ORDER NO. 17 250

ENTERED JUL 12 2017

# BEFORE THE PUBLIC UTILITY COMMISSION

# OF OREGON

UM 1826

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| In the Matter of<br><br>PUBLIC UTILITY COMMISSION OF OREGON,<br><br>Investigation into Utility Participation in Oregon Clean Fuel Programs. . | ORDER |

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED AS REVISED

This order memorializes our decision, made and effective at our July 11, 2017 Regular Public Meeting, to adopt Staff's recommendation as modified to read:

> The Commission finds that utility participation in the Clean Fuels Program (CFP) as Credit Generators to be in the public interest, and concludes that:
>
> (1) PGE and PacifiCorp must register with the Department of Environmental Quality prior to October 1, 2017 in order to generate and aggregate CFL credits; and
>
> (2) Staff will work with Idaho Power to determine the necessity and extent of its participation in the CFP.
>
> The Commission further directs the investigation recommended by Staff to continue as outlined in its April 13, 2017 Staff Report, but modifies Order No. 17-152 to allow Staff to address the utility's role under the Clean Fuel Program as part of Phase II of that investigation.

The Staff Report is attached as Appendix A.

Dated this 12 day of July, 2017, at Salem, Oregon.

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| **Lisa D. Hardie**<br>Chair | **Stephen M. Bloom**<br>Commissioner |
| | **Megan W. Decker**<br>Commissioner |

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.

**ITEM NO. 2**

**PUBLIC UTILITY COMMISSION OF OREGON**
**STAFF REPORT**
**PUBLIC MEETING DATE: July 11, 2017**

**REGULAR** X **CONSENT** ____ **EFFECTIVE DATE** July 12, 2017

**DATE:** July 5, 2017

**TO:** Public Utility Commission

**FROM:** Nolan Moser and Jason R. Salmi Klotz NM NM for JSK

**THROUGH:** Jason Eisdorfer and John Crider JE JC

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1826) Report on the question of the public interest of utility participation in the Clean Fuels Programs and initial discussion of Phase 1 issue as outlined in Staff's April 13 memo to the Commission.

## STAFF RECOMMENDATION:

Staff recommends that the Commission find utility participation in Oregon's Clean Fuels Program (CFP) to be in the public interest and that the investigation opened by the Commission on April 18, 2017 continue as outlined in the Staff Memo of April 13, 2017.

## DISCUSSION:

Issue

Whether utility participation in Oregon's Clean Fuels program is in the public interest.

Applicable Rule or Law

At the April 13, 2017 regular public meeting, the Commission opened this Staff-led investigation into electric company participation in Oregon's Clean Fuels Program pursuant to ORS 756.515(1), which gives the Commission broad authority to open an investigation regarding any matter relating to a public utility that the Commission believes should be investigated. In its order, the Commission directed staff to first address whether it is in the "public interest" for electric companies to participate in the Clean Fuels Program. As a result, Staff held a workshop with stakeholders and requested written comments on the public interest question.

The Commission is charged by the legislature to represent the interests of public utility customers and the public generally in ensuring the provision of safe and adequate service at fair and reasonable rates.[1] Although certain Commission statutes expressly refer to the public interest,[2] what constitutes a finding that a particular action or application is in the "public interest" will vary depending on the context and circumstances of the filing before the Commission. Based upon the circumstances in this particular investigation, the question of whether it is in the public interest for electric companies to participate in the Clean Fuels Program can be evaluated based on review of the benefits to utility customers and to the public generally from electric companies serving as Clean Fuels credit generators or aggregators, as well as concerns associated with utility participation. This approach was discussed with stakeholders at the Staff-led workshop that focused on the public interest question and is further developed in this staff report.

Analysis

*Background*

Oregon's CFP is implemented by the Oregon Department of Environmental Quality (DEQ). DEQ rules identify electric utilities as the first choice aggregator for all residentially-charged electric vehicles (EVs) registered in the utility's service territory.[3] DEQ rule OAR 340-253-0330(2)(a) states that electric utilities must register prior to October 1 in order to generate and aggregate credits in the following calendar year. Oregon's investor owned electric utilities have to date did not register under DEQ's program to generate and aggregate credits. During informal discussions with Staff, utilities indicated that guidance from the Commission on the administration and application of CFP credits was needed before they would be comfortable registering for the program.

Accordingly, Staff proposed to the Commission the opening of this investigation to provide the necessary guidance requested by the utilities.[4] In the order adopting Staff's recommendation and opening this investigation, the Commission directed that the

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[1] *See* ORS 756.040.

[2] *See* ORS 757.511(4) (no harm and net benefits standard applied in cases involving the authority to exercise substantial influence over a public utility); see also ORS 757.480 (no harm standard applied for the sale of utility property).

[3] OAR 340-253-0330(2)(a) (the DEQ rule provides the following hierarchy for the person who is eligible to generate credits for residential charging: (a) Electric Utility, (b) Broker, and (c) Owner of electric-charging equipment) DEQ rules available at:
http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_253.html

[4] OPUC Staff, *Recommendation to Open Investigation into Electric Utility Participation in Oregon's Clean Fuels Program*, April 13, 2017. *See* http://edocs.puc.state.or.us/efdocs/HAA/um1826haa13641.pdf.

question of whether utility participation in the CFP is in the public interest be resolved by the end of the second week in July.[5] The Commission's inquiry into the public interest question set up a phased approach to the investigation into utility participation in the CFP. After this initial question is addressed, subsequent phases will address what responsibilities the utilities may undertake as generators, possible program structures, and other necessary guidance.[6]

Commission Staff held a well-attended workshop to discuss the threshold public interest question on June 14, 2017. Written comments from stakeholders were submitted to Staff regarding the public interest inquiry on June 23, 2017. This staff report includes a summary and analysis of those comments.

*Questions Posed by Staff on the Public Interest*

In an effort to produce a recommendation to the Commission that was well-informed and inclusive of stakeholder input, Staff posed the following questions to participants at the workshop:

- What are the potential benefits of utility participation in the Clean Fuels Program?
- What are the potential risks of utility participation in the Clean Fuels Program?
- What concerns are present regarding utility participation in the CFP and how can they be alleviated?

Staff's goal in posing these questions was to explore how utility participation in the CFP aligns with the public interest. Other issues not addressed by these questions will be addressed in the following phases of this investigation as proposed in Staff's April 13, 2017 memo. Specifically, Staff proposes to address the following questions in the second phase of this investigation:

- What is the highest and best public interest use of credit value received by utilities from participation in the CFP?
- What are recommended programmatic and administrative structures for utility participation in the CFP?
- What guidance would be helpful to the utilities as they participate in the nascent CFP credit market?
- What is the appropriate forum for resolving these and future issues associated with utility implementation of the CFP?

Staff intends to engage stakeholders thoroughly throughout this investigation to answer these second phase questions. However, the subject of this report is a more limited

[5] Order No. 17-152, Docket No. UM 1826, April 20, 2017.
[6] The Commission directed that the first phase discussion be completed by the third week of August; Commission Order No. 17-152, Docket No. UM 1826, April 20, 2017.

review of the explicit question posed by the Commission: is utility participation in the CFP in the public interest?

*Summary of Stakeholder Responses to Public Interest Question*

Is it beneficial for utilities to register and participate in the CFP?

PGE, PacifiCorp and Idaho Power all agree that utility participation could be beneficial depending on some key aspects. PacifiCorp notes that the threshold question should actually be whether the utilities should register as aggregators in the CFP program. PAC and PGE both qualify their positions on utility participation on the future Commission directives regarding credit usage and monetization. Idaho Power believes utility participation should be voluntary, and if mandated, then utility participation should be reviewed on a case-by-case basis, informed by the diminutive penetration of electric vehicles in Idaho Power's Oregon service territory.

The Oregon Department of Energy (ODOE), Chargepoint, the Oregon Citizens' Utility Board (CUB) and the Natural Resources Defense Council in joint comments with the Oregon Environmental Council (NRDC-OEC) support utility participation in the CFP, though Chargepoint and NRDC-OEC encourage consideration of other entities as the credit managers after utilities register and generate credits. Tesla and Forth oppose utility participation in the CFP, believing the utilities can fulfill roles in the electric vehicle space other than credit generation. The solar renewable energy credit aggregator SRECTrade believes that utilities are inherently not optimal for the role of credit generator and that other solutions exist.

What are the potential benefits of utility participation in the Clean Fuels Program?
PGE, PAC, and Idaho Power state that utility participation in the CFP would allow the value of the credits to be applied within their system, benefiting the residential customers who generated them and possibly the system overall through various electric vehicle (EV) program or infrastructure development.

Forth notes a number of benefits that could derive from utility participation, including better management and utilization of the electric grid that could also facilitate integration of renewables, lower costs for all ratepayers and reduced air pollutant emissions. An additional benefit would be the opportunity for utilities to better familiarize themselves with customer use of electric vehicles and the requisite charging infrastructure. However, Forth states that none of these benefits derive exclusively from utility participation in the CFP.

ODOE lists numerous benefits from utility participation in the CFP, which broadly fall under reducing EV programing costs for customers or improving grid management and utilization. ODOE references an RMI study in detailing the benefits to the grid of utility participation, some of which include deferring capital investments, optimizing existing assets, and supplying ancillary services.

NRDC-OEC makes similar comments about lowering costs for customers for EV programing and providing benefits to the existing system, but also highlights the familiarity customers have with their utilities and how the utilities could leverage that.

CUB supports utility participation in the CFP to ensure that the value from CFP programing is captured so that it may be returned to ratepayers. CUB also values the oversight role of the PUC in determining how to utilize credit revenue, which over time could be substantial.

<u>What are the potential risks of utility participation in the Clean Fuels Program?</u>

PGE and PacifiCorp present concerns that, depending on the scope and goals of credit revenue spending, the utilities may not be the most effective entity to utilize the funds that result from monetization of CFP credits. They both argue that a separate entity may be able to more effectively disburse the credit value on a statewide basis or for instant rebates, which may more efficiently accelerate EV development if the revenue goals are broad enough.

Idaho Power notes that the costs of administering and reporting a program that it would incur will likely outweigh the benefits, at least in the early years, because of the practically nonexistent EV market in its Oregon service territory.

Tesla and Forth provide reasons why utility involvement in the CFP program could jeopardize successful utilization of the credit revenue. Some reasons include administrative overhead, the risk adverse nature of the utilities, the regulatory process, and the concern about the utilities ability to fully operate in the residential EV space. SRECTrade states that the utilities' unfamiliarity with the CFP could not only prevent a delayed deployment of a market solution, but could delay action all together. NRDC adds that smaller, more nimble organizations could develop and deploy incentive strategies in a manner that is more responsive to the market than the utilities could.

OEC notes that a single statewide aggregator could put in place a program that serves all utility customers, could be straightforward, and have lower administrative cost than multiple utilities hosting their own programs. OEC emphasizes a desire to ensure that additionally is maintained between the clean fuels program and 1547 investments, and argues that Oregon is not investing adequately to decarbonize its economy.

<u>What concerns are present regarding utility participation in the Clean Fuels Program and how can they be alleviated?</u>

PacifiCorp and PGE both express a need for clear Commission guidance or standards if the utilities participate in the CFP. Both utilities express concern about how new the market is and that short-term monetization strategies may not comport with long-term compliance goals. Guidance from the Commission on how the utilities should monetize the credits and treat the costs or revenues would assuage these concerns. PGE makes explicit, and PacifiCorp's comments implicit, that flexibility regarding who serves as the residential credit administrator would be valuable if the directives surrounding credit value require a more effective administrator who is not the utility.

PGE also requests electric companies be held harmless from risks that may result in entering the CFP, in part because electric companies may be the first entities that have substantial roles in the program. Finally, PGE seeks Commission guidance on how to proceed with supplemental EV program pilots that may arise and support for cost deferral associated with these pilots.

Forth provided a list of seven recommendations to alleviate concerns, which include additional PUC and DEQ guidance around aggregation and credit use, ensuring that utilities have discretion in monetizing credits, clear rationale for utilities' role as an aggregator, and collaborating with other utilities and industry stakeholders to ensure optimal program operations and electric vehicle market development.

Chargepoint and SRECTrade also seek flexibility for who can ultimately serve as an aggregator if the opportunity to select an entity other than the utility arises. Chargepoint questions if rules will permit diverse use of credit revenue such that electric vehicle market development is optimized.

*Issues Raised with Regard to Future Phases*

Workshop discussion and written comment illuminated contrasting positions on program administration and CFP credit funding issues, which are beyond the scope of the Commission's threshold question and will be addressed in the second phase of this investigation. The below table presents stakeholder positions associated with these issues. This table highlights the differences of opinion on key questions that the Commission will help stakeholders navigate through the course of this docket. It is important to note that the below is a short summary of nuanced positions and that many stakeholders remain open to different ideas and models.

| Stakeholder | Program Development Comment Position | Use of Funds Comment Position |
|---|---|---|
| PacifiCorp | Open | Open; Mentions providing a credit to electric vehicle owners or offsetting transportation electrification program costs |
| CUB | Utility Deployed | Open, Mentions Utility credits to current electric vehicle owners |
| Forth | One single statewide comprehensive program w/o Utility | Revenue should promote EV adoption, should not benefit all ratepayers |
| Idaho Power | Open, Voluntarily Utility Deployed | Should benefit all ratepayers |
| NRDC-OEC | Open, Utility or Third Party after Utility Registration | Open, EV point of sale after PUC review of options |
| SRECTrade | Multiple Third Parties | Credits to current electric vehicle owners |
| Tesla | Multiple Third Parties w/o Utility | EV point of sale, not on CA program model |
| ODOE | Open, Utility | Open, used to minimize the cost of addressing and managing EV demand for ratepayer benefit |
| ChargePoint | Open, Utility or Other Aggregator | Open, Points to CA programs |
| PGE | Open, balance of efficiency, speed, effectiveness | Open, balance of efficiency, speed, effectiveness |

*Issues that can only be addressed by DEQ*
Some stakeholder comments address issues that the Commission cannot resolve and are extraneous to this investigation. Staff takes no position on these questions, but highlights them so that stakeholders can direct their comments to the appropriate agency. Staff understands and appreciates that Oregon's CFP implicitly creates some confusion because of the implementation roles of both the DEQ and electric utilities under current administrative rules.

In its comments, SRECTrade argues that credit aggregators should be the first-in-line generator as agents for residential charging EV owners.[7] ChargePoint makes a similar

[7] SRECTrade Comments at 2.

point, asking if other aggregators as designated by the utility or the resident could designate another aggregator.[8] DEQ has designated electric utilities as first-in-line generators of credits. DEQ has not given the resident a role in the hierarchy of credit generation. The Commission does not have authority to change the DEQ rule, and the comments from SRECTrade and ChargePoint on this issue are better addressed to the DEQ. However, Staff notes the possibility that utilities could ultimately designate third party aggregators as agents and more thoroughly addresses this in the Staff recommendation section of this report.

Forth requests that DEQ rules be changed to include an alternative backstop aggregation option to that of the utilities.[9] Forth asks that DEQ rules allow for retroactive credit generation.[10] Forth's comments should be directed to the DEQ.

Tesla argues that if an entity other than the electric utilities was the primary credit generator, credits would be generated immediately.[11] As explained by the DEQ at the June 14, 2017 workshop, under current rules the earliest any residential EV credits would be available to an aggregator would be the spring of 2019. Accordingly, Tesla's request for immediate credit generation is not consistent with the structure of current DEQ rules, and would require DEQ rule changes best addressed in DEQ stakeholder engagement and rulemaking processes.

*Staff's Recommendation*
After thorough review of all stakeholder comments, Staff's position is that electric utility registration in the CFP is clearly in the public interest.

1. *Value in a Public Process*

Several parties emphasized the importance of a publicly accountable agency overseeing program options and CFP credit value spending in an open and transparent way. CUB believes that it is beneficial that utilities register under the CFP for residential charging because Commission regulatory oversight will ensure that CFP revenue will be spent in accordance with the CFP statute and will further the goals of the legislation.

NRDC-OEC comments that: "We also see advantages in oversight by the OPUC of both the aggregation (and market sales) process and the uses to which revenues from credits sale are put."[12] This desire was broadly reflected in the June 14 workshop, as

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[8] ChargePoint Comments at 1.
[9] Forth Comments at 3.
[10] Id.
[11] Tesla Comments at 3.
[12] NRDC Comments at 1.

noted by PacifiCorp: "At the June 14 workshop, many stakeholders seemed to agree that it would be beneficial for the utilities to play the role of credit aggregator because it would ensure the use of a public process (via Commission oversight) to determine how revenues associated with credit sales will be spent."[13] Staff agrees with these views and emphasizes that Commission investigations and utility proposal developments are open and collaborative, and subject to input and participation from the general public.

Staff asserts, as do many parties, that generation of funds from participation in the CFP and the use of those funds to provide the best value for the ratepayer in the context of transportation electrification is in the public interest. Ensuring that the generation and use of these funds is conducted with substantial opportunity for public participation is important. As participants, utilities would also be part of the process. Program development and implementation would be part of the public record, and decisions accountable to the public. In short, generating credits and developing plans for the spending of credit value in a manner that is open, evidence based, accountable and repairable weighs in favor of a finding that electric company participation in the CFP is in the public interest.

By contrast, in the absence of utility registration in the CFP, public review of spending associated with CFP credits will not take place. This will prevent the general public from playing a significant role in the development of options under the program, and also prevent stakeholders with divergent views on how funds could be best utilized from reaching a resolution that properly balances all interests. As illustrated in the table above, there appears to be a considerable difference of opinion among stakeholders on this question and others. Some stakeholders indicate that funds should be remitted to the utility customers that helped generate credits through past purchases and use of EVs, while others argue that funds should be used to offset costs borne by ratepayers for EV infrastructure, while still others argue that funds should go to auto retailers to provide new customer incentives.[14]

Staff notes that there is no guidance in current DEQ rules on spending associated with residential EV credits. As Forth correctly observes: "...under current DEQ rules, there is nothing that requires that credit proceeds be reinvested in electric vehicle programs or returned to electric vehicle customers."[15] Absent utility registration in the CFP, there will continue to be a void of guidance from any Oregon agency on these issues. Staff cannot find that a vacuum of oversight for how non-utility aggregators spend EV credit revenue is in the public interest. Staff believes that a public process, where all stakeholders impacted by EV programing can actively participate, is the best method for

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[13] PacifiCorp Comments at 1.
[14] CUB Comments at 1, Idaho Power Comments at 3, Tesla Comments at 1.
[15] Forth Comments at 2.

balancing competing views and arriving at a spending plan that serves the public interest.

2. *Value to Ratepayers*

Ensuring that value associated with CFP residential EV charging credits is generated *and captured* is in the public interest and ratepayer interest. Failure to capture this value would result in the loss of funds that could be allocated to ratepayers or the public to provide tangible economic benefits.

The loss of possible economic benefits has already occurred as credits have failed to be generated due to lack of participation in the CFP. As noted above, Oregon's investor-owned electric utilities have to date not registered in the program. Under current DEQ rules, this means that for the 2017 credit generation year substantially less residential EV credits will be generated than could have been generated if utilities had registered this past year. Accordingly, monetary value that could have been captured by utilities and remitted to ratepayers has been forgone.

In contrast, if utilities register for next year's credit generation cycle by October 1, 2017, the negative result of lower credit generation and lost value would be averted. Staff notes that proposed DEQ rules which have not yet been adopted would allow the registering utilities to capture the value which has been lost if they register by the October 1, 2017 deadline. Staff agrees with the following comment from NRDC-OEC: "It is important that residential credits already accruing not be stranded or go unutilized for long periods and that the value be put towards achieving the end goals of the Clean Fuels Program."[16] Ensuring that the value associated with residential EV credits is captured and used is consistent with the public interest.

3. *Coordination and Consistency with the Growing Utility Role in Transportation Electrification*

The role of electric utilities in transportation electrification is expanding in Oregon. Transportation electrification has the potential to positively impact the ratepayer-funded utility system if utilities, the Commission, and stakeholders work collaboratively to identify and address challenges associated with EV impacts on the electrical system. Through AR 599, the Commission adopted transportation electrification program rules, including OAR 860-087-0030(1)(c)(B), which requires electric utilities to coordinate with related state programs to effectively accelerate transportation electrification as required by SB 1547. Coordination and consistency across various EV-related programs that will impact the utility system has already been identified as important and valuable by the Commission.

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[16] NRDC Comments at 1.

With electric utilities as participants in the CFP, stakeholders and the Commission can ensure that credit use supports and is consistent with larger utility electrification efforts. Failure to ensure this consistency could result in missed opportunities to enhance programing, and capture valuable data. Lack of coordination could create unintended consequences associated with poorly aligned programing. Creating alignment, consistency, and program enhancement is in the public interest.

Stakeholders generally agree that such coordination is important. According to ODOE: "If utilities anticipate the load of charging EV's and plan proactively, they can not only accommodate the load at a low cost, but also reap numerous benefits to the entire system."[17] ODOE further notes: "Managing and addressing this new load up front will be less expensive to the ratepayer and the Clean Fuels Program credits can minimize the costs of addressing and managing EV demand thereby reducing ratepayer costs."[18] NRDC-OEC comments that utilities already have a substantial role in the development of EV infrastructure, in part making them the "functionally-logical" parties to act as aggregators.[19] Staff finds that aligning CFP credit generation and spending with the numerous efforts of utilities to optimize transportation electrification for utility system benefits is in the public interest.

4. *DEQ Has Made a Policy Decision that Electric Utility Participation in the CFP is in the Public Interest*

DEQ conducted an extensive rulemaking process for the CFP, a process that continues as amendments to CFP rules are examined. Throughout that DEQ process, most of the stakeholders participating in this docket were involved. The DEQ process allowed extensive opportunity for stakeholder comment and participation in the creation of the current rules that make electric utilities the first-in-line aggregators for residential EV credits.

This important policy decision made by DEQ reflects the judgement that electric utility participation in the CFP is clearly in the public interest. Staff agrees with PacifiCorp's characterization of this dynamic: "The threshold question to be considered by the Commission should be whether there is some benefit to the utility performing this aggregation function over some other entity or entities. The Oregon Department of Environmental Quality (DEQ) seems to have answered this question by designating the utility as having the first opportunity to register to generate these credits."[20]

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[17] ODOE Comments at 2.
[18] Id.
[19] NRDC Comments at 1.
[20] PacifiCorp Comments at 1.

Staff acknowledges the DEQ's stakeholder driven processes, rulemaking, and policy decision to identify electric utilities as the first-in-line aggregator of CFP residential EV credits as reflective of DEQ's judgment that electric utility participation in the CFP is in the public interest.

*5. Arguments of Tesla and Forth Against Electric Company Participation*
Most stakeholders to this proceeding argued in favor of utility participation in the CFP. However, Tesla and Forth did not. Staff is not persuaded by the arguments that registration may not be in the public interest. These arguments can be grouped into two categories: (A) concerns about timing and (B) concerns about the appropriateness of utility management of EV programing.

*A. Timing Concerns*
Tesla and Forth argue that utility participation in the program may be inconsistent with the public interest because of Commission- or utility-created delays in monetizing or utilizing credit revenue. These arguments are not persuasive to Staff. In comments, Tesla expressed concerns that the combination of the time necessary to complete Staff's investigation coupled with the time necessary for utilities to design and achieve approval for participation in the CFP would be excessively long, a delay Tesla contends could be avoided if utilities did not register under the program.[21] Tesla argues that absent utility or Commission involvement, programs utilizing credits from CFP residential EV aggregation could be "implemented immediately."[22]

Similarly, Forth argues that "PUC oversight of the process – from when and how utilities are supposed to sell credits to how they may use proceeds – could further delay programs, possibly stranding credits or reducing program effectiveness."[23] Forth states that if utilities did not register, "Oregon consumers would benefit immediately as opposed to waiting while PGE and Pacific Power design, propose and potentially receive OPUC approval after staff's review and investigation."[24]

These points are not persuasive because, at the stakeholder workshop DEQ staff explained that under current rules the earliest credits would be available to an aggregator of residential EVs is the spring of 2019—more than 18 months into the future. No matter who acts as an aggregator the programs cannot be launched in the spring of 2019 because that is earliest date of credit generation; credits must be monetized. Only when credits are monetized (i.e. counter-party credit buyers are identified, prices negotiated, and credits sold) may programs which might be funded by

[21] Tesla Comments at 2.
[22] Id. at 3.
[23] Forth Comments at 3.
[24] Id.

those credits be launched. Accordingly under current DEQ rules the earliest any party may feasibly launch CFP residential credit programs is at least two years from now, in the summer of 2019. Ironically, it is the lack of registration by utilities in previous years that will cause this inevitable delay in the launch of programs, something that both Forth and Tesla argue should be repeated this year.

Staff notes that DEQ has indicated that potential rule changes might allow credits, if utilities were to register by October 1, 2017, to be generated in the spring of 2018. Presumably this would allow a program to be launched as early as one year from now. Therefore, the earliest any party may launch programs associated with CFP residential EV credits is the summer of 2018, but only if new DEQ rules are adopted in the near term. The arguments of Tesla and Forth—that if no utilities registered under the CFP that EV programs utilizing credit funds could be "implemented immediately"—are not consistent with Staff's understanding of DEQ's current or prospective rules. At least one year will go by, and possibly more time than that, before any party no matter how nimble would be able to launch programing.

Despite the fact that programs are not likely to be launched inside of one year in any circumstance, Staff is confident that the timing concerns of Tesla and Forth can be addressed in this docket. Specifically, investigation timelines can be adopted in a manner so that utilities are provided ample time to present plans, receive stakeholder input, and achieve approval before a program launch scheduled for 2018. Additionally, as discussed below, depending on the program structure or utility role in the program, simple program or administrative structures could be adopted that facilitate quick implementation through partnerships with third parties.

*B. Appropriateness of utility management of EV programing*

Tesla and Forth also argue that utilities are not well poised to run effective programs. Forth states that "utilities are likely to be slow and risk adverse in developing programs."[25] Both Forth and Tesla point to experiences in California, arguing that California's utilities have been slow to deploy programs, and that those programs are not effective.[26]

To the contrary, ChargePoint points to California's process as a positive example.[27] This divergence highlights the need to work through program design issues collaboratively in an open forum that the Commission can provide.

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[25] Id. at 2.
[26] Id at 2, Comments of Tesla at 2.
[27] ChargePoint Comments 1-2.

To be clear, utility registration in no way precludes a third party administrator from being appointed by a utility to run its CFP credit generation and EV programing. This investigation will examine the role of the utility in program development and structure. It is feasible that based on the feedback produced through this investigation, initial utility programing may rely entirely or in part upon third party aggregators.

Accordingly, Tesla and Forth's arguments on this point are misplaced; as the investigation moves into its next phase, stakeholders can discuss the concept of limiting the utility role in the implementation effort. In arguing for utility registration, NRDC-OEC correctly observes: "Whether utilities are the immediate right fit for aggregating residential credits--is a separate question that will be answered through this process."[28]

6. *All Concerns Expressed by Stakeholders Can be Addressed in Future Phases of this Investigation*

As outlined above, a number of stakeholders offer arguments relating to future phases of this investigation. Principally, these discussions relate to how revenues associated with credits should be spent, and what parties that should be administering programs. Staff acknowledges the significant difference of opinion on these issues, which highlights the value of a public process to identify the optimal modes of participation, program models, and spending associated with CFP credit revenue.

While some stakeholders encourage utilities to develop CFP-related programing, other stakeholders in this proceeding are not certain that utilities are the optimal residential EV credit aggregators. These stakeholders believe that other parties may be better suited to develop programs as third party administrators.

As Staff stated during the June 14 workshop, registration of the utilities as credit aggregators does not mean that third parties will not take on the administrative role associated with program development. If in the course of the investigation, stakeholders, the Commission, or utilities determine that third-party administration of certain program aspects is most appropriate, then the utilities would be encouraged to recommend such a program model as part of their proposal to spend revenue associated with residential EV credit sales. Utility registration prior to the October 1, 2017 DEQ deadline in no way precludes a third party administrative model.

Additionally, there is a broad range of opinions on how credit value should be spent. This too is an issue that will be explored in depth in the second phase of this investigation. In particular, a number of stakeholders comment that the highest and best use of CFP credit funds is "cash on the hood" incentives for EV purchases, which would

[28] NRDC Comments at 1.

be provided by auto retailers. Tesla argues that EV retailers should receive credits and monetize the credits to incentivize the sale of vehicles.[29] This is an ideal subject of discussion for the second phase of this investigation. If stakeholders, utilities, and the Commission determine that ensuring revenues from CFP credit generation flow to EV retailers, then utilities can develop such a program, or as discussed above, propose that third-parties, including the EV retailers themselves, develop the programing. Utility registration under the CFP in no way precludes the development of an effective auto retailer EV purchase incentive program.

The second phase of this investigation will examine the program model proposals of stakeholders, and help utilities move forward with timely, effective, stakeholder informed plans to monetize and spend CFP funds. No proposals or third party administration models are precluded, and will be discussed and reviewed as this investigation progresses.

*7. Certainty for Utility Participation Will be a Priority for this Investigation*

Utilities have made clear their desire for regulatory clarity associated with participation in the CFP as credit generators. Indeed, it is this request for guidance from utilities that was the origin of this investigation. Staff intends that this investigation will provide clear guidance to utilities on substantive questions of CFP participation requested by the utilities.

PacifiCorp desires that utilities be given "sufficient discretion in determining a strategy for generating revenue from credits."[30] PacifiCorp argues that there may be incentives for utilities to bank credits in order to enhance credit value as CFP compliance targets for regulated entities under the program climb. PacifiCorp is concerned that credit management strategies will be questioned after the fact. "To alleviate this concern, PacifiCorp asks that the Commission provide guidance or standards about how it will review choices regarding the generation and usage of revenue from these credits."[31]

PGE requests extensive Commission guidance regarding utility participation. Specifically, PGE requests that the Commission provide utility guidance on the following factors:

- Information from DEQ on credit market structure and rules;
- Commission guidance on market participation, including a request that PGE be held harmless for liability associated with market risks;
- An eventual rulemaking on utility participation in the CFP;

[29] Tesla Comments at 2.
[30] PacifiCorp Comments at 2.
[31] Id. at 3.

- Guidance on the prudence of utility participation in the CFP associated with program development;
- And the ability to transition the role of program manager for CFP participation to third parties if stakeholders determine that new electric vehicle sale incentives are the best use of CFP credit derived funds.[32]

Idaho Power expresses one significant concern; that at current adoption rates Idaho Power participation in the CFP would not result in significant enough revenue to justify participation.[33]

Staff appreciates the willingness of utilities involved in this proceeding to outline concerns associated with participation in the CFP. As the Commission memo of April 13 indicated, it is the intention of Staff to immediately take up these issues as part of the first phase of this investigation as soon as the Commission rules on the threshold public interest question. Specifically, Staff's April 13 memo identified the following as the first phase question: "Discussion and guidance regarding the electric utility role under the Clean Fuels Program and the Commission's role." Future questions which will be directly addressed in this proceeding include: "What guidance would be helpful to the utilities as they participate in the nascent CFP credit market." Staff intends this investigation to provide ample guidance and surety to utility participants.

As stated in Staff's April 13 memo, the Commission should give clear guidance to utilities that effectively address the above concerns: "Because the CFP creates a new marketplace with unknown and not fully-established market dynamics, it is the intention of Staff to use this proceeding to identify clear initial criteria for utility participation in the CFP credit market. This guidance would be designed to allow electric utilities to engage CFP credit market actors with an understanding of Commission expectations."[34]

Staff remains committed to this principle. Staff recommends that the Commission provide guidance, after or during the development of this investigation, that provides sufficient assurance to utilities regarding concerns associated with CFP participation. The timing of this guidance is important. As discussed above, the earliest that credits would be available for monetization under current rules is the spring of 2019. Staff understands that proposed DEQ rules may make credits available at an earlier date. Accordingly, Staff will recommend that this initial utility guidance be completed no later than the anticipated date of credit availability. Staff intends to structure this investigation to ensure that this guidance is available according to that timetable.

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[32] PGE Comments 2-4.
[33] Idaho Power Comments at 2.
[34] Staff Memo of April 13 at 4.

Conclusion

Utility participation in the CFP is in the public interest. There is value in a public process for deploying funds derived from CFP credit sales. It is important to ensure that CFP credit values are captured for ratepayers. The DEQ has made a policy judgement in favor of utility participation through its stakeholder driven rulemaking process. The public interest is advanced through aligning CFP credit revenue uses with broader utility transportation electrification programing. All concerns expressed by stakeholders concerning utility participation in the CFP can be effectively addressed in future phases of this investigation.

**PROPOSED COMMISSION MOTION:**

The Commission finds utility participation in the Clean Fuels Program as Credit Generators to be in the public interest, and directs the investigation recommended by Commission Staff in its April 13, 2017 to continue as outlined in that memo.

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