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December 14, 2017

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
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Attn: Filing Center

RE: UM 1810 —Joint Opening Brief

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

If you have questions about this filing, please contact Natasha Siores, Manager, Regulatory Affairs, at (503) 813-6583.

Sincerely,



Etta Lockey
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of

PACIFICORP, d/b/a PACIFIC
POWER,

Applications for Transportation
Electrification Programs.

UM 1810

JOINT OPENING BRIEF OF PACIFICORP, CUB, FORTH, AND GREENLOTS

December 14, 2017

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

In this docket, PacifiCorp has asked the Public Utility Commission of Oregon (Commission) to approve three time- and cost-limited transportation electrification programs developed in conformance with the Legislature's mandate in Senate Bill (SB) 1547. In large part, there are no disputed factual or legal issues. All parties to the docket agree with PacifiCorp that the proposed Outreach and Education, and Demonstration and Development Pilots, are consistent with SB 1547 and the Commission's implementing rules. The record contains no evidence suggesting otherwise.

There is, however, one narrow, disputed legal issue—whether PacifiCorp's proposed Public Charging Pilot complies with SB 1547 and the Commission's rules. PacifiCorp, Commission Staff, the Oregon Citizens' Utility Board (CUB), the Oregon Department of Energy (ODOE), the Industrial Customers of Northwest Utilities (ICNU), Forth, and Greenlots agree that it does. Their agreement is memorialized in a Stipulation filed on August 11, 2017.

The Legislature has made clear that electric companies like PacifiCorp have a central role to play in accelerating transportation electrification in Oregon. The Public Charging Pilot will test new public charging models, in new areas, with new tools that the current private charging market has failed to produce. The pilot will also provide PacifiCorp, the Commission, and other

market participants with valuable information regarding potential grid management benefits, the equitable distribution of public charging services within Oregon (including among underserved communities), and will set the stage for a fair evaluation of different ownership models. Because non-utility participants in the public charging market are not subject to Commission regulation,¹ the Public Charging Pilot proposed by PacifiCorp (and the Electric Avenue pilot proposed by Portland General Electric Company in docket UM 1811) are the proper avenues for the Commission to gain the insights necessary to properly consider the utilities' role in accelerating transportation electrification.

But a lone party, ChargePoint, Inc., mistakenly argues that *any* utility ownership of public charging facilities (even as part of a time- and cost-limited pilot program) conflicts with SB 1547's legislative intent, will result in unfair competition, and will limit customer choice. ChargePoint's opposition to PacifiCorp's Public Charging Pilot program boils down to opposition to no more than *seven*² charging pods. Further, ChargePoint argues that unfair competition can only be prevented, and customer choice can only be furthered, by limiting the number of participants in the public charging market. But the self-serving outcome ChargePoint advocates for is contrary to the Legislature's intent, and would restrict investment in (and customer access to) public charging infrastructure in PacifiCorp's service territory.

I. BACKGROUND

PacifiCorp has asked the Commission to approve three time- and cost-limited transportation electrification pilot programs. The proposed pilot programs are consistent with the Oregon Legislature's stated goal of further electrifying the state's transportation system. In

¹ See Docket No. UM 1461, Order No. 12-013 at 5 (Jan. 19, 2012) ("ORS 757.005(1)(b)(G) expressly exempts a non-utility EVSP that provides charging services to EVs from being defined as a public utility.")

² PAC/100, Morris/17.

March 2016, the Legislature passed SB 1547—landmark legislation that, among other things, established a framework for accelerating transportation electrification.³ The Legislature found that:

Transportation electrification is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state’s greenhouse gas emissions reduction goals described in ORS 468A.205 and improve the public health and safety....⁴

The Legislature acknowledged that expanding consumer access to a variety of charging options is central to accelerating transportation electrification: “widespread transportation electrification should ... provide consumers with increased options in the use of charging equipment.”⁵ To that end, the Legislature recognized that stimulating the nascent electric vehicle market is dependent on electric utilities increasing access to the use of electricity as a transportation fuel.⁶

SB 1547 directs electric utilities to propose programs to accelerate transportation electrification within their service territories via applications filed with the Commission.⁷ The legislation suggests that such programs may include utility-owned electric vehicle charging infrastructure:

A program proposed by an electric company may include prudent investments in ... electric vehicle charging and related infrastructure.⁸

³ SB 1547 resulted from a collaborative effort by PacifiCorp, Portland General Electric, the Oregon Citizens’ Utility Board, Sierra Club, Renewable Northwest, and other environmental and energy NGOs.

⁴ SB 1547, § 20(2)(a).

⁵ SB 1547, § 20(2)(d).

⁶ SB 1547, § 20(2)(b) (“Widespread transportation electrification *requires* that electric companies increase access to the use of electricity as a transportation fuel.”) (emphasis added). *See also* § 20(2)(c) (“Widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel in low and moderate income communities.”)

⁷ SB 1547 § 20(3).

⁸ SB 1547 § 20(3).

Following a Commission rulemaking⁹ to effectuate the Legislature’s directives, PacifiCorp proposed¹⁰ three time- and cost-limited pilot programs designed to test different market intervention strategies, gather data, and develop experience that will be useful for future system and program needs: (1) a Public Charging Pilot; (2) an Outreach and Education Pilot; and (3) a Demonstration and Development Pilot. These pilot programs are designed to help reduce market barriers PacifiCorp identified in its service area, while complementing and enhancing the efforts of other market actors working to accelerate transportation electrification in Oregon.

PacifiCorp, Staff, and the intervenors have devoted significant time and resources to evaluating PacifiCorp’s proposed pilot programs. After Staff and intervenors filed testimony in May 2017, the parties engaged in robust settlement discussions¹¹ that culminated in a Stipulation filed on August 11, 2017. The Stipulation, which is supported by joint testimony filed by the stipulating parties, clarifies and modifies PacifiCorp’s proposed pilot programs, and reflects reasonable compromise regarding the three proposed pilot programs.

The pilot programs, as modified in the Stipulation, are supported by PacifiCorp, Staff, ODOE, CUB, ICNU, Forth, and Greenlots.¹² This support by a broad array of interests, including utility customer advocates and electric vehicle supply equipment companies, supports the reasonableness of the compromises embodied in the Stipulation. As proposed in the Stipulation, the three pilots are:

- **Public Charging Pilot:** PacifiCorp proposes to install, own, and operate a limited number of publicly accessible charging stations in its Oregon

⁹ See Order No. 16-447, AR 599 (Nov. 23, 2016). The Commission’s rules governing SB 1547 transportation electrification implementation are codified in Oregon Administrative Rules Chapter 860, Division 087.

¹⁰ See PacifiCorp’s Initial Application (Dec. 27, 2016) and Supplemental Application (Apr. 12, 2017).

¹¹ The settlement negotiations included an in-person meeting hosted by PacifiCorp on May 31, 2017.

¹² PacifiCorp notes that the three pilot programs, as initially proposed in the April 2017 Supplemental Application, were also supported by the following: City of Albany, City of Corvallis, City of Dallas, City of Independence, City of Portland, Bureau of Planning and Sustainability; City of Sutherlin; Hacienda Community Development Corporation; Klamath Falls Downtown Association; OReGONbike LLC; Rogue Valley Clean Cities (representing 10 cities in Jackson County); and Sunset Empire Transportation District. PAC/100, Morris/16-17.

service territory. Program expenses for the 2017-2019 pilot period are capped at \$1.85 million. The Public Charging Pilot is limited to seven charging pods. PacifiCorp will schedule a workshop with the stipulating parties within 30 days of program approval to further refine site evaluation and monitoring criteria.¹³

- **Outreach and Education Pilot:** This pilot includes tactics and messages that increase exposure and access to reliable information about electric transportation options and benefits. Program expenses for the 2017-2019 pilot period are capped at \$1.105 million, less 50 percent of PacifiCorp's initial proposed budgets for Customer Communications and Community Events that will be diverted to develop certain transportation electrification models and studies.
- **Demonstration and Development Pilot:** This pilot includes grant funding to help non-residential customers develop creative, community-driven electric vehicle supply equipment projects. Program expenses for the 2017-2019 pilot period are capped at \$1.685 million.

The total budget for all three pilot programs is capped at a modest \$4.64 million over the 2017-2019 pilot period.

In addition to the three pilot programs contemplated in its application, PacifiCorp will support and fund developing an attribution model and cost-effectiveness framework and toolset to inform evaluation efforts and potential future transportation electrification program development.¹⁴ Further, PacifiCorp will develop and conduct a pilot study of potential system impacts of residential electric vehicle adoption in a selected portion of its Oregon service territory.¹⁵ These future programs and studies will provide essential learnings and will be funded from funds diverted from the Outreach and Education pilot as noted above.

PacifiCorp will provide the Commission with a progress update on all the pilot programs by March 31, 2019, and will provide the Commission with a report on all pilot activities, including the results of program evaluation activities by June 30, 2020. These learnings will

¹³ PacifiCorp is amendable to non-stipulating parties (i.e., ChargePoint) participating in this workshop.

¹⁴ UM 1810 – Stipulation at 6, paragraph 15.

¹⁵ UM 1810 – Stipulation at 6, paragraph 16.

help inform any further Commission actions on how utilities can further accelerate transportation electrification in Oregon.

Significantly, ChargePoint is the only party to the docket that did not join the Stipulation. ChargePoint's objection is based on an outlier position that utilities should not be permitted to own and operate electric vehicle charging infrastructure—even when utility ownership is limited to a discrete (no more than seven charging pods) time- and cost-limited pilot program designed to gather valuable information that will benefit the Commission as it seeks to further implement the Legislature's goals regarding transportation electrification.

ChargePoint's objections are limited to the Public Charging Pilot; ChargePoint unequivocally supports adoption of the Outreach and Education and Demonstration and Development Pilots as modified by the Stipulation.

II. ARGUMENT

The proposed Demonstration and Development and Outreach and Education Pilots, as modified by the Stipulation, are unopposed,¹⁶ and the undisputed record evidence demonstrates that those programs comply with the Legislature's intent. Therefore, the only contested issue in this proceeding is whether PacifiCorp's Public Charging Pilot furthers the Legislature's intent in SB 1547 and aligns with the Commission's rules developed in AR 599. As set out below, the Public Charging Pilot is consistent with the Legislature's clear directives and fully supported by an uncontested evidentiary record.

¹⁶ See ChargePoint/200, Packard 5 (“ChargePoint supports Commission approval of the Demonstration and Development program and the Outreach and Education program, as modified by the Stipulation.”)

A. SB 1547 and the Commission’s Rules Expressly Authorize Utility Investments in Public Charging Infrastructure

The Legislature has declared that accelerating transportation electrification “is necessary to reduce petroleum use, achieve optimum levels of energy efficiency and carbon reduction, meet federal and state air quality standards, meet this state’s greenhouse gas emissions reduction goals ... and improve the public health and safety.”¹⁷ The Legislature acknowledged that utilities must play a key role in increasing access to the use of electricity as a transportation fuel—especially in low and moderate income communities.¹⁸ To further its stated goal of increasing access to the use of electricity as transportation fuel, the Legislature expressly authorized electric companies to “include prudent investments in ... electric vehicle charging and infrastructure” as part of their transportation electrification plans.¹⁹

Aside from the goals contemplated by the Legislature in achieving widespread transportation electrification, the Legislature also gave the Commission direction when examining the transportation electrification programs proposed by the electric utilities. In this instance, the Commission was delegated authority to “direct each electric company to file applications, *in a form and manner prescribed by the commission*, for programs to accelerate transportation electrification.”²⁰ Enabling the Commission to prescribe the form and manner of utility transportation electrification gave it significant discretion to work with a broad range of stakeholders in a rulemaking proceeding to determine the integral components of a transportation electrification program application. In that proceeding, AR 599, the Commission sought to

¹⁷ SB 1547 § 20(2)(a).

¹⁸ SB 1547 §§ 20(2)(c)-(d).

¹⁹ SB 1547 § 20(3).

²⁰ SB 1547 § 20(3) (emphasis added).

implement section 20 of SB 1547.²¹ Numerous parties participated in workshops and filed comments in that docket, including ChargePoint.

The Commission finalized the rules associated with electric utility program applications on November 23, 2016.²² One of the final transportation electrification program requirements promulgated by the Commission 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.”²³ Despite misguided claims by ChargePoint that allowing utility ownership of the charging stations in PacifiCorp’s Public Charging Pilot runs counter to the Legislature’s intent in SB 1547, the Legislature clearly delegated the authority to decide how to administer transportation electrification applications to the Commission, and the Commission decided, under its discretionary power, that utility ownership of charging infrastructure is a distinct and feasible possibility. Further, the vast majority of parties to this docket believe that PacifiCorp’s transportation electrification program application is reasonable and furthers the goals of SB 1547.

Following the Legislature’s invitation and the Commission’s subsequent rulemaking proceeding, PacifiCorp has proposed a limited and cost-capped Public Charging Pilot. Specifically, PacifiCorp would invest no more than \$1.85 million in up to seven publicly accessible charging pods during the 2017-2019 program period.²⁴ These investments will increase access to electricity as a transportation fuel and expand customer choice in public charging options. The data generated as part of the pilot will be useful for evaluating future

²¹ *In the Matter of Rulemaking to Prescribe Application Requirements for Transportation Electrification Programs*, OPUC Docket No. AR 599, Order No. 16-447 (Nov. 23, 2016).

²² See OPUC Order No. 16-447.

²³ OAR 860-087-0030(1)(a)(G) (emphasis added).

²⁴ Stipulation at 2; Stipulating Parties/100, Morris-Klotz-Mullins-Jenks-Allen-Ashley-Avery/3.

transportation electrification programs, assessing how public charging stations can be useful for grid management, and weighing the benefits of different ownership models.

Despite ChargePoint’s assertions, it is clear that both the Legislature and the Commission authorized utility ownership of electric vehicle charging infrastructure.

B. SB 1547 Does Not Establish Mandatory Criteria and Grants the Commission Significant Discretion To Approve Utility Transportation Electrification Plans

In SB 1547, the Legislature granted the Commission broad discretion to approve utility transportation electrification plans—including the type of programs PacifiCorp has proposed. The legislation instructs the Commission to “direct each electric company to file applications, in a form or manner prescribed by the commission, for programs to accelerate transportation electrification.”²⁵ Contrary to ChargePoint’s arguments, the legislation does not lay out a mandatory set of criteria that the electric companies must satisfy in their transportation electrification applications. Instead, the Commission is directed to “consider” six different factors when reviewing the utility proposals:

[The] commission shall *consider* whether the investments and other expenditures:

- (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 operational flexibility, including the ability of the electric company to integrate variable generating resources; and
- (f) Are reasonably expected to stimulate innovation, competition and customer choice in electric vehicle charging and related infrastructure and services.²⁶

²⁵ SB 1547 § 20(3).

²⁶ SB 1547 §§ 20(4)(a)-(f) (emphasis added).

The principal controversy in this docket comes down to competing interpretations of “consider.” ChargePoint would have the Commission believe that by using the term “consider,” the Legislature established a mandatory set of criteria that utility applications must satisfy before the Commission can approve a transportation electrification proposal. More specifically, ChargePoint argues that the proposed Public Charging Pilot cannot be approved because it will hinder, rather than stimulate, competition in conflict with subsection (f). But the context of the statutory language, and bedrock principals of statutory construction indicate that the Legislature endowed the Commission with broad discretion to approve PacifiCorp’s transportation electrification program.

Under Oregon law, the goal of statutory interpretation “is to determine what meaning the legislature intended in drafting the statute.”²⁷ The first step in ascertaining the meaning of legislative language is to examine the text and context of the statute, along with the statute’s legislative history, when useful.²⁸ “[W]hen the legislature, in enacting a law, makes use of plain, unambiguous, and understandable language, it is presumed to have intended precisely what its words imply. There is no occasion to go beyond those words and their plain meaning ... the words speak for themselves.”²⁹ Words of common usage are presumed to have their plain, natural, and ordinary meaning.³⁰

Here, the statute’s plain language directs the Commission to “consider” certain factors when reviewing utility applications. The term “consider” means “to look at carefully; to think or

²⁷ *Comcast v. Dep’t of Revenue*, 356 Or. 282, 295 (2014).

²⁸ *State v. Gaines*, 346 Or. 160, 171-72 (2009).

²⁹ *Berry Transp. v. Heltzel*, 202 Or. 161, 166 (1954). *See also* ORS 174.010 (“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, *not to insert what has been omitted*, or to omit what has been inserted ...”)

³⁰ *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or. 606, 610 (1993).

deliberate on; to weigh advantages and disadvantages, with a view to action.”³¹ Given the terms “plain, natural, and ordinary meaning,” it is evident that the Legislature intended the Commission to “look carefully at” and the “weigh the advantages and disadvantages” of the factors laid out in subsection 20(4). There is simply no textual support for ChargePoint’s reading that a proposed program must somehow satisfy a defined set of mandatory factors. Had the Legislature intended that result, it would have drafted SB 1547 differently.

Furthermore, the statute’s context illustrates that the Legislature granted the Commission broad discretion over utility activities furthering transportation electrification. First, the Legislature granted the Commission discretion to determine the “form and manner” for applications.³² This language broadly enables the Commission to determine the substance of, and administer the review of, transportation electrification applications. Second, five of the six factors in section (2)(4) use language (“as determined by the Commission” and “are reasonably expected”) indicating the Commission has discretion when reviewing utility proposals. Contrary to ChargePoint’s misguided reading, the plain language does not constrain the Commission’s discretion, it simply announces it.

C. The Uncontested Record Demonstrates that the Pilot Programs are Consistent with SB 1547

As previously discussed, there is no legal or evidentiary dispute regarding the Demonstration and Development and Outreach and Education Pilots, and all parties to this docket support the Commission approving those programs. The only disputed issue is whether the Public Charging Pilot is consistent with section 20(4)(f), which instructs the Commission to consider whether the pilot is “reasonably expected to stimulate innovation, competition and

³¹ Webster’s English Dictionary (2003). *See also* Black’s Law Dictionary (5th ed.) (defining “consider” as “to fix the mind on, with a view to careful examination; to examine, to inspect.”)

³² SB 1547 § 20(3).

customer choice in electric vehicle charging and related infrastructure and services.” The weight of the evidentiary record evidence demonstrates that that the Public Charging Pilot will “stimulate innovation, competition and customer choice.” It strains credibility to believe that utility ownership of a mere seven charging pods across a broad geographic region will stifle competition.

Stimulate Innovation: PacifiCorp will use an RFP process to select a vendor for constructing the six public charging pods, and will encourage bidders to propose innovative solutions to integrating advanced technologies, mitigate grid impacts, future-proofing investments, and addressing interoperability barriers.³³

Stimulate Competition: There is a dearth of public charging options PacifiCorp’s Oregon service territory.³⁴ Indeed, many of the communities in its service territory lack public charging infrastructure entirely.³⁵ Accessible charging stations will increase demand for charging services and stimulate competition in the market—particularly in areas where a market does not currently exist. The RFP process itself will stimulate competition among potential bidders, and the presence of PacifiCorp’s proposed charging stations will help stimulate the market in currently under-served areas. Furthermore, the pricing will be designed to stimulate competition both with other transportation and with other public electric vehicle charging stations (PacifiCorp’s prices will reflect market prices for similar electric vehicle charging, so PacifiCorp will not be undercutting the market at ChargePoint suggests).³⁶ Nothing in PacifiCorp’s proposed Public Charging Pilot prohibits, prevents, or otherwise impedes the ability of other entities to also

³³ PacifiCorp’s Supplemental Application at 40, 59 (Apr. 12, 2017); PAC/100, Morris/8; Stipulating Parties/100, Morris-Klotz-Mullins-jenks-Allen-Ashley-Avery/11-12.

³⁴ *Id.*

³⁵ PacifiCorp’s Supplemental Application at 18.

³⁶ PAC/100, Morris/8.

provide public charging infrastructure in PacifiCorp’s service territory. Indeed, ChargePoint has at least 11 publicly-available DC fast chargers and 181 publicly-available Level 2 charging ports in Oregon.³⁷

Stimulate Customer Choice: The charging facilities will provide electric vehicle drivers with an option other than home charging. In other words, customers will have the choice to use public charging infrastructure as either a primary or secondary means of fueling their vehicles.³⁸ The pilot will also stimulate the market, potentially leading to the development of additional public charging options for customers.

The gravamen of ChargePoint’s objection is that utility-owned public charging (even a mere seven charging pods via a pilot program) will distort the market and undercut competition and customer choice. But ChargePoint has not produced a single study, report, or other concrete evidence supporting its position.

In discovery, PacifiCorp repeatedly asked ChargePoint for studies, workpapers, analyses, memorandum, and other documents supporting its allegations. In each instance, ChargePoint failed to produce any factual materials, studies, reports, or examples supporting its opinions.”³⁹

More specifically:

- PacifiCorp asked ChargePoint to produce evidence supporting its assertion that the proposed Public Charging Pilot “can be expected to hamper transportation electrification in Pacific Power’s service territory, rather than accelerate it.”⁴⁰ ChargePoint provided no evidence in its response.⁴¹
- PacifiCorp asked ChargePoint to identify examples where utility-ownership of public charging equipment rendered other public charging

³⁷ PAC/409 (ChargePoint Response to PacifiCorp DR 11).

³⁸ Supplemental Application at 59.

³⁹ See, e.g., PAC/404 (ChargePoint response to PacifiCorp DR 6); PAC/405 (ChargePoint response to PacifiCorp DR 7).

⁴⁰ PAC/410.

⁴¹ PAC/410 (ChargePoint response to PacifiCorp DR 12).

programs “unsuccessful.” ChargePoint produced no examples in its response.⁴²

- PacifiCorp asked ChargePoint to produce evidence supporting its argument that “prospective site-hosts who may be considering investing in publicly available charging stations would be much less likely to do so when they learned that Pacific Power was providing charging stations.” ChargePoint provided no evidence in its response.⁴³
- PacifiCorp asked ChargePoint to produce evidence supporting its claim that “[e]lectric vehicle service equipment (EVSE) vendors would also be less likely to invest in their own publicly available charging stations when they learned that Pacific Power was providing charging stations.” Again, ChargePoint provided no evidence in its response.”⁴⁴
- PacifiCorp asked ChargePoint to produce evidence supporting its claim that “it is doubtful that private investment would materialize to meet [the demand for additional publicly available charging stations] if the Commission approves the Public Charging program.” Again, ChargePoint provided no evidence in its response.⁴⁵
- PacifiCorp asked ChargePoint for evidence supporting its claim that “Pacific Power’s participation in the publically available charging station market would severely distort and hamper the market over the medium- and long-term...” Again, ChargePoint provided no evidence in its response.⁴⁶

The Commission is being asked to weigh the evidence and answer the question—is ChargePoint’s testimony (which is not supported by any studies, reports, or concrete data) more credible or more persuasive than the testimony and evidence submitted by PacifiCorp, Staff, ODOE, CUB, ICNU, Greenlots, and Forth? It is clear that ChargePoint’s outlier position cannot overcome the overwhelming weight of record evidence supporting approval of PacifiCorp’s modest Public Charging Pilot program.

⁴² PAC/408 (ChargePoint response to PacifiCorp DR 10).

⁴³ PAC/411 (ChargePoint response to PacifiCorp DR 13).

⁴⁴ PAC/412 (ChargePoint response to PacifiCorp DR 14).

⁴⁵ PAC/413 (ChargePoint response to PacifiCorp DR 15).

⁴⁶ PAC/414 (ChargePoint response to PacifiCorp DR 16).

D. The Commission Has Broad Authority to Consider What to Include in Utility Rates, and Has the Authority to Approve the Stipulation

Contrary to the unfounded assertions made by ChargePoint in its Response Testimony Opposing the Stipulation, the Commission has the authority and discretion under SB 1547 to approve PacifiCorp’s transportation electrification application as modified by the Stipulation. Further, as a preliminary matter, the Commission generally has broad authority and discretion to determine what to include in utility rates. Generally speaking, the Commission was given the powers to “represent the customers of any public utility ... in all controversies respecting rates, valuations, [and] service” and to protect these customers “from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.”⁴⁷ Importantly, the Commission “shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.”⁴⁸ The Commission has distilled the general powers granted to it by the Oregon Legislature into its mission to “ensure Oregon utility customers have access to safe, reliable, and high-quality utility services at just and reasonable rates.”⁴⁹

To put the ability of the Commission to place the \$1.85 million dollar maximum allowable cost associated with the Public Charging Pilot⁵⁰ into utility rates into perspective, a discussion of the Commission’s authority to do so is necessary. Since 1911, the Oregon Legislature has delegated its authority to regulate public utilities exclusively to the Commission.⁵¹ Within this delegation, the Commission is provided “the broadest authority—

⁴⁷ ORS 756.040(1).

⁴⁸ ORS 756.040(1).

⁴⁹ Oregon Public Utility Commission, Mission-Values-Actions, *available at* <http://www.puc.state.or.us/docs/Mission-Values-Actions%20-02092016.pdf>.

⁵⁰ UM 1810 – Stipulation at 2, paragraph 2.

⁵¹ *In the Matters of The Application of Portland General Electric Company for an Investigation into Least Cost Plan Plant Retirement; Revised Tariffs Schedules for Electric Service in Oregon Filed by Portland General Electric Company; Portland General Electric Company’s Application for an Accounting Order and for Order Approving Tariff Sheets Implementing Rate Reduction*, OPUC Docket Nos. DR 10, UE 88, and UM 989, Order No. 08-487 at 4 (Sept. 30, 2008).

commensurate with that of the legislature itself—for the exercise of [its] regulatory function.”⁵² However, the Commission’s broad authority is not without limits.

Since the Commission was created by the legislature, its authority is limited by the boundaries of the legislature’s delegation.⁵³ It is also limited by the confines of the state and federal constitutions, and governmental regulation has implied limits that preserve the private rights of public utilities as for-profit businesses.⁵⁴ In determining how to set rates to meet its mandate to establish fair and reasonable rates, the Commission employs a comprehensive and flexible regulatory scheme.⁵⁵ The legislature has expressed no specific process or method that the Commission must use to determine the level of just and reasonable rates, and the Commission has great freedom to determine which of the many possible methods it will use.⁵⁶ In the end, the Commission must set rates within a reasonable range that protects the competing interests of the utility and its customers.⁵⁷

Given the broad authority of the Commission to determine what to include in rates, the discretion given to the Commission by the Legislature to prescribe the form and manner of utility program applications, and the plain meaning of SB 1547’s language that the Commission “shall consider” the six factors in SB 1547 § 20(4)(a)-(f), the Commission is well within its discretion to approve the stipulation reached by parties in this docket.

⁵² OPUC Order No. 08-487 at 4, *citing Pacific NW Bell Tel. Co. v. Sabin*, 21 Or. App. 200, 214, *rev den* (1975).

⁵³ OPUC Order No. 08-487 at 4, *citing see, e.g., Pacific NW Bell Tel. Co. v. Katz*, 116 Or. App 302, 309-10 (1992) (an agency’s authority cannot go beyond the authority expressly conferred upon it by the legislature), *citing Sabin*, 21 Or App at 213.

⁵⁴ OPUC Order No. 08-487 at 4; *see also Hammond Lumber Co. v. Public Serv. Comm’n*, 96 Or. 595, 604 (1920).

⁵⁵ OPUC Order No. 08-487 at 5; *see also Multnomah Cnty v. Davis*, 35 Or App 521, 525 (1978).

⁵⁶ OPUC Order No. 08-487 at 5, *see, e.g., Pacific NW Bell Tel. Co. v. Eachus*, 165 Or App 41, 56 (1995), *citing Sabin*, 21 Or App at 224 (Commission is “not obligated to use any single formula or combination of formulas to determine what are, in each case, just and reasonable rates.”)

⁵⁷ OPUC Order No. 08-487 at 5.

III. CONCLUSION

PacifiCorp has presented the Commission with three cost- and time-limited pilot programs designed to accelerate transportation electrification in PacifiCorp's Oregon service territory. Consistent with SB 1547, these pilots will stimulate innovation and competition, provide consumers in PacifiCorp's service territory with increased charging options, and help attract private capital investments. PacifiCorp's proposal, as modified by the Stipulation, is broadly supported by Staff, utility costumer advocates, and members of the electric vehicle charging market. Accordingly, PacifiCorp respectfully asks the Commission to approve PacifiCorp's inaugural transportation electrification pilot programs, as modified by the Stipulation filed in this docket.

Respectfully submitted this 14th day of December, 2017



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