ITEM NO. RA2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
SPECIAL PUBLIC MEETING DATE: November 30, 2021

REGULAR __X__ CONSENT ____ EFFECTIVE DATE ______Not Applicable______

DATE: November 24, 2021

TO: Public Utility Commission

FROM: Eric Shierman

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

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 2165)
Interim process guidance and definitions for implementation of HB 2165 implementation.

STAFF RECOMMENDATION:

This is an informational filing with no recommendation for the Commission.

DISCUSSION:

Issue

Staff is informing the Oregon Public Utility Commission (Commission or OPUC) of interim guidance and definitions for terms introduced in HB 2165 to serve as guidance to begin implementation of the bill effective January 1, 2022.

Applicable Law

ORS 757.357 requires the Commission to direct each electric company to file programs that accelerate transportation electrification (TE). The statute gives considerations that the Commission is required to include in its review of such programs. House Bills 2165 and 3055 were passed in the most recent legislative session and amend ORS 757.357 in three significant ways. First, HB 2165 directs each utility to implement a monthly meter charge equal to 0.25 percent of total revenues as a dedicated funding source for TE investments. Fifty percent of that funding must be spent on “underserved communities.” Second, HB 3055 created a new category of investment in TE that is distinct from TE programs as already defined in the statute. This category is referred to as “infrastructure measures.” Third, the law redefines TE programs to exclude infrastructure measures. HB 3055 went into effect on September 25, 2021, and HB 2165 will go into effect on January 1, 2022.

OAR Division 87 was promulgated by the Commission to implement ORS 757.057, specifically prescribing “the application and reporting requirements for programs to accelerate transportation electrification filed by an electric company.”[1] The rules currently outline requirements for TE program applications and TE Plan filings.

Executive Order 20-04 establishes Governor Brown's new greenhouse gas emissions goals for the State of Oregon and directs state agencies to identify and prioritize actions to meet those goals. Section 5.4(8) of the Executive Order directs the Public Utility Commission to "[e]ncourage electric companies to support transportation electrification infrastructure that: supports GHG reductions, helps achieve the transportation electrification goals set forth in Senate Bill 1044 (2019), and is reasonably expected to result in long-term benefit to customers."

In Order No. 21-026, upon Staff’s request, the Commission directed Staff to open an investigation to develop a holistic, transportation electrification investment framework to meet the goals set forth in Oregon Executive Order 20-04.

<u>Analysis</u>

Background

In 2021, Commission Staff has been engaged in an investigation of TE investment frameworks in Docket No. UM 2165, in response to Governor Brown’s Executive Order 20-04 and several TE dockets. The PUC has integrated HB 2165 implementation with the UM 2165 investigation, given the interconnectedness of the new legislation with the scope of the UM 2165 investigation.

Staff will make recommendations for a broader transportation electrification investment framework at the December 14, 2021 Public Meeting. In this memo, Staff provides an update to the Commission on recommended interim guidance that Staff would like to communicate, without Commission action, to the utilities to support smooth implementation of HB 2165. Due to the nature of this filing, this guidance is not binding, however Staff encourages the utilities to follow this interim guidance prior to its formalization in 2022.

Staff discusses the following elements of HB 2165 in this memo:

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[1] OAR 860-087-0001(1).

- Monthly Meter Charge Budget
- Minimum Spending on Underserved Communities
- Annual Reporting Requirements
- Definition of Underserved Communities
- Implementation of 2022 Rulemaking and TE Plan Filing

Stakeholder Engagement Process

Staff has used several workshops in the UM 2165 process to engage parties on the implementation of this legislation. At the October 20, 2021 workshop, Staff introduced its proposed guidance, which included definitions of key elements of the bill. Staff sought feedback in both the workshop and written comment. Pacific Power, ChargePoint, PGE, Climate Solutions, Forth, Green Energy Institute, Northwest Energy Coalition (NWEC), Citizens' Utility Board (CUB), and Verde all submitted written comments. Staff incorporated this input to inform the interim guidance contained in this memo, and thanks the parties for their robust participation in the implementation process of this legislation.

Proposed Guidance on Monthly Meter Charge Budget

HB 2165 provides two provisions that direct how the utilities need to spend, budget for, and obtain approval from the Commission for expenditures of the monthly meter charge. This section discusses Staff's interim guidance that is based on stakeholder feedback.

HB 2165, Section 2(3) states:

> Funds collected under [the monthly meter charge] must be expended by the electric company to support and integrate transportation electrification and must be consistent with a budget approved by the Public Utility Commission for use of funds collected under this section. Expenditures made by an electric company pursuant to this subsection must be made on elements contained within the electric company's transportation electrification plan accepted by the Commission pursuant to ORS 757.357.

Based on the input received in the UM 2165 investigation, Staff recommends that PGE and Pacific Power file a budget for a calendar year that covers the expenditures grouped by all TE programs to be funded by the meter charge revenue. The expenditures in the monthly meter charge budget should be made on elements contained in an accepted TE Plan.

In PGE's comments to the docket, the Company recommends that "elements" be interpreted broadly.[2] Staff agrees, and supports allowing budgeted expenditures to be reflective of programs within previously accepted TE Plans, which were filed and accepted by the Commission in 2019.

HB 2165, Section 2(4) states:

> An electric company shall account separately for all revenues and expenditures related to funds described in this section and shall report the revenues and expenditures on a schedule and in the manner prescribed by the Commission.

Based on the input received in the UM 2165 investigation, Staff recommends that expenditures in the monthly meter charge budget contain both capital expenditures and expenses. Staff recommends that capital expenditures on generation or distribution capacity, which are attributable to new EV load created by the monthly meter charge, or incremental energy costs, should be interpreted to be beyond the budget's scope. Utilities should break down expenses by administrative costs, O&M on investments, incentives paid to program participants, and any unique category that may become relevant. The filed budget should contain a forecast of expected revenue from the monthly meter charge and a forecast of expenditures by program. The budget should also forecast spending on underserved communities.

In its written comments, PGE recommends that the budgets be multi-year.[3] Staff clarifies that the recommendation that utilities submit annual budgets is not intended to rule out multi-year planning. For the immediate implementation of HB 2165, Staff recommends that a budget for the monthly meter charge expenditures in calendar year 2022 is a minimum requirement because of the bill's requirement to spend a minimum of fifty percent of the charge on underserved communities each year. Staff recommends that the budget for 2022 include an annual estimate of spending by program, and an annual forecast of spending on underserved communities. Staff believes that this approach is critical to ensure adequate tracking and prioritization for expenditures on underserved communities, based on stakeholder feedback.

Annual Reporting

In HB 2165, Section 2(4), referenced above, the bill directs the Commission to establish a schedule and manner for the utility to report revenues and expenditures for the monthly meter charge. This section discusses Staff's interim guidance, informed stakeholder feedback.

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[2] *See* Docket No. UM 2165, PGE, Comments, November 5, 2021, p 3.
[3] Ibid, p 2.

Staff recommends that the utilities file a compliance filing at the end of the calendar year, reporting actual revenue collection and actual spending to document expenditures on programs and underserved communities. Utilities should provide a spending summary that matches the format of the previous year's monthly meter charge budget. Staff suggests that summary should be filed to the electric company's TE Plan docket by May 1, 2023. Staff revised its earlier recommended deadline of March 31 to reflect comments from Pacific Power, which recommends May to provide time for late transactions to clear lagging invoices.[4] The summary should also include a supporting spreadsheet shared through Huddle listing all line-item expenditures of the HB 2165 monthly meter charge for the previous calendar year. These reports will be reviewed in the next TE Plan and rate case.

Utilities should also identify these transaction-level expenditures by program and indicate whether the expenditure was made on underserved communities. This granularity can come in two ways: 1) written into the transaction description, or 2) matched with another SQL column in the utility's data base of expenditures. Shared expenditures can be allocated proportionately by program and to document spending on underserved communities. After 2022, Commission review of the monthly meter charge budget will be part of the entire TE Plan portfolio budget, to maximize holistic planning and stakeholder engagement.

Based on stakeholder comments, Staff recommends that for separate accounting, expenditures shall be marked at the transaction level as spent with monthly meter charge funds, to allow reporting with line-item detail. Spending on underserved communities should also be identified at the transaction level. In filed comments, PGE notes "the difficulty of attributing line-item administrative costs to underserved communities, and recommends that Staff instead consider an alternative approach, such as permitting administrative expenses or other shared costs to be divided proportionately based on the number of program enrollments or participation of members of underserved communities."[5] Staff finds this approach to shared expenditures reasonable because a proportionate allocation of administrative costs can more accurately account for spending on programs and underserved communities.

Minimum Spending and Spending on Underserved Communities

HB 2165 states that the monthly meter charge is the minimum amount that utilities should spend on TE. As previously noted, the bill also requires the utilities to spend a minimum of fifty percent of the monthly meter charge annually to support TE in underserved communities. This section discusses Staff's interim guidance that is based on stakeholder feedback.

[4] See Docket No. UM 2165, Pacific Power, Comments, November 2, p 2.
[5] *See* Docket No. UM 2165, PGE, Comments, November 5, 2021, p 4.

HB 2165, Section 2(5) states:

> Funds collected and expended pursuant to this section shall be a minimum investment in transportation electrification and may not limit the amounts that may otherwise be collected by an electric company in rates to recover the costs of prudently incurred investments that support transportation electrification.

HB 2165, Section 2(6) states:

> An electric company shall make reasonable efforts to expend not less than one-half of the amount collected under subsection (2) of this section each year to support transportation electrification in underserved communities through approaches that may include but are not limited to programs, infrastructure, rebates or expenses that support:
>
> (a) The use of electric vehicles by residents of rental or multifamily housing;
>
> (b) The use of electric vehicles by communities of color, communities experiencing lower incomes, tribal communities, rural communities, frontier communities, coastal communities and other communities adversely harmed by environmental and health hazards;
>
> (c) The use of electric vehicles by communities described in paragraph (b) of this subsection in areas with a low density of public charging stations; or
>
> (d) The deployment of electric school and transit buses in a manner that benefits communities described in paragraph (a) or (b) of this subsection.

In its comments, PGE recommends that the company should not be required to spend the fifty percent of the monthly meter charge that is not going towards underserved communities in a single calendar year.[6] Staff agrees with PGE that electric companies should have the flexibility to carry unspent funds over to the next year. Staff does not want utilities to be forced to expend funds at the end of the year to meet a fixed spending quota. However, HB 2165 directs utilities to spend fifty percent of the charge on underserved communities per year.

Based on stakeholder input, Staff recommends that the utilities should directly engage members of underserved communities to identify preferred spending of the earmarked 50 percent of the monthly meter charge, preferred standards for geographic

[6] *See* Docket No. UM 2165, PGE, Comments, November 5, 2021, p 2.

designation, and prioritization of populations served. For 2022, utilities can conduct this engagement before TE Plans and associated TE Plan budgets are filed. This engagement should follow the techniques of the City of Portland's Pricing Options for Equitable Mobility (POEM) model and the community engagement principles of the Greenlining Institute because these are proven means of gathering information from people that not participated in utility planning in the past.[7]

Staff would also suggest that for 2022 spending on underserved communities, the utilities explore with stakeholders methods and approaches that are can leverage these new funds with successful existing programs. An example would be approaching the Oregon Department of Environmental Quality about combining HB 2165 funds in 2022 with the Department's Charge Ahead rebate program. This program is directed at people in the underserved community experiencing low-income and encourages the use of EVs by providing rebates. This could be an interim approach for next year while longer-term solutions are explored later in 2022 among stakeholders and the utilities.

Definition of Underserved Communities
Section 2 of HB 2165 defines "underserved communities" as residents of rental or multifamily housing; communities of color, communities experiencing lower incomes, tribal communities, rural communities, frontier communities, coastal communities, and other communities adversely harmed by environmental and health hazards.

Staff proposed a set of definitions based on established sources, discussed them at the October 20, 2021 workshop, sought public comment, and offered an alternative option of an online survey for stakeholder access. As a result, Staff has modified some of these definitions based on feedback we received.

- Residents of rental housing are people, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority.[8]

- Residents of multifamily housing are people that reside in a structure or facility established primarily to provide housing that provides more than one living unit, and may also provide facilities that are functionally related and subordinate to the living units for use by the occupants in social, health, educational or recreational activities:

[7] https://greenlining.org/wp-content/uploads/2019/08/Making-Equity-Real-in-Climate-Adaption-and-Community-Resilience-Policies-and-Programs-A-Guidebook-1.pdf
https://www.portland.gov/transportation/planning/pricing-options-equitable-mobility-poem.
[8] ORS 90.100(47)(A)

Multifamily housing includes special care facilities, which are defined by ORS 443.400-445 as, "for the elderly, including but not limited to individual living units within such structures, mobile home and manufactured dwelling parks and residential facilities licensed under ORS 443.400. . . .and other congregate care facilities with or without domiciliary care. For persons with disabilities, including, but not limited to, individual living units within such structures, mobile home and manufactured dwelling parks and residential facilities licensed under ORS 443.400. . . .other congregate care facilities with or without domiciliary care.This does not include: nursing homes, hospitals, places primarily engaged in recreational activities and single-family, detached dwellings, except manufactured dwellings situated in a mobile home and manufactured dwelling park."[9]

- <u>Communities of color</u> are communities of people who are not identified as White, emphasizing common experiences of racism.[10]

  Staff had not originally capitalized the word "white." We capitalize it here at the request of the joint comments of Climate Solutions, Forth, Green Energy Institute, Northwest Energy Coalition, Citizens' Utility Board, and Verde (Joint Parties).[11] The joint parties requested this change, and Staff is supportive.

- <u>Communities experiencing lower incomes</u> are residential customers whose household income is less than or equal to 120 percent of state median income adjusted for household size. This definition was chosen primarily to be consistent with Staff's implementation of HB 3141. We engaged parties on choice of a state median or a local median. No parties fully opposed this definition, but the Joint Parties emphasis flexibility for expansive qualification.[12] PGE prefers a geographic definition.[13] Staff retains this definition, because the broadness of such a high percent is inherently flexible and can be readily converted into a geographic designation.

- <u>Tribal communities</u> are Oregon's nine recognized Native American tribes: Burns Paiute Tribe, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Coquille Tribe, Cow Creek Band of Umpqua Tribe of Indians, Confederated Tribes of the Grand Ronde Community of Oregon, The Klamath Tribes,

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[9] ORS 456.515(8).
[10] Office of Equity and Human Rights, City of Portland, *Shared City-Wide Definitions of Racial Equity Terms*.
[11] *See* Docket No. UM 2165, Joint Parties, Comments, November 5, 2021, p 1.
[12] Ibid.
[13] *See* Docket No. UM 2165, PGE, Comments, November 5, 2021, p 1.

Confederated Tribes of Siletz, Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Indian Reservation.[14] Or a utility can recognize a credible claim of indigenous descendance by another group.

In its original proposal, Staff recommended just the nine recognized tribes. The Joint Parties recommend "considering including groups who are not officially recognized by the federal or state government but who identify as historically, culturally, and or genetically related to historic Native American tribes."[15] Staff finds this reasonable because if falls within a plain reading of HB 2165's text.

- Rural communities are people residing 30 or more miles by road from an urban community of 50,000 people or more.[16]

- Frontier communities are people residing 75 miles by road from a community of less than 2,000 individuals.[17]

- Coastal communities are people residing west of Oregon's Coastal Mountains.

- Communities adversely harmed by environmental and health hazards are people residing in a part of Oregon that is adversely affected by criteria pollutants or climate change.

  The Joint Parties recommend using the EPA EJScreen Tool for this purpose,[18] which Staff supports because it is a well-established demographic indicator for public health and environmental policy.[19]

Spending on underserved communities can come in the form of direct expenditures on individual members of an underserved community for that individual's personal use of an EV or publicly available investments in a geographical location. How the geographic designations are defined should be vetted by engagement with members of these communities. Rural, frontier, and coastal communities don't require vetting of the spatial boundaries, because their definitions are inherently geographic.

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[14] Legislative Policy and Research Office. Tribal Governments in Oregon, September 16, 2016, p 3.
[15] *See* Docket No. UM 2165, Joint Parties, Comments, November 5, 2021, p 1.
[16] Executive Order 07-02, January 31, 2007, p 1.
[17] Ibid.
[18] *See* Docket No. UM 2165, Joint Parties, Comments, November 5, 2021, p 1.
[19] EJSCREEN: Environmental Justice Screening and Mapping Tool | US EPA.

PGE recommends establishing an official statewide mechanism to identify qualifying communities by geographic area.[20] Staff will work with other state agencies at the Zero Emissions Vehicle Interagency Workgroup to establish this geographic standard.

Implementation of 2022 Rulemaking and TE Plan Filing
Staff sought stakeholder input on two possible pathways in 2022 to integrate HB 2165 rulemaking with TE plan filing. These pathways were:

- Option One - Use UM 2165 to develop an interim guidance document including a TE investment framework by end of year, 2021. Use that guidance to inform utility TE Plans filed as scheduled in 2022 under existing Division 87 rules. (The current schedule is PGE filing by February 14, 2022, Idaho Power filing by May 7, 2022, and Pacific Power filing by June 18, 2022). Utilities would file budgets for the monthly meter charge based on elements in their new TE Plans. Commission review of Plans would inform rulemaking (OAR 860 Division 87). Rulemaking would begin after TE Plans are reviewed.

- Option Two - Use UM 2165 to develop an interim guidance document including TE investment framework by end of year, 2021. Use that guidance to inform Division 87 rulemaking. Start rulemaking in January 2022, to conclude in Q2. TE Plan filings would be delayed and filed after the rulemaking. This would require utilities to file 2022 budgets for the monthly meter charge based on program elements in their previously accepted TE Plans.

All parties preferred Option Two. Staff is scheduled to provide a report of the UM 2165 investigation to the Commission at the December 14, 2021 Public Meeting, including recommendations for an updated TE investment framework. In that report, Staff will request the Commission open a rulemaking to update Division 87 rules, consistent with stakeholder feedback.

<u>Conclusion</u>

This Staff guidance on implementing HB 2165 is intended to be narrowly focused on smooth implementation of the monthly meter charge on January 1, 2022. The first implementation steps will require a monthly meter charge tariff, monthly meter charge

[20] *See* Docket No. UM 2165, PGE, Comments, November 5, 2021, p 1.

budget, separate accounting of spending for a report filed no later than May 2023, and common definitions of what qualifies as underserved communities.

A recommendation on how to proceed with a rulemaking for other policy changes will be a topic of Staff's report for the December 14, 2021 Public Meeting.

PROPOSED COMMISSION MOTION:

This is an informational only report with no recommendation for the Commission.

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