

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1811**

In the Matter of	)	
	)	
PORTLAND GENERAL ELECTRIC	)	ELECTRIC VEHICLE CHARGING
COMPANY,	)	ASSOCIATION REPLY TO PGE'S
	)	OBJECTION TO ELECTRIC VEHICLE
Application for Transportation Electrification	)	CHANGING ASSOCIATION'S
<u>Programs</u>	)	PETITION TO INTERVENE

**I. INTRODUCTION**

Pursuant to OAR 860-001-0300(5), the Electric Vehicle Charging Association (“EVCA”) files this reply to the objection filed by Portland General Electric Company (“PGE”) to EVCA’s request before the Oregon Public Utility Commission (the “Commission”) to intervene and appear with full party status in this proceeding. The Commission should grant EVCA’s intervention because EVCA has demonstrated a substantial interest in the relevant issues, and its participation will not broaden, burden, or delay the proceeding.

EVCA is a non-profit organization that advocates for policies that will expand clean transportation and increase the growth of electric vehicle (“EV”) adoption. EVCA’s membership offers unique and diverse perspectives on all aspects of EV charging. For example, some members simply sell charging stations while others operate and maintain them. Some of EVCA’s members distinguish themselves by focusing on cloud-based software systems while others focus on the latest hardware options. This diversity allows EVCA to educate policymakers and stakeholders on the critical role EV technology, infrastructure, and services play in advancing EV solutions.

PGE's claims seem to misunderstand the relationship between trade associations and their individual members. For example, PGE claims that EVCA's interest are represented in this proceeding by its individual members.<sup>1</sup> This is simply incorrect. EVCA is interested in the EV charging market generally, and does not advocate for the specific commercial interests of any of its individual members. As PGE's objection points out, EVCA's members appear to have divergent views in this proceeding.<sup>2</sup> PGE seems to suggest that EVCA wants to advocate solely for one of its members to the detriment of its other members. EVCA represents the interests of the electric vehicle industry, including its members, by advocating for policies based on the principles of innovation, technology-neutral strategies and customer choice to make charging convenient, ubiquitous, and affordable, and to build a positive experience for EV drivers everywhere.

PGE also claims that EVCA's intervention will burden the proceedings, which is also misguided.<sup>3</sup> Contrary to PGE's claims, there are no grounds to believe that EVCA's participation will delay or otherwise burden the proceeding. PGE has not argued that EVCA seeks to broaden the issues, because EVCA's petition has raised no such concerns. EVCA has no desire to expand the scope beyond the issues already raised, and EVCA simply wants the opportunity to exercise its statutory right to participate in a proceeding it understands could have a significantly effect on the very market it advocates on behalf of.

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<sup>1</sup> PGE's Opposition at 1-2 (June 13, 2017).

<sup>2</sup> Id. at 2-3.

<sup>3</sup> Id. at 2.

EVCA has no interest in delaying the proceeding, and will not seek to extend the schedule of this proceeding. Specifically, EVCA commits not to advocate or propose any changes to the schedule that have not already been requested by at least one other party. Thus, EVCA’s participation cannot lead to an extension of the schedule.

## II. LEGAL STANDARD

ORS 756.525 governs petitions to intervene before the Commission and has two important components. First, it permits the Commission to allow “any person to become a party that might, on the institution of the proceeding, have been such a party, if application therefor is made before the final taking of evidence in the proceeding.”<sup>4</sup> Second, it directs the Commission to first “determine the interest of the applicant in the proceeding” and then grant the intervention “if the commission determines that such appearance and participation will not unreasonably broaden the issues or burden the record”.<sup>5</sup> The Commission has promulgated additional rules to implement ORS 756.525, which state that petitioners must have “sufficient interest” in a proceeding.<sup>6</sup> The Commission has described “sufficient interest” as “some stake in the outcome” of a proceeding.<sup>7</sup>

The Oregon Supreme Court has also determined that, when an agency allows an intervention, it does so in recognition of the fact that the petitioner has presented “an

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<sup>4</sup> ORS 756.525(1).

<sup>5</sup> ORS 756.525(2).

<sup>6</sup> OAR 860-001-0300(6).

<sup>7</sup> Re Fish Mills Lodges Water System Application for an Order Authorizing Abandonment of Water Service, Docket No. UM 1489, Order No. 11-179 at 2 (May 31, 2011) (denying a petition to intervene from a group that represented “neither the utility nor its customers” and simply wanted to be “an observer” of the proceeding).

interest that the legislature wishes to have considered.”<sup>8</sup> Thus, when determining a petitioner’s interest in this proceeding, the Commission should consider whether the legislature wished to have the petitioner’s issues addressed in the proceeding.

### **III. REPLY**

EVCA has a “stake in the outcome” of this proceeding because it could have lasting effects in PGE’s service territory, which includes an important segment of the EV charging market. Moreover, the broad directive from Senate Bill 1547, which directs PGE to describe its long-term strategy for increasing transportation electrification in its service territory, naturally implicates a broad set of interests the legislature would want to be considered, including EVCA’s.<sup>9</sup> EVCA has a unique and important perspective that can help the Commission understand the important issues before it, and may help the parties resolve the remaining issues more amicably. EVCA’s petition was timely filed, and should be granted.

#### **A. EVCA’s Interests Include the Entire Electric Vehicle Industry and Not Just Any Specific Member**

EVCA’s interests are not adequately represented in this proceeding because the trade association broadly represents the electric vehicle industry and not solely any specific member. EVCA’s mission is to bring together leaders and educate policymakers and stakeholders about EV technology, infrastructure, and services. Even a cursory review of EVCA members reveals that the membership has diverse and varied

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<sup>8</sup> Marbet v. Portland General Electric Co., 277 Or. 447, 457, 561 P2d 154 (1977) (“What matters . . . is that the interest the intervenor proposes to represent, if not a merely personal one, be an interest shared by a significant part of the public or one to be considered an element in the over-all public interest.”).

<sup>9</sup> Oregon Laws 2016, chapter 028, section 20 (“Senate Bill 1547”) (directing utilities to “increase access to the use of electricity as a transportation fuel”).

commercial interests, and EVCA’s interests are more expansive than any particular member’s unique commercial or policy goals. This is the purpose of trade associations, and why many industries have organizational representation.

The Commission routinely grants intervention to individual members of trade associations, as well as the organizations themselves.<sup>10</sup> In one such example, the Oregon Solar Energy Industries Association (“OSEIA”) intervened in an investigation into incentive rates for certain solar types three years after the proceeding began, and only one month before the Commission’s order adopting new rates for the pilot programs.<sup>11</sup> The investigation was initiated in response to House Bill 3039, signed into law in 2009, requiring the Commission to establish pilot programs for each investor owned utility, and most of the intervenors filed petitions in 2009. Although most of the parties intervened in 2009, OSEIA filed a petition to intervene in 2012 without addressing the delay, and simply requesting the opportunity to participate.<sup>12</sup> PGE did not object to OSEIA’s petition, or claim that the other solar developers (or OSEIA members) in the docket adequately represented the trade association’s interests. Ultimately, the Commission

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<sup>10</sup> See e.g., Investigation of PacifiCorp’s Non-Standard Avoided Cost Pricing, Docket No. UM 1802, Ruling at 1 (Dec. 8, 2016) (granting intervention for Cypress Creek as well as two of its trade associations: Renewable Northwest and Northwest and Intermountain Power Producers Coalition (“NIPPC”).

<sup>11</sup> See Re Investigation into Pilot Programs to Demonstrate the use and effectiveness of Volumetric Incentive Rates for Solar Photovoltaic Energy Systems, Docket No. UM 1452, available at

<sup>12</sup> Re Investigation into Pilot Programs to Demonstrate the use and effectiveness of Volumetric Incentive Rates for Solar Photovoltaic Energy Systems, Docket No. UM 1452, OSEIA Petition to Intervene at 1 (Jan. 31, 2012).

granted OSEIA’s intervention, without qualification or additional process, in the same order that directed PGE to implement the new pilot program.<sup>13</sup>

The Commission has also customarily grants late-filed petitions to intervene. In 2014, the COMPETE Coalition (“COMPETE”) intervened just to file comments in support of a stipulation regarding PacifiCorp’s five-year cost of service opt-out.<sup>14</sup> COMPETE’s intervention was granted despite its unconventional timing.<sup>15</sup> Likewise, although other parties had already filed testimony addressing PacifiCorp’s Inter-Jurisdictional Allocation Protocol, a petition to intervene filed by NIPPC was granted in 2016.<sup>16</sup> NIPPC is a trade association, and individual NIPPC member (Nobles Solutions) had been participating in the proceeding already, but none of the parties in that proceeding found cause to object. Sierra Club’s intervention was also granted without opposition nearly a year later.<sup>17</sup>

PGE’s Opposition ignores the fact that EVCA’s mission differs from those of ChargePoint, EVConnect, or SemaConnect, and that EVCA’s petition is timely. As PGE correctly points out, ChargePoint is a member of EVCA and has not yet agreed to the

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<sup>13</sup> Re Investigation into Pilot Programs to Demonstrate the use and effectiveness of Volumetric Incentive Rates for Solar Photovoltaic Energy Systems, Docket No. UM 1452, Order at n.1 (Feb. 13, 2012).

<sup>14</sup> Re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, Docket No. UE 267, Compete Coalition’s Petition to Intervene and Comments (June 17, 2014).

<sup>15</sup> Re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, Docket No. UE 267, Ruling at 1 (June 30, 2014).

<sup>16</sup> Re PacifiCorp, dba Pacific Power, Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol, Docket No. UM 1050, Ruling at 1 (Apr. 11, 2016).

<sup>17</sup> Re PacifiCorp, dba Pacific Power, Petition for Approval of the 2017 PacifiCorp Inter-Jurisdictional Allocation Protocol, Docket No. UM 1050, Ruling at 1 (Mar. 10, 2017).

stipulation tentatively reached in this proceeding.<sup>18</sup> PGE also notes that EVConnect and SemaConnect, which are EVCA members, have signed on to comments filed by Drive Oregon (now Forth) supporting PGE's program.<sup>19</sup> This proves the point that EVCA advocates for robust competitive markets, and not for certain aspects of markets that might help any certain individual members commercially.

EVCA has not seen the details of the proposed stipulation, and intends to review it to determine whether to take a position on its terms and conditions. EVCA's position on this not yet finalized document may or may not be consistent with any individual member's position. In the end, EVCA's recommendation to the Commission (if any) will be based on whether the stipulation is consistent with EVCA's broad goals for the electric vehicle market in Oregon.

Finally, EVCA notes that its interests similarly overlap with at least some of PGE's articulated positions. Utilities often share EVCA's general goal of implementing a vast network of charging stations. While EVCA prefers customer choice, both PGE and EVCA support an expansion of electric vehicle infrastructure in the state of Oregon.

**B. EVCA's Participation Will Not Broaden the Issues, Burden the Record, or Delay the Proceedings**

EVCA understands that testimony has already been filed in this proceeding and that settlement conferences are ongoing. EVCA will not burden the record or cause any delay in the proceeding simply by accepting and participating in whatever schedule would otherwise be adopted.

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<sup>18</sup> PGE's Opposition at 1-2.

<sup>19</sup> Id. at 2.

**1. EVCA Accepts the Procedural Schedule As Is**

The Commission's rules permit intervention before the final taking of evidence, which means that it is not too late for EVCA to intervene. EVCA understands that the proceeding has been underway since February and that settlement negotiations are ongoing. PGE's June 9 status report to Judge Harper indicated that the parties have not yet agreed to the current settlement proposal, and would like more time to reach settlement. EVCA is only asking to participate in the schedule requested by PGE, with the support of other parties in this docket. There is no reason to suggest that EVCA wants to delay the schedule. PGE's unsupported argument is unfounded.

**2. EVCA Only Wishes to Address the Current Scope of Issues**

Likewise, the Commission's rules permit intervention for those parties that will not burden the record or broaden the issues. The Commission's rules do not exclude interventions because the parties have begun discussing settlement, or because certain parties believe the proceeding may be close to settlement. In fact, the Commission has granted interventions even after contested settlements had been agreed to.<sup>20</sup>

PGE does not cite, and EVCA is unaware of any similar circumstances in which an intervention has been denied. Conversely, the Commission has denied late-filed petitions to intervene where the petitioner's interests were not aligned with the proceeding. For example, in 2000 the Commission denied a petition to intervene from a qualifying facility ("QF") raising issues in PacifiCorp's rate case relating to its efforts to renegotiate its power purchase agreement with PacifiCorp, and suggesting that

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<sup>20</sup> E.g., Re PacifiCorp, dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out, Docket No. UE 267, Ruling at 1 (June 30, 2014).

PacifiCorp had not met its obligation to lower its rates through QF power sales.<sup>21</sup> The Commission determined that issue “should have been addressed in discovery, direct testimony, and settlement conferences.”<sup>22</sup> Thus, because the topics the QF developer intended to raise were not within the scope of the issues already included in the proceeding, the Commission determined the intervention would burden the proceeding.

EVCA understands the scope of this proceeding and will only submit testimony or legal pleadings consistent with whatever schedule the ALJ adopts for the remainder of the proceeding and on issues already identified by the parties. The Commission has no reason to believe that EVCA will try to broaden the issues or burden the record. PGE has not made any such argument, and instead simply maintains that EVCA wants to delay the proceeding, which it does not.

#### **IV. CONCLUSION**

EVCA respectfully requests that the Commission grant its petition to intervene with full party status in this proceeding. Denying EVCA’s intervention will result in substantial harm to EVCA, and may delay the resolution of the remaining issues.

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<sup>21</sup> Re Revised Tariff Schedules in Oregon filed by PacifiCorp, dba Pacific Power & Light Company, Docket No. UE 111, Biomass One’s Motion to Intervene Out of Time (July, 10, 2000).

<sup>22</sup> Re Revised Tariff Schedules in Oregon filed by PacifiCorp, dba Pacific Power & Light Company, Docket No. UE 111, Order 00-427 at 2 (Aug. 07, 2000).

Dated this 20th day of June 2017.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large, looped initial "I".

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