

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1158

In the Matter of

ENERGY TRUST OF OREGON

Waiving 2022 Performance Measure #5
Related to Performance Delivery Efficiency
and #6 Related to Staffing.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 4, 2022, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 4, 2022**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** October 5, 2022

DATE: September 26, 2022

TO: Public Utility Commission

FROM: Anna Kim and JP Batmale

THROUGH: Bryan Conway, JP Batmale, and Sarah Hall **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1158)
Waiving Energy Trust 2022 performance measure #5 related to performance delivery efficiency and #6 related to staffing.

STAFF RECOMMENDATION:

Waive Energy Trust of Oregon's (Energy Trust) 2022 performance measures #5 related to performance delivery efficiency and #6 related to staffing.

DISCUSSION:

Issue

Whether the Oregon Public Utility Commission (Commission or OPUC) should waive performance measures #5 and #6 for evaluating the performance of Energy Trust in 2022.

Applicable Law

Energy Trust operates under a grant agreement with the Commission, as authorized under ORS 757.054(4), ORS 757.612(3), and ORS 757.746. The grant agreement requires the PUC to establish quantifiable performance measures that clearly define its expectation of Energy Trust's performance. The following statement can be found on page three of the grant agreement:

Docket No. UM 1158
September 26, 2022
Page 2

The Energy Trust and the PUC recognized the need for having valid and quantifiable performance measures that clearly define the PUC's expectation of the Energy Trust's performance. The performance measures are developed to clarify minimum expectations for Energy Trust on an ongoing basis and may be adjusted from time-to-time. The Energy Trust will regularly report to the PUC, comparing actual performance to the PUC established performance measures. Should the Energy Trust fail to meet the performance measures adopted by the PUC, the PUC, at its discretion, may issue a Notice of Concern. In choosing to issue such a Notice of Concern, the PUC will take into account reasonable causal factors and any mitigating actions taken by the Energy Trust.

Per OAR 860-001-0000(2) for limited purposes in specific proceedings, the Commission or administrative law judge (ALJ) may modify or waive any of the rules in Division 860 for good cause shown. A request for exemption must be made in writing, unless otherwise allowed by the Commission or ALJ.

Analysis

This memo provides a brief overview of Energy Trust performance measures generally, the specifics of performance measure #6 on staffing costs, and performance measure #5 on program delivery efficiency, which is influenced by staffing costs. The memo continues by outlining Energy Trust's need for waiver of these performance measures, and Staff's reasons for seeking Commissioner approval of the waiver request.

Purpose of and Process for Energy Trust Performance Measures

Per Energy Trust's 2005 Grant Agreement, the Commission uses annual performance measures to clarify Commission's minimum expectations for Energy Trust. Performance measures are not meant to be targets or goals.¹ Rather, they reflect a threshold by which regulators can determine the health of Energy Trust programs. They are meant to provide early indicators of poor performance, which if not met, signal that intervention may be required. Energy Trust sets specific goals, collaboratively developed with utilities and Staff, in its annual budget and action plan. These goals, which broadly become performance measures, are based on available conservation and renewable generation as indicated by utility Integrated Resource Plan (IRP) targets and market studies. Energy Trust presented its 2022 budget and action plan to the

¹ See 2005 Energy Trust Grant Agreement, Section 2.e, page 3. Grant agreement can be found at https://www.energytrust.org/wp-content/uploads/2016/10/grant_agreement.pdf.

Docket No. UM 1158
 September 26, 2022
 Page 3

Commission at a special public meeting on November 16, 2021,² and approved Energy Trust's performance measures later in February 2022.³

Measure 5: Program Delivery Efficiency (Administration)

The program delivery efficiency measure is a maximum threshold for administrative and program support costs. It is calculated as a percentage of total annual revenues. The initial target of 11 percent was set in 2004 when establishing Energy Trust's performance measures.⁴ Currently, the performance measure is set to eight percent of revenues.⁵ Since the 2019 budget cycle, Energy Trust has updated its annual budget documents to make it easier to determine applicable costs for this OPUC performance measure.⁶ Administrative costs fall under several approved categories.⁷

The performance measure #5 for the 2022 budget was as follows:

Table 1 – Performance Measure #5 for 2022⁸

Category	2021 Performance Measure	Proposed 2022 Performance Measure
5. Program Delivery Efficiency	<ul style="list-style-type: none"> Administrative and program support costs must be below 8% of annual revenues (no more than \$14,443,806). Administrative and program support cost growth is limited to 10% year-over-year increase (no more than \$1,383,127). 	<ul style="list-style-type: none"> Administrative and program support costs must be below 8% of annual revenues (no more than \$15,980,475). Administrative and program support cost growth is limited to 10% year-over-year increase (no more than \$1,408,400).

Budgeted Administrative Costs vs. Actual

In 2021 Energy Trust underspent on administrative costs in response to an unprecedented level of program participation in late 2020 and early 2021. As part of the strategy to adjust the 2021 budget in response to increased spending early in the year,

² For more information on this special public meeting please go to https://oregonpuc.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=856.

³ See UM 1158, Order No.22-061, February 24, 2022.

⁴ See Order No. 04-593.

⁵ See Order No. 15-127.

⁶ See Order No. 18-076.

⁷ See Staff Report at Special Public Meeting on Energy Trust's 2019 Budget, November 8, 2018, pg. 10-11.

⁸ See UM 1158, Order No.22-061, February 24, 2022.

Docket No. UM 1158
 September 26, 2022
 Page 4

Energy Trust cut back on advertising, marketing, and other professional services, resulting in less spending on administrative costs in 2021 than budgeted.⁹

Table 2 – Administrative Costs¹⁰

	Total Administrative
2021 Budget	\$14,443,806
2021 Actuals	\$12,448,812
2022 Budget	\$15,151,196

The difference between the 2021 administrative cost budget and actuals is \$1,994,994. Energy Trust underspent its 2021 administrative cost budget by nearly 14 percent.¹¹

Need for Waiver

Energy Trust's large variance between its approved annual administrative cost budget and actual administrative spending is problematic due to the nature of the performance measure. The language of Energy Trust's performance measure #5 establishes a limit on *actual* year-over-year spending, not budgeted. As such, while Energy Trust has an approved 2022 administrative cost budget of \$15.2 million, Energy Trust is currently limited to spending to about \$13.7 million in order to remain under the year-over-year growth limit. This has put an unnecessary pause in needed hirings related to administrative work and other spending that could positively impact Energy Trust's operations, such as in the critical areas of Information Technology and Planning & Evaluation.

Performance Measure #6

Performance measure #6 which relates to staffing costs, has been in effect since 2015.¹² In 2017, Staff worked with Energy Trust to revise the performance measure from a 7.75 percent three-year rolling average, including agency contractor costs, to a 7.25 percent three-year rolling average, *not including agency contractor costs*. The measure was also modified to include a ten percent cap on year-over-year increases.¹³

In 2019 Energy Trust began to report employee (staffing) costs and agency contractor costs separately in the 2019 budget. Agency contractors became a new line item in the

⁹ Briefing Paper: Background on Factors Contributing to Amended 2021 Budget Proposal, Energy Trust, May 10, 2021, found at: <https://www.energytrust.org/wp-content/uploads/2021/05/2021-Amended-Budget-Briefing-Paper.pdf>.

¹⁰ Provided by Energy Trust on September 14, 2022.

¹¹ Ibid.

¹² See Order No. 15-127.

¹³ See Order No. 18-076.

Docket No. UM 1158
 September 26, 2022
 Page 5

budget. In August 2019, in Order No. 19-292, the Commission adopted the following temporary changes to Staffing measures:

- 1) For the next two years (2020-2021), reduce the annual growth in staffing costs from 10 percent to no more than 9 percent from year to year.
- 2) Remove the rolling average of staffing costs as a percent of total costs as the relationship between the two cost categories is continuing to evolve.
- 3) Report to the Commission on staffing trends and provide a recommendation for 2022 performance measures.¹⁴

These changes were enacted in response to the combination of declining savings projections and steeply increasing medical benefits costs at the time, which suggested that the existing performance measure was not providing the information the Commission sought.

In 2020, Staff worked with Energy Trust and stakeholders to identify opportunities to reduce costs and monitor changes in staffing cost needs due to new challenges from the pandemic.

Based on the finalized 2022 budget, the 2022 performance measure #6 was as follows:

Table 3 – Performance Measure #6 for 2022¹⁵

Category	2021 Performance Measure	Proposed 2022 Performance Measure
6. Staffing	Staffing cost growth is limited to 9% year-over-year increase (no more than \$1,354,779).	Staffing cost growth is limited to 9% year-over-year increase (no more than \$1,451,776).

Budgeted Staffing Costs vs. Actual

The following table shows staffing costs as represented in past budgets. These reported numbers are specifically related to the OPUC grant agreement, excluding activities in Washington and its contract with the Community Solar Program.

¹⁴ See Order No. 19-292 pg. 6.

¹⁵ See UM 1158, Order No.22-061, February 24, 2022.

Table 4 –Staffing Costs¹⁶

	Total Staffing
2019 Budget	\$14,026,973
2020 Budget	\$15,053,097
2021 Budget	\$16,130,842
2021 Actuals ¹⁷	\$15,265,717
2022 Budget	\$17,456,639

The difference between the 2021 staffing budget and actual spending is \$865,125.

Need for Waiver

Due to issues in the broader economy and staffing turnover in 2021, Energy Trust experienced a large variance between its approved annual staffing budget and actual staff spending. Specifically, Energy Trust underspent its 2021 staffing budget by nearly 5.6 percent.¹⁸

This underspending on staffing in 2021 negatively impacts staffing spending in 2022. The language of Energy Trust's performance measure #6 establishes a limit on *actual* year-over-year spending, not budgeted. As such, while Energy Trust has an approved 2022 staffing budget of \$17.4 million, Energy Trust is currently limited to spending to about \$16.4 million in order to remain under the year-over-year growth limit. This has put an unnecessary pause in needed hirings and other staff spending that could positively impact Energy Trust's operations.

Staff Supports Waiving of Performance Measures #5 and #6

There are two main reasons for Staff support of waiving performance measure #5 and #6 for the remainder of 2022. First, allowing Energy Trust to fully spend what has already been allocated in its 2022 budget has no fiscal impact on ratepayers in 2022. The funds have already been allocated and are being collected from ratepayers. Second, artificially limiting Energy Trust spending to below what was already approved serves no public purpose as it negatively impacts Energy Trust's 2022 operations in acquiring cost-effective energy efficiency savings, leading to reduced benefits for ratepayers. Energy Trust is currently holding back on needed hirings, including approved contractor conversion, so as to not run afoul of the performance measure.

¹⁶ Ibid.

¹⁷ Provided by Energy Trust on September 14, 2022.

¹⁸ Ibid.

Docket No. UM 1158
September 26, 2022
Page 7

Finally, Staff plans to work with Energy Trust in 2023 to reform this performance measure so this situation is avoided in the future.

Conclusion

Staff proposes waiving Energy Trust's performance measures #5 and #6 for 2022.

PROPOSED COMMISSION MOTION:

Waive performance measures #5 and #6 for evaluating the performance of Energy Trust in 2022.

CA3 UM 1158