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Public Utility Commission of Oregon
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Attn: Filing Center

RE: UM 1810 —Joint Reply Brief

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket the Joint Reply Brief of PacifiCorp, Oregon Citizens' Utility Board, Forth, and Greenlots.

If you have questions about this filing, please contact me at (503) 813-6583.

Sincerely,

Natasha Siores
Manager, Regulatory Affairs

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1810

**In the Matter of
PACIFICORP, d/b/a PACIFIC POWER,
Applications for Transportation
Electrification Programs**

**Joint Reply Brief of PacifiCorp,
Oregon Citizens' Utility Board,
Forth, and Greenlots**

After months of testimony and briefing, the modest pilot programs PacifiCorp has proposed in this docket remain a common sense approach to help accelerate transportation electrification in Oregon. PacifiCorp's Public Charging, Demonstration and Development, and Outreach and Education pilot programs are widely supported by Public Utility Commission of Oregon (Commission) staff, the Oregon Citizens' Utility Board (CUB), Industrial Customers of Northwest Utilities (ICNU), Oregon Department of Energy, Forth and Greenlots. These parties all agree that all three pilots are consistent with Senate Bill 1547 and the Commission's implementing rules.

But one party remains opposed to the Public Charging Pilot.¹ ChargePoint, Inc. has waged a tedious campaign aimed at convincing the Commission that the time- and cost-limited Public Charging Pilot will diminish competition, stifle innovation, and otherwise hinder the acceleration of transportation electrification in Oregon. In this docket, ChargePoint relied upon the same testimony and legal arguments it advanced in Portland General Electric Company's transportation electrification docket, UM 1811, regarding public charging pilot programs. ChargePoint has added nothing new in this docket, and its

¹ PacifiCorp's Demonstration and Development and Outreach and Education pilot programs are unopposed.

arguments have been comprehensively addressed through multiple rounds of testimony and briefing both in this docket and UM 1811.

Rather than belaboring the procedural background and exhaustively developed legal arguments, PacifiCorp, CUB, Forth, and Greenlots will provide a few concluding thoughts on PacifiCorp's proposals and ChargePoint's arguments. In sum, PacifiCorp's Public Charging Pilot is a common-sense, step-wise approach for expanding access to electric vehicle charging infrastructure in PacifiCorp's service territory. No more than seven charging pods will be installed and operated as part of the program.² Like any other electric vehicle charging service provider (EVSP) or electric vehicle service equipment (EVSE) provider, ChargePoint will be able to bid into the request for proposal process associated with the Public Charging Pilot, and no part of the pilot program prohibits ChargePoint or other EVSPs/EVSEs from selling or installing its charging stations in PacifiCorp's service territory. Current and prospective electric vehicle drivers will have an option for charging that does not currently exist and the Commission will have access to information (like grid impacts and consumer behavior) that it would not have in the absence of the Public Charging Pilot.

Simply put, the Public Charging Pilot will not diminish competition, stifle innovation, or otherwise hinder the Legislature's intentions as expressed in Senate Bill 1547.

² PAC/100, Morris/17.

I. DISCUSSION

A. *The Legislature did not Intend that all Six Factors in Senate Bill 1547 §§ 20(4)(a)-(f) Must be Fulfilled for the Commission to Approve a transportation electrification Program Application*

ChargePoint’s arguments hinge on a fundamental misunderstanding of Senate Bill 1547. The legislation did not establish, as ChargePoint argues,³ a list of mandatory factors that must be satisfied before the Commission may approve a transportation electrification program. Instead, the legislation’s unambiguous language establishes a series of factors that the Commission must *consider* when determining cost recovery for utility transportation electrification investments.⁴ Put another way, the factors are not dispositive, and the language directing the Commission to “consider” the statutory factors endows it with considerable discretion regarding how the factors should be “considered” and weighed.

This unambiguous language is controlling.⁵ Drafters of legislation are precise, and are careful to only include language that, when subject to interpretation, will further the intent of the given bill. Here, the drafters of Senate Bill 1547 § 20(4) could have easily written in language such as “all six factors in Senate Bill 1547 § 20(4) must be met in order for the Commission to approve a program application.” Instead, in reference to the six factors listed, Senate Bill 1547 § 20(4) reads:

When considering a transportation electrification program and determining cost recovery for investments and other expenditures related to a program proposed by an electric company under subsection (3) of this section, the commission *shall consider* whether the investments and other expenditures:

³ E.g., ChargePoint, Inc.’s Post-Hearing Reply Brief at 1-2.

⁴ Senate Bill 1547 § 20(4).

⁵ *State v. Gaines*, 346 Or 160, 171 (2009) citing *State ex rel Cox v. Wilson*, 277 Or 747, 750 (1977) (“there is no more persuasive evidence of the intent of the legislature than ‘the words by which the legislature undertook to give expression to its wishes.’”)

- (a) Are within the service territory of the electric company;
- (b) Are prudent as determined by the commission;
- (c) Are reasonably expected to be used and useful as determined by the commission;
- (d) Are reasonably expected to enable the electric company to support the electric company's electrical system;
- (e) Are reasonably expected to improve the electric company's electrical system efficiency; and
- (f) Are reasonably expected to stimulate innovation, competition, and customer choice in electric vehicle charging and related infrastructure and services.⁶

By using the word “consider,” the Legislature unambiguously signaled to the Commission that the criteria enumerated in (a)-(f) are meant to be thought carefully about⁷ before making a determination regarding a transportation electrification program application. “Consider” is a word of common usage, and its meaning is clear on both a stand-alone basis and in the context of its usage in Senate Bill 1547.⁸

The six criteria listed are guideposts between which the Commission can consider transportation electrification program applications. In this nascent industry, the proper role for a utility to play in transportation electrification is yet to be determined, and many of the criteria contemplated by Senate Bill 1547—including supporting a utility's electrical system, increasing efficiency and operational flexibility, and integrating variable generating resources—are not likely to be fully met by an initial pilot proposal. The Legislature never intended that a utility would fully meet each individual criterion by dipping its toe in the transportation electrification pool with an initial proposal. That will take time, and the information gathered from the Public Charging Pilot will provide insights into a path

⁶ Senate Bill 1547 § 20(4) (emphasis added).

⁷ UM 1810 – Staff's Opening Brief at 6, lines 10-12 citing Webster's Third New International Dictionary, Unabridged, “*Consider*” (2016).

⁸ UM 1810 – Staff's Opening Brief at 10.

forward. In the meantime, PacifiCorp’s modest proposal aligns with the expectations in Senate Bill 1547 § 20(4) and should be adopted by the Commission.

B. The Stipulation Stimulates Innovation, Competition, and Customer Choice

The crux of ChargePoint’s argument is that the Public Charging Pilot does not stimulate customer choice. Despite ChargePoint’s protestations to the contrary, the Public Charging Pilot, as modified by the Stipulation, *does* stimulate innovation, competition, and customer choice. Throughout the record in this docket, ChargePoint has asserted that the “customer” envisioned by the Legislature is the charging infrastructure site-host.⁹ Under ChargePoint’s construct, customer money would be given to private site-hosts to reduce the cost of installing charging equipment from companies like ChargePoint.¹⁰

ChargePoint’s interpretation of “customer” mistakenly suggests that the concept of “customer choice” should apply only within the confines of the Public Charging Pilot. But there is no legislative support for that result. Put into the broader context of Senate Bill 1547’s objective of expanding access to electric vehicle charging infrastructure, a rational reading of § 20(4) does not support the notion that the Legislature was referencing site-hosts when it asked the Commission to consider “customer choice.” Customer choice goes far beyond ChargePoint’s model, and includes concepts like providing a diverse selection of charging options and models for electric vehicle drivers. Expanding public charging options, particularly in PacifiCorp’s predominantly rural service territory, stimulates customer choice to transition from gas to electric vehicles due to expanding charging options (or, in some cases, the first option they have had practical access to). While site-hosts may be the

⁹ See, e.g., UM 1810 – ChargePoint, Inc.’s Post-Hearing Reply Brief at 4-5.

¹⁰ UM 1810 – Staff’s Opening Brief at 14.

customers ChargePoint considers when looking for opportunities to sell its products, this exclusive definition is not supported by statute.

By increasing (on a limited basis) the access to, and the diversity of, public charging options, PacifiCorp's Public Charging Pilot will increase customer choice. By giving residential electric vehicle drivers increased options within PacifiCorp's service territory to charge besides their home, expanded customer choice in charging siting, technology, and options will inherently occur. The expanded choice that PacifiCorp's Public Charging pilot will provide will also flow to many other customer classes beyond residential electric vehicle owners. Further, allowing PacifiCorp to own up to seven charging stations will not prevent other site-hosts who wish to install charging equipment from doing so.

The record further supports that the Public Charging Pilot will stimulate competition. The prices charged at the pods covered under the Public Charging Pilot will reflect market prices for similar electric vehicle charging services.¹¹ So PacifiCorp will not be distorting or undercutting the market as ChargePoint repeatedly suggests. The increased number of public charging options will increase competition, not only within the public charging market, but also in the transportation market in general—by increasing public charging options (particularly in areas of PacifiCorp's service territory that are currently underserved), electric vehicles will become more attractive to potential purchasers, and competition between traditional gas vehicles and electric vehicles will be stimulated.

C. Utility Ownership: Not Required, Not Forbidden

In the Stipulation, the broad balance of the parties to this docket came to a reasoned compromise that resulted in a modest, time-limited, cost-limited, utility-owned Public

¹¹ PAC/100, Morris/8.

Charging pilot. The assertions by ChargePoint regarding why it believes the Stipulation does not further the goals of Senate Bill 1547 are centered on their disagreement with the utility-owned business model. The fact is that, while the Stipulating parties¹² came to an agreement for a modest roll out of utility-owned charging stations in this docket, there is insufficient data—both in this proceeding and nationwide—to support the conclusion that a customer subsidized make-ready model is superior to a utility ownership model, or vice versa.¹³ However, the knowledge, data, and takeaways gained during the course of PacifiCorp’s pilot programs will inform the success of future programs that seek to accelerate transportation electrification. Indeed, the types of information that the Public Charging Pilot will generate are otherwise not available to the Commission, which does not have jurisdiction over private charging companies like ChargePoint.

What is clear, however, is that a utility-owned charging infrastructure model was contemplated by both the Legislature and the Commission before the onset of this proceeding. The Legislature directed the Commission to “. . . direct each electric company to file applications, in a form and manner prescribed by the commission, for programs to accelerate transportation electrification.”¹⁴ The Commission promulgated the rules prescribing the form and manner of transportation electrification program applications in AR 599. One of the transportation electrification program requirements that arose from that rulemaking proceeding requires the utility to include a “[d]escription of the electric company’s role and, if applicable, a discussion of how the electric company *proposes to own* or support charging infrastructure.”¹⁵ In addition, comments by Representative Vega

¹² PacifiCorp, Staff, CUB, ICNU, Oregon Department of Energy, Forth, and Greenlots.

¹³ UM 1810 – Staff’s Opening Brief at 14.

¹⁴ Senate Bill 1547 § 20(3).

¹⁵ OAR 860-087-0030(1)(a)(G) (emphasis added).

Pederson in the Oregon House of Representatives regarding Senate Bill 1547 stated that the bill “allows utilities to construct and operate [] charging stations.”¹⁶ In the eyes of the Legislature, the Commission, and the vast majority of stakeholders, utility ownership of public charging infrastructure under the transportation electrification program applications in question is a distinct and feasible possibility.

III. CONCLUSION

PacifiCorp respectfully asks that the Commission approve its three transportation electrification pilot programs, as modified by the August 11, 2017, Stipulation. The Outreach and Education Pilot and Demonstration and Development Pilot are uncontested and supported by every party in this docket. The Public Charging Pilot is broadly supported by Staff, CUB, ICNU, the Oregon Department of Energy, Forth, and EVSE suppliers. The objections advanced by ChargePoint (the only party objecting to the Public Charging Pilot) reflect its economic self-interests rather than a desire to further the Legislature’s desire to accelerate transportation electrification in Oregon.

The time- and cost-limited Public Charging Pilot will give electric vehicle drivers additional charging options, particularly in large portions of PacifiCorp’s service territory that are currently underserved by market participants like ChargePoint. The increased charging options will stimulate customer choice, competition, and innovation by providing new charging options and increasing the practicality of electric vehicle adoption. As such, the limited pilot programs PacifiCorp has proposed will help advance transportation electrification in PacifiCorp’s service territory, and further the important policy objectives the Legislature established in Senate Bill 1547.

¹⁶ UM 1810 – Staff’s Opening Brief at 10.

Respectfully submitted this 24th day of January, 2018.



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