utilities should be able to propose programs when necessary credit revenue is available rather than on a prescribed schedule. A prescribed schedule specifying when utilities need to monetize credits and to propose programs may harm the credit market and the value of a utility’s credits. Stakeholders should be able to propose good ideas to utilities, but utilities should ultimately decide which programs to fund and who should implement them. PacifiCorp notes that if the intent was to have other entities implement programs directly, then it is not clear why utility participation is necessary (*i.e.*, ODEQ could have selected a backstop aggregator to implement credit revenue).

III. Conclusion

PacifiCorp recommends the Commission order additional deliberations on the threshold issue of the Commission’s role in the Clean Fuels Program. Two rounds of written comments (opening and response) should provide the Commission with sufficient information to decide the issue, and the Commission’s resolution of the issue would then inform program design. Alternatively, PacifiCorp urges the Commission to adopt program oversight principles consistent with its recommendations in Section III of these comments.

PacifiCorp appreciates the opportunity to provide these comments and looks forward to continuing to actively participate in this proceeding.

Please direct any questions about these comments to Natasha Siores at (503) 813-6583.

Sincerely,

Etta Lockey
Vice President, Regulation

PacifiCorp's Informal Comments

August 3, 2018

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August 3, 2018

VIA ELECTRONIC MAIL

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Attn: Rose Anderson
JP Batmale

RE: UM 1826—PacifiCorp's Comments

In response to Public Utility Commission of Oregon (Commission) Staff's request for comments regarding proposed Oregon Clean Fuel Program (CFP) principles and processes, PacifiCorp d/b/a Pacific Power provides the following comments.

Principles for the use of CFP Credit Revenues

1. ***Increase transportation electrification in Oregon***
   - ***Programs should be designed to increase access to or use of electric vehicles and electric vehicle charging in Oregon.***
   - ***Programs should seek to consider, leverage, and coordinate with other electric vehicle programs in Oregon to maximize the effect of the CFP credit revenues to increase access to or use of electric vehicles and charging infrastructure.***

PacifiCorp agrees that programs should have a direct tie to electric transportation, but requiring them to increase transportation electrification is overly narrow. Programs directed at existing electric vehicle owners, including data collection and load management, could be a valuable use of Clean Fuels Program revenue even though they may not directly lead to additional electric vehicle miles traveled. PacifiCorp proposes modifying this principle as follows: "Improve understanding, value, or access to electric transportation for a utility or its customers."

2. ***Provide majority of benefits to residential customers***
   - ***Programs should be expected to create a benefit for residential ratepayers in Oregon; although benefits do not need to go exclusively to residential ratepayers, they should predominantly accrue to residential ratepayers.***

PacifiCorp supports this principle but notes the inconsistent language of "customers" in the principle and "ratepayers" in the sub-bullet. For consistency, and because funds for these programs are not collected through rates, PacifiCorp recommends replacing both terms with "consumers."

Additionally, PacifiCorp proposes merging this principle with proposed principle 3 regarding traditionally underserved communities. The term "traditionally underserved communities" is not defined in the proposed principle. This definitional ambiguity has the potential to lead to disputes about the language's intent. To better clarify the intent of this principle and to reflect that some program designs will be more expansive in their reach than others, PacifiCorp proposes the following revision to Principle 2:

Proposed Revised Principle 2:
Provide majority of benefits to residential consumers

- *Programs should be expected to primarily benefit a diverse set of residential consumers in Oregon*

3. Provide benefits to traditionally underserved communities

- ***Some portion of CFP revenues should benefit communities traditionally underserved by access to electric vehicles and electric vehicle charging infrastructure.***

See comments on Principle 2 above.

4. Programs are independent from ratepayer support

- ***Program design should be flexible so as to scale and adapt to changes in funding by using accumulated CFP revenues gained from monetization of CFP credits, without drawing on separate ratepayer funding.***
- ***Programs should be capable, within a one-year timeframe, of changing in response to the amount of available CFP credit revenue.***

PacifiCorp notes that the annual process proposed by Staff (and discussed later in these comments) may be inconsistent with the principle of minimizing administrative costs (as reflected in the Commission-approved credit monetization principles). A series of one-year programs will necessarily be more administratively burdensome than a single multi-year program because of required program design and startup costs. Utilities should have the autonomy to design programs with sufficient flexibility to address shifts and volatility in the nascent CFP credit market. Because program budgets will be limited by CFP credit revenue that is already generated, utilities will need the flexibility to immediately ramp down programs when available funds are exhausted.

5. ***Programs are developed collaboratively and transparently.***
   - ***Utilities, stakeholders, and Staff should work toward the goal of consensus through stakeholder workshops, with the goal of meaningful and accessible participation.***
   - ***Utilities will report to stakeholders and the Commission on the use of CFP revenues, including how funds were utilized, efficacy of the program, and the percentage of revenues spent each year that goes toward administration costs.***

PacifiCorp strongly supports this principle and has no recommended changes.

6. ***Maximization of funds for implementation of programs***
   - ***Funds should be maximized to complete programmatic efforts and reduce to the greatest extent possible administrative costs.***

PacifiCorp recommends incorporating this item into Principle 4, as discussed above.

CFP Credit Revenue Oversight Process

PacifiCorp notes that Staff's proposed principles, where programs would be exclusively funded through CFP revenues and customers would not have any financial exposure, may call for a different program development and implementation process. It may be that utilities should have the authority to develop and implement programs that are consistent with those principles without further Commission oversight, because there is no cost or risk to ratepayers. In this instance, PacifiCorp proposes that utilities meet annually with stakeholders to review program progress to date, available CFP revenue, and proposals to spend the available revenue, either through new programs or expansion of existing programs. Such a process would significantly reduce the utility's administrative costs (consistent with the Commission-approved monetization principles) and make more efficient use of stakeholder time (as compared to the more substantial process Staff has recommended). As an alternate approach, we provide additional comments on Staff's proposed process below:

Proposal for First Program Year

Staff proposes that utilities file initial proposals September 3, 2018, based on credits already monetized at that time. PacifiCorp appreciates stakeholders' interest in moving quickly to deploy CFP credit value, however, we are concerned with the highly compressed timeline described in the proposal, requiring utilities to file program proposals a mere three weeks after the Commission approves program principles. This proposed timeline is not sufficient to develop program proposals that are consistent with Commission-approved program principles. Moreover, if the approved principles require program budgets to only rely on credits monetized before filing, PacifiCorp will not have any money to propose spending by early September.

Proposal for Process After First Program Year

Staff proposes an annual six-month process for developing new programs, beginning with "utilities and any other parties" providing program expenditure plans and ending with Staff recommending programs to fund to the Commission. PacifiCorp does not support Staff's proposal for several reasons:

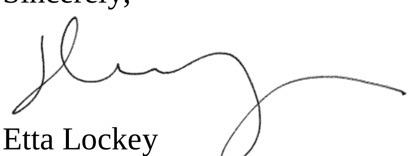
- PacifiCorp is not clear whether Staff is proposing a process allowing stakeholders to propose program concepts to utilities to consider or whether stakeholders would be making funding requests to the Commission, who could then direct utilities to give their CFP revenue to another party to administer. PacifiCorp feels strongly that utilities should maintain their autonomy in designing and implementing programs that align with Commission-approved principles.
- As discussed above, imposing timing on when program proposals can be submitted may harm the CFP credit market and reduce the value of utility credits by sending signals to market participants on when utilities will need to monetize credits.
- PacifiCorp supports a robust stakeholder engagement process, but the proposed process seems overly burdensome and inconsistent with the principle of minimizing administrative costs.
- The proposed process does not contemplate the efficiency and stability benefits that can be gained by implementing multi-year programs.

PacifiCorp recommends that utilities be free to propose new programs, consistent with the approved principles, as they deem appropriate based on projected CFP revenue not already committed to existing programs. This would create a more efficient and timely process for utilities and stakeholders, while still ensuring that CFP revenue is deployed in a manner than supports the program principles.

PacifiCorp appreciates the opportunity to provide these comments and looks forward to continuing to actively participate in this proceeding.

Please direct any questions about these comments to Natasha Siores at (503) 813-6583.

Sincerely,



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