

1 The nine stipulating parties represent a wide spectrum of often divergent interests,
2 ranging from protection of residential and industrial customers to testing electrification of public
3 busses, promoting EV uptake, defending natural resources, marketing electric vehicle service
4 equipment (EVSE), and beyond, all of whom have contributed their knowledge and expertise in
5 reaching the terms of the Stipulation. Together, staff of the Public Utility Commission of
6 Oregon (Staff), PGE, Oregon Citizens' Utility Board, Industrial Consumers of Northwest
7 Utilities, Oregon Department of Energy, Tesla, Forth, TriMet, and Greenlots (the Stipulating
8 Parties) respectfully request that the Commission adopt the collaborative Stipulation reached in
9 this inaugural docket.

10 II. BACKGROUND

11 1. Since December of 2016, the parties have been working diligently to propose a 12 reasonable first package of transportation electrification programs.

13 In March of 2016, the Oregon legislature passed SB 1547, directing electric companies to
14 accelerate transportation electrification in their service territories and allowing electric company
15 ownership of electric vehicle charging and related infrastructure.¹ PGE filed an application for
16 approval of different transportation electrification programs on December 27, 2016.

17 Over the past ten months, Staff and the numerous parties to this docket have worked
18 diligently to evaluate PGE's proposals—numerous rounds of discovery have been exchanged
19 with PGE, hundreds of pages of testimony have been filed, and the positions of ten parties have
20 been fully debated and vetted. Accordingly, Staff's position evolved over time, especially given
21 the novelty of the subject matter and lack of Oregon-specific data.² For example, Staff explained
22 that, at this point in time, we are simply not as far along as we would like to be in terms of access
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25 ¹ Oregon Laws 2016, Chapter 28, Section 20(3) ("A program proposed by an electric company may include prudent
26 investments in . . . electric vehicle charging and related infrastructure.") and Section 20(5)(a) ("Tariff schedules and
rates allowed pursuant to subsection (3) of this section: (A) May allow a return of and a return on an investment
made by an electric company . . .").

² Hearing Transcript at 146, lines 13-25, and at 147, lines 1-11 (Oct. 10, 2017).

1 to reliable data and methodologies like attribution³ and cost-effectiveness⁴ that are necessary to
2 evaluate transportation electrification investments. Nonetheless, Staff endeavored to work
3 collaboratively with the numerous stakeholders and parties that expressed interest and offered
4 their expertise in transportation electrification designs, with the goal of recommending a first set
5 of programs that drive transportation electrification forward as envisioned by the legislature and
6 protect utility ratepayers, as utilities responsibly test different approaches in the market.

7 After review of the reply testimony filed by seven parties, the ten parties to this docket⁵
8 met for a settlement conference on May 12, 2017. After much deliberation and exchange of
9 policy positions, nine of the ten parties were able to reach a reasonable compromise. The
10 Stipulation was filed on June 27, 2017, supported by the joint testimony of Mr. Spak, Mr. Klotz,
11 Mr. Jenks, Ms. Shaw, Mr. Ashley, Mr. Whiteman, Mr. Hesse, and Mr. Ratcliffe. Shortly
12 thereafter, ChargePoint, who advocated for a site-host ownership model for charging
13 infrastructure, objected to the Stipulation, and the Electric Vehicle Charging Association
14 (EVCA), who intervened after the settlement was reached, also filed an objection. ChargePoint
15 required additional time to file testimony in support of its pre-filed objections, as well as a
16 hearing on the same objections. On October 10, 2017, a four-hour hearing was held for
17 ChargePoint and EVCA questioning of stipulating-party-witnesses.

18 **2. The components of the Stipulation are clear and reasonable.**

19 If the Commission decides to adopt the Stipulation, it would be adopting the following:
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21 ³ Staff/100, Klotz/11, 13, 26 (explaining that attribution is a way to assess estimated program impacts; in other
22 words, attribution methodology “is the approach used to estimate the degree to which PGE’s specific efforts are
23 expected to result in EV market lift,” however, “at present, attribution methodology is lacking proper definition and
data.”).

24 ⁴ Staff/100, Klotz/11 (“Proper identification and quantification of the costs and benefits of the investment are
25 essential to the resulting determination of cost effectiveness. Benefits are driven by the underlying assessment of
26 estimated program impacts, also known as program attribution. Therefore, the methodology used to determine
program attribution is critical. If the anticipated program impacts are inflated or simply inaccurate, benefits are not
valid, nor is the cost effectiveness evaluation.”).

⁵ Electric Vehicle Charging Association petitioned to intervene after the settlement conference was held, increasing
the total number of parties in this docket to eleven.

1 ✓ **Three pilot programs that test different methods to accelerate transportation**
2 **electrification:**

- 3 a. TriMet Pilot, with costs capped at \$800,000.
4 b. Education and Outreach Pilot, with costs capped at \$400,000.
5 c. Electric Avenue Pilot,⁶ with costs capped at \$2.6M. **Note: this is the only*
6 *pilot contested by ChargePoint, which is just one component of a larger*
7 *Stipulation offering additional pilots and benefits.*⁷

8 ✓ **A requirement that PGE propose pilot programs in the future to test two**
9 **alternative methods of transportation electrification:**⁸

- 10 a. Residential Home Charging Pilot.
11 b. Workplace and/or Fleet Charging Pilot.

12 ✓ **Collection of Data, Required Evaluations, and Pilot Learnings. The *Electric***
13 ***Avenue Pilot* specifically requires the following:**

- 14 a. Annual reporting on load profiles, utilization, charging frequency,
15 charging duration, voltage and power quality, kWh delivery, insights into
16 price sensitivity of customers charging at the Electric Avenue Pilot
17 chargers, revenue generated, types of EVs that customers drive, and any
18 additional insights.⁹
19 b. Annual review (or even more frequently) of PGE’s tariff for public
20 charging.¹⁰ All stakeholders may participate in this review.

22 ⁶ To be clear, this pilot is limited to up to six sites (also called stations), with up to a total of 24 new DC Quick
23 Chargers (DCQC) and six Level 2 chargers.

24 ⁷ Staff/401, Klotz/7 (ChargePoint’s Response to Staff DR 9: ChargePoint confirms that “ChargePoint only objects to
25 the Electric Avenue Pilot in the Stipulation. In other words, ChargePoint does not object to the other pilots in the
26 Stipulation.”).

25 ⁸ These two pilots will require a future application filing by PGE, party review, and approval by the Commission.

26 ⁹ Stipulation at para. 26.

¹⁰ Stipulation at para. 29.

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- c. PGE to evaluate each approved pilot program at the end of the 2nd and 5th pilot years.¹¹
- d. PGE to provide an assessment, included in the 2nd and 5th year evaluations of the Electric Avenue Pilot program, of its role in the charging market, addressing whether its participation in the market is necessary as presently structured, if another model or intervention strategy would be better for the market, or if PGE should exit the charging market.¹²
- e. PGE to file a written list, designed by the Stipulating Parties, of learnings that are intended to be gained from each of the three pilot programs. PGE will track and report on such learnings. Specifically for the Electric Avenue Pilot, the learnings will likely mirror the draft list filed with the Stipulation, which includes determination of:

- The impact of the presence of visible, reliable, and accessible charging infrastructure on customer willingness to purchase an EV and drive longer distances in an EV;
- The predominant users of PGE’s EV charging infrastructure, including whether the chargers are regularly utilized by PGE or non-PGE customers;
- Whether there are distinct use cases with predictable load profiles;
- Total PGE EV charging network load profiles and the impact of DC Quick Chargers on PGE’s distribution system and non-coincident peak loads;
- Impacts of time-variant rates on customer use of EV charging infrastructure (charging behavior);
- Whether additional infrastructure is needed to support and ensure highly reliable public EV charging infrastructure (and the associated costs);

26 ¹¹ *Id.* at. 9, lines 2-4.

¹² Stipulating Parties/100, Spak-Klotz-Jenks-Mullins-Shaw-Ashley-Whiteman-Hesse-Ratcliffe/8, lines 18-21.

- Siting criteria that can be utilized to limit or reduce distribution system upgrades;
- General charging infrastructure installation, operation, and maintenance costs;
- Challenges and best practices in permitting, designing, and siting DC Quick Charging infrastructure;
- Charging revenues;
- Coincidence factor of the EV charging stations;
- Data related to utilization, load profiles, load factors, and accessibility.

✓ **Forward Progress:**

- a. Future workshops *open to all* interested intervenors¹³ to develop the following methodologies for evaluation of programs: (1) attribution and (2) cost-effectiveness.

All of the above components are expressly included in the Stipulation. However, a question was raised at the hearing regarding the interplay of the Stipulation and other elements proposed in PGE’s Supplemental Application, specifically: (a) does the Stipulation replace PGE’s Supplemental Application filed on March 15, 2017, meaning that the elements of the Electric Avenue Pilot in the Stipulation supersede and replace the elements proposed by PGE in its Supplemental Application, or (b) does the Stipulation also include all elements of PGE’s Supplemental Application that were not expressly modified by the Stipulation, meaning that elements of the Electric Avenue Pilot as proposed in PGE’s Supplemental Application will still take effect, despite being absent from the terms of the Stipulation.

The answer to this question is twofold. First, (a) is correct—the Stipulation modifies and replaces PGE’s Supplemental Application.¹⁴ The Stipulation includes essential modifications

¹³ This could be opened beyond intervenors to all interested stakeholders; “intervenors” was used because some information in this docket is confidential and therefore would require intervention in order to sign the protective order.

¹⁴ Hearing Transcript at 80, lines 8-9 (Oct. 10, 2017) (“We are asking the Commission to approve the Stipulation, that is correct.”); *Id.* at 80, lines 21-24 (where Mr. Klotz responds to Mr. Dunbar’s question that the Stipulating Parties are asking the Commission to approve the Electric Avenue proposal “As described in the Stipulation.”).

1 not present in the Supplemental Application such as cost caps, application of offsetting Clean
2 Fuels Program (CFP) revenues to reduce the cost to ratepayers, specific data collection and
3 learnings developed by the Stipulating Parties, all of the reporting criteria requested in Staff
4 witness Ms. Hanhan’s Reply Testimony, and more. Second, the answer becomes slightly more
5 nuanced with regard to granular-level detail provided in the Supplemental Application. Mr.
6 Klotz was correct in explaining that if there was a question regarding a specific detail of the
7 Electric Avenue Pilot, the Commission or the parties could look to the Supplemental Application
8 for clarification.¹⁵ For example, in the Supplemental Application, PGE offered a list of siting
9 criteria and list of cities where charging stations could be located.¹⁶ The siting criteria are not
10 included in the Stipulation because traditionally stipulations are not as detailed as the discussion
11 in the company’s application or parties’ testimony with regard to every possible feature of a
12 proposed program. In this sense, the Stipulation captures the modifications and, if you will, the
13 major “pillars” of the pilot programs. Importantly, if the Commission has a question about a
14 particular item in the Stipulation, the Stipulating Parties are available for clarifications through a
15 bench request.

16 However, based on ChargePoint’s line of questioning, Staff perceived the underlying
17 question to be something different. To ensure clarity of the record, the EV chargers that PGE
18 currently owns (in the ground today), which include the eleven charging stations owned by PGE
19 as a legacy of the EV Highway pilot and the single Electric Avenue station (that has five
20 chargers),¹⁷ are *not part* of the Stipulation’s Electric Avenue Pilot. Moreover, from a legal
21 standpoint, these chargers pre-date the passage of SB 1547 and therefore *cannot* be part of the
22 SB 1547 transportation electrification programs proposed by PGE. The law expressly requires
23 that programs proposed by a utility for electric vehicle charging and related infrastructure be

24 ¹⁵ Hearing Transcript at 80, lines 17-18 (Oct. 10, 2017) (“We could certainly take a look at the application, if
25 clarification was necessary.”).

26 ¹⁶ PGE’s Supplemental Application at 61 (Mar. 15, 2017).

¹⁷ These pre-existing stations are considered part of PGE’s total charging “network,” but are not part of the Electric
Avenue Pilot described in the Stipulation. See PGE’s Supplemental Application at 47 (Mar. 15, 2017).

1 installed *on or after* July 1, 2016,¹⁸ which is not true of PGE’s pre-existing chargers. The
2 Stipulation’s silence as to PGE’s pre-existing chargers is purposeful—they are not and cannot be
3 part of the Electric Avenue Pilot in the Stipulation.¹⁹

4 III. DISCUSSION

5 1. There are no legal concerns with adopting the Stipulation.

6 The decision before the Commission is whether or not to adopt a Stipulation that tests
7 three modest approaches to transportation electrification, is supported by a wide range of experts,
8 and complies with the law. There are no legal issues prohibiting adoption of the Stipulation in
9 this case. Staff explained in testimony that the Stipulation can be approved pursuant to the six
10 considerations outlined in SB 1547, Section 20(4), or under the Commission’s authority to
11 approve pilot programs.²⁰

12 A. The law requires Commission “consideration” of the six factors, meaning 13 that an individual program does not need to “meet” each of the six 14 factors to be approved.

15 Subsection (4) of the transportation electrification law governs program approval, and
16 delineates six factors for the Commission to think about when deciding whether to approve a
17 utility-proposed transportation electrification program. The relevant text is as follows:

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

- 21 (a) Are within the service territory of the electric company;
- 22 (b) Are prudent as determined by the commission;

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24 ¹⁸ Oregon Laws 2016, Chapter 28, Section 21; Hearing Transcript at 59, lines 7-25, and at 60, lines 1-2 (Oct. 10, 2017).

25 ¹⁹ Hearing Transcript at 21, lines 8-16 (Oct. 10, 2017) (Mr. Goodspeed clarified that PGE is “not asking for
26 Commission approval to continue to operate the [EV Highway Pilot] sites . . . we have been operating them and
earned no recovery or return on those assets . . .”).

²⁰ Staff/400, Klotz/14-15, lines 20-2.

1 (c) Are reasonably expected to be used and useful as determined
by the commission;

2 (d) Are reasonably expected to enable the electric company to
3 support the electric company's electrical system;

4 (e) Are reasonably expected to improve the electric company's
5 electrical system efficiency and operational flexibility, including
the ability of the electric company to integrate variable generating
resources; and

6 (f) Are reasonably expected to stimulate innovation, competition
7 and customer choice in electric vehicle charging and related
infrastructure and services.²¹

8 The law requires the Commission to "consider" the above six factors when deciding to
9 approve a program. It does *not* require the Commission to deny a program if it does not "meet" a
10 specific factor, or "meet" every factor. Any confusion as to the law's requirements can be
11 swiftly resolved by understanding what the legislature intended the term "consider" to mean at
12 the time it enacted the statute.²²

13 Attorneys²³ use the Oregon Supreme Court's statutory construction methodology to
14 determine legislative intent by examining the text and context of the statute, along with the
15 statute's legislative history where it appears useful to the analysis.²⁴ If the legislature's intent
16 still remains unclear after examining the text, context, and legislative history, then general
17 maxims of statutory construction are applied to resolve the ambiguity.²⁵

18 The best evidence of the legislature's intent is the text of the statute itself.²⁶ When
19 examining the text of a statute, courts presume that the legislature intended words of common
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²¹ Oregon Laws 2016, Chapter 28, Section 20(4) (emphasis added).

22 ²² See ORS 174.020(1)(a); *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610 (1993)
23 (hereinafter "*PGE*").

24 ²³ ChargePoint's two witnesses discuss the legislative intent behind the statute and the legal meaning of specific
terms at great length in testimony, but neither Mr. Packard nor Ms. Smart are attorneys. See Staff/504 and
Staff/505. Therefore, their testimony should be weighted accordingly.

25 ²⁴ *State v. Gaines*, 346 Or 160, 171-72 (2009) (hereinafter "*Gaines*").

26 ²⁵ *Id.* at 172.

²⁶ *PGE*, 317 Or at 610.

1 usage to have their plain, natural, and ordinary meaning.²⁷ “Consider” is a word of common
2 usage and means “to think about carefully”; “to think of especially with regard to taking some
3 action”; and “to take into account.”²⁸ Therefore, the legislature intended that the Commission
4 *take into account* and *think carefully about* the six factors (a)-(f) in their decision-making
5 process, but left the final decision as to whether a particular program should be approved to
6 Commission discretion. In other words, a program does not need to “meet” or “satisfy” every
7 individual factor to be approved.

8 Next, the Oregon Supreme Court requires that the text (“consider”) be read in context,
9 which can include its immediate context, the context of other provisions of the same statute, and
10 the broader context of related statutes involving the same subject matter that existed at the time
11 of the statute’s enactment.²⁹ When “consider” is read in its immediate context, it is clear that the
12 Commission *must consider* the six (a)-(f) factors because of the inclusion of the word “shall”
13 immediately preceding “consider.”³⁰ Additionally, the use of the conjunctive word “and”
14 between factor (e) and the final factor (f), indicates that the Commission is required to *consider*
15 each of the six factors, when they are applicable to the specific program.³¹ Nevertheless, these
16 observations do not alter the plain meaning of the exact term “consider.” Further, when read in
17 the broader context of other subsections of the same statute, it becomes clear that the
18 Commission was delegated discretion in its decision-making and each factor need not be met in
19 order to approve a program.

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22 ²⁷ *Id.* at 611; *State v. Ziska*, 355 Or 799, 804-05 (2014) (the plain meaning of the text at issue can be found in its
dictionary definition).

23 ²⁸ Webster’s Third New International Dictionary, Unabridged, “Consider” (2016).

24 ²⁹ *Oregonian Publ’g Co. v. Portland Pub. Sch. Dist. No. 1J*, 329 Or 393, 400 (1999); *see State v. Stamper*, 197 Or
App 413, 418 (2005); *see* ORS 174.010.

25 ³⁰ *Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm’n*, 346 Or 415, 426-27 (2009) (“shall”
creates a mandatory duty).

26 ³¹ *See gen., Martin v. City of Albany (In re Martin)*, 320 Or 175, 181 (1994) (courts apply rules of grammar to text in
question to discern legislative intent); *see gen., SAIF Corp. v. Donahue-Birran*, 195 Or App 173, 180 (2004).

1 First, the six factors themselves indicate that the legislature intended the Commission to
2 have discretion in its decision-making: five of the six factors say “*as determined by the*
3 *commission,*” and “are reasonably *expected.*”

4 Second, the legislature delegated to the Commission the *authority to prescribe* the form
5 and manner of applications for programs³² and the responsibility to review EV adoption data and
6 *make a determination* about the effect of market barriers on utilization of charging
7 infrastructure.³³

8 Third, ChargePoint and EVCA’s initial claim that all factors must be “met” or even that
9 all factors “apply” to every type of possible program is illogical.³⁴ In viewing the (a)-(f) factors
10 together and in context with the immediately preceding subsection (3),³⁵ which allows utilities to
11 propose customer rebate programs, how could a customer rebate for EV charging “meet” factor
12 (c): “reasonably expected to be *used and useful* as determined by the commission”? “Used and
13 useful” is a term of art in utility regulation and ratemaking that comes up in the context of capital
14 investments made by the utility that provide service to the customer, namely, that the utility
15 cannot collect the costs of construction, building, installation, or property not presently used to
16 provide utility service to the customer in customer rates. Therefore, factor (c) would *not* be
17 applicable to a “customer rebate” program, or for example, the Education and Outreach Pilot in
18 the Stipulation. Likewise, factor (b) “prudent as determined by the commission” should also
19 cause furrowed brows if applied when deciding program approval because the Commission’s
20 prudence review of costs occurs *after* the project has been completed and when the utility is

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22 ³² Oregon Laws 2016, Chapter 28, Section 20(3).

23 ³³ *Id.* at Section 20(7).

24 ³⁴ EVCA’s Objection to the Stipulation at 7 (“Each of these [criteria] is a separate and independent statutory
25 requirement that must be complied with.”) and ChargePoint/200, Packard/14-15, lines 22-2 (“I do not think that the
26 Commission has the discretion to find that a particular criterion does not apply or does not need to be met at all.”).
By contrast, please see Staff/100, Klotz/5, lines 3-15.

26 ³⁵ Oregon Laws 2016, Chapter 28, Section 20(3) of the statute expressly includes: “*A program proposed by an
electric company may include prudent investments in or customer rebates for electric vehicle charging and related
infrastructure.*” (emphasis added).

1 seeking cost recovery through customer rates. These contradictions to established ratemaking
2 principles indicate that all six factors will not apply to every proposed program, and all factors
3 do not need to be “met” to approve a program.³⁶

4 Forth, there is nothing in the text or context to indicate that the legislature intended for
5 “consider” to mean anything other than its plain meaning. The legislature could have easily said:
6 “the Commission may not approve programs unless they meet the following factors,” but it
7 chose not to do so. Consistent with the canons of statutory construction, we must assume that
8 the legislature purposefully choose the word “consider.”³⁷ As there is no ambiguity in the text,
9 the statutory construction analysis ends here.³⁸

10 In sum, the law requires only that the Commission think carefully about the six factors,
11 (a)-(f), when deciding program approval, but leaves the ultimate decision of how much weight to
12 attribute to each factor, or which factors apply to a given program, to Commission discretion.
13 This means that the Commission can approve the Electric Avenue Pilot after taking into account
14 factors (a)-(f), however, the Electric Avenue Pilot need not satisfy every individual factor to
15 legally be approved.³⁹ Further, the amount of discretion provided to the Commission allows for
16 the current status of the EV market, as well as recognition of where we are currently with a void
17 of applicable data and methodologies, to inform the decision-making in this inaugural docket.

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21 ³⁶ *City of Salem v. Salisbury*, 168 Or App 14, 25 (2000), *rev den*, 331 Or 633 (2001) (courts also consider the
22 *regulatory context* of the statute being interpreted: “we consider in the first level of analysis . . . as context for the
existing statutes . . . the preexisting common law and statutory frameworks within which the laws were enacted in
our effort to discern the legislature’s intent.”).

23 ³⁷ See ORS 174.010 (general rule for construction of statutes is that the office of the judge is simply to ascertain and
24 declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has
been inserted.).

25 ³⁸ The prevailing *Gaines* methodology allows for consideration of legislative history where it appears useful,
26 regardless of whether an ambiguity exists (See *Gaines*, 346 Or at 171-72), but here the legislative history is silent as
to the decision-making required by the Commission with regard to the meaning of “consider.”

26 ³⁹ Nonetheless, Staff later explains how innovation, competition, and customer choice is reasonably expected to be
stimulated by the Electric Avenue Pilot.

1 **B. The Commission has discretion to approve pilot programs.**

2 Staff believes that the three individual pilot programs in the Stipulation could be
3 approved pursuant to consideration of the law’s six factors. However, Staff testified that the
4 programs in the Stipulation could also be approved under the Commission’s authority to approve
5 pilot programs—SB 1547 did not remove that authority from the Commission.

6 Early on in testimony, Staff explained that it was uncomfortable with the limited amount
7 of data and analysis to support a large roll out of *any* program at this time, simply due to the
8 newness of the market and utility participation in it. Therefore, it made practical sense to Staff to
9 treat this first set of transportation electrification programs as pilots—meaning that they are a
10 way to test the market and gain the data necessary to evaluate future programs, with clear time
11 limits and cost limits to protect ratepayers.

12 The Commission has not expressed a specific approval standard for pilot programs.
13 However, past pilot programs proposed by utilities are generally filed as a new tariff application
14 (describing the proposed pilot) and accompanied by a deferral application for costs related to the
15 pilot program. In reviewing the proposal, Staff has historically evaluated the benefits of the
16 proposed pilot to customers, as well as the reasonableness of the proposed expenditures and the
17 sharing of costs.⁴⁰ Additionally, pilot programs tend to be time-limited, cost-limited (through
18 either the need to have a 12-month deferral reauthorized or a limited expenditure identified up
19 front), and are used to gather data, learnings, or gauge customer interest.⁴¹

20 Therefore, Staff noted that PGE’s transportation electrification proposals could also be
21 approved outside of the SB 1547 framework because they have been designed to produce
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24 ⁴⁰ See e.g., UM 1327, Order No. 07-383, Appendix A-Staff Report (Commission approval of NW Natural’s Smart
25 Energy Program Tariff Pilot based on Staff’s recommendation that there was a sufficient showing of utility related
26 benefit and appropriate sharing of necessary costs); UM 1427, Order No. 09-395, Appendix A-Staff Report
(Commission approval of a pilot to enable PGE, regulators, and other interested parties to better understand how
residential customers with certain appliances and load control capabilities respond to critical peak pricing).

⁴¹ *Id.*; Staff/100, Klotz/39, lines 7-9 (“We conduct pilots to learn about program framework, operation, market
acceptance, and to acquire data on these and other points.”).

1 valuable data and learnings, have regular reporting and evaluation intervals, are cost-limited at
2 reasonable caps, are limited in time and scope, and as a result, produce just and reasonable rates.

3 **2. The objections raised by ChargePoint and EVCA are misleading and**
4 **unsupported by fact.**

5 Despite hours of questioning at the hearing by ChargePoint and EVCA on syntax used by
6 Staff and whether the Stipulation is precedential when it expressly says it is not,⁴² this case is not
7 confusing, nor complicated.

8 **A. ChargePoint.**

9 Contrary to ChargePoint’s assertions that “Electric Avenue would also require PGE to
10 spend ratepayer funds to enter a competitive market, which is an imprudent use of ratepayer
11 funds,”⁴³ and “PGE cannot stimulate the public EV charging market by entering that market,”⁴⁴
12 the legislature unmistakably expected investor-owned utilities to own and operate EV charging
13 infrastructure to help stimulate the market:

14 The bill “sets up a transportation electrification program, which
15 allows electric companies to apply to the PUC for installing and
16 ownership of electric vehicle charging stations . . . in addition, this
17 also allows utilities to construct and operate these charging
18 stations, they must take market competition into account”⁴⁵

18 *– Representative Vega Pederson, summarizing the*
19 *transportation electrification section of SB 1547*
20 *for her colleagues in the House.*

20 The Stipulating Parties worked collaboratively to meet the legislative directive to
21 accelerate transportation electrification in a manner that is reasonable and measured for a first
22 attempt. One could argue that a policy question has been raised as to what is the best structure

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24 ⁴² Stipulation at para. 36 (“ . . . no Stipulating Party shall be deemed to have agreed that any provision of this
25 Stipulation is appropriate for resolving issues in any other proceeding.”); Hearing Transcript at 149, lines 17-25, and
26 at 150, lines 1-9 (Oct. 10, 2017).

⁴³ ChargePoint Objections to Stipulation at 7-8.

⁴⁴ ChargePoint Objections to Stipulation at 11.

⁴⁵ House Chamber, 2016 Leg., 78th Sess. (Or. Mar. 1, 2016) (comments by Rep. Vega Pederson at 01:05:00).

1 for utility offerings of EV charging infrastructure—(a) owning and operating, or (b) giving
2 ratepayer money to a private “site host” like Fred Meyer, so that Fred Meyer’s cost of installing
3 charging equipment would be reduced, and then EVSE sellers like ChargePoint would be better
4 positioned to enjoy increased sales because there are a greater number of site-hosts interested in
5 purchasing EVSE, or (c) other structures not advocated in this docket. The bottom line from
6 Staff’s perspective, as well as the other eight stipulating parties, is that we simply do not have
7 enough data to confidently make the call on whether option (a), or (b), or (c), or a combination is
8 superior at this time.

9 By contrast, the hyperbolic claims made by ChargePoint that the Electric Avenue Pilot
10 will cause “massive market distortion”⁴⁶ and that the Stipulating Parties did not even take market
11 competition into account are simply untrue and unsupported by fact.⁴⁷ Based on the evidence in
12 the record, the investment proposed by PGE will not cause massive market distortion nor prove
13 harmful to private competitors because it is modest in scale—*according to private market*
14 *competitors*.⁴⁸ Siemens, a market competitor that offers hardware and software for charging
15 light, medium, and heavy duty vehicles and make-ready equipment, testified that the Stipulation
16 is a “modest program” that will “accelerate rather than ‘hamper’ transportation electrification”
17 and “would actually ‘stimulate innovation, competition and customer choice . . . by stimulating
18 the overall growth of the electric (EV) market by reducing barriers to ownership and operation
19 for EV owners.”⁴⁹

20 Similarly, Forth, a non-profit trade association promoting greater adoption of EVs, and
21 *eight of its members* who compete in the same market as ChargePoint—EV Connect, Greenlots,
22 ABB Inc., Schneider Electric, Eluminocity, SemaConnect, EV-Box, OpConnect—all voiced

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24 ⁴⁶ ChargePoint Objection to Stipulation at 11.

25 ⁴⁷ Staff/401, Klotz/2, 3, 5, and 8; Staff/503.

26 ⁴⁸ Siemens/100, King/3, lines 8-31, and King/5, lines 15-25. Also, by contrast, utilities in California have proposed
installation of thousands of charging stations. See Drive Oregon/100, Shaw/2.

⁴⁹ Siemens/100, King/3.

1 strong support for PGE’s Electric Avenue Pilot, stating that they have reviewed PGE’s pricing
2 and “are not concerned that it will undercut our pricing” and “PGE is proposing an open and
3 competitive RFP process to select interoperable hardware, back office software suppliers, and
4 other vendors. We have confidence that this process will allow open competition.”⁵⁰

5 Now, in terms of offering customer choice, Forth raises an important clarification: “SB
6 1547 did not say that programs must stimulate competition among the site hosts to select
7 charging vendors; it said programs should stimulate competition and innovation across the entire
8 ecosystem of transportation electrification.”⁵¹ The Electric Avenue Pilot does the latter by
9 offering up to 30 new chargers, spread across six different locations (stations) that provide co-
10 located, quick charging opportunities for customers in cities spanning from Portland to Salem.
11 Moreover, Siemens and CUB pointed out the obvious: by the very fact that the six charging
12 stations do not currently exist, when they are installed, they will increase customer choice for
13 charging services because there are additional sites at which to charge.⁵²

14 Additionally, PGE’s RFP process “scores bids on both price and non-price criteria, and is
15 designed to meet the needs of customers through a mixture of affordability, reliability, quality,
16 and customer experience.”⁵³ Private market participants agree, explaining that “[i]n the RFP
17 process, vendors compete both on price and features, with utilities typically selecting a winner
18 based on a combination that keeps costs low and factors in the higher value of enhanced features
19 when appropriate.”⁵⁴ Therefore, besides misconstruing the legal requirements of the statute,
20 ChargePoint’s and EVCA’s claims—that the Stipulating Parties did not take market competition
21 into account and “ignored” factor (f) regarding stimulation of innovation, competition, and
22 customer choice—are simply false.

23 _____
24 ⁵⁰ Drive Oregon/100, Shaw/8 – Attachment 3.

25 ⁵¹ Forth/200, Allen-Shaw/4.

26 ⁵² Siemens/100, King/6; CUB/200, Jenks/5.

⁵³ PGE/200, Milano-Goodspeed/5.

⁵⁴ Siemens/100, King/8.

1 Finally, for clarification of the record, ChargePoint based its argument that the
2 Stipulating Parties had “admitted” that the Electric Avenue Pilot did not meet the six factors on
3 one sentence it found in the Stipulation: “PGE agrees that the proposals are pilot programs only,
4 meaning that the Stipulating Parties have not agreed that the TE proposals meet the six statutory
5 criteria in SB 1547”⁵⁵ This sentence was included simply to indicate that, because this is a
6 nine-party stipulation, not every single stipulating party agreed with each other as to the amount
7 of weight to attribute to a particular factor, or what factors applied. The statement also expresses
8 the Stipulating Parties’ preference to treat these as pilots, which meant only that cost caps should
9 be imposed to limit ratepayer exposure to costs of the program and that specific data must be
10 gathered by PGE for review by the Stipulating Parties and other interested stakeholders.

11 **B. EVCA.**

12 EVCA came late to the process and raised three primary concerns that can easily be
13 alleviated. First, EVCA raises a similar objection to ChargePoint that the Electric Avenue Pilot
14 does not stimulate innovation, competition, and customer choice. For the reasons previously
15 discussed, this claim is misplaced.

16 Second, EVCA argues that the Stipulation will have a precedential impact. Mr. Klotz
17 clarified at the hearing that stipulations by their very nature are not considered precedential at
18 this Commission,⁵⁶ and there is specific language in the Stipulation explaining that none of the
19 pilots in the Stipulation, including the Electric Avenue Pilot, are intended to be precedential.⁵⁷ If
20 this is at all unclear, Staff establishes in this brief that the Stipulation is, in Staff’s view, non-
21 precedential.

22 Third, EVCA expressed concern that it, as an intervenor, is improperly restricted from
23 participating in the already-developed draft learnings attached to the Stipulation and from future

24 ⁵⁵ Stipulation at para. 2; Staff/501 (ChargePoint Response to Staff DR No. 10).

25 ⁵⁶ See Hearing Transcript at 150, lines 5-8 (Oct. 10, 2017).

26 ⁵⁷ Stipulation at para. 36 (“ . . . no Stipulating Party shall be deemed to have agreed that any provision of this
Stipulation is appropriate for resolving issues in any other proceeding.”); Hearing Transcript at 149, lines 17-25, and
at 150, lines 1-9 (Oct. 10, 2017).

1 processes pertaining to the pilots reached in the Stipulation. Staff's view is that the list of pilot
2 learnings to be filed in this docket is limited to Stipulating Party-input because they flow directly
3 from the pilots that were reached in this Stipulation based on the exchange of policy positions and
4 the collaboration of the nine Stipulating Parties, they are essentially already complete, and
5 opening the list of learnings up to ChargePoint and EVCA could very well unravel the progress
6 made. However, the Stipulating Parties never intended to preclude the participation of EVCA, or
7 future stakeholders, from reviewing PGE's future annual reports, pilot evaluations, EV charging
8 tariffs, etc. All of these items would, consistent with standard practice, be filed in the docket and
9 subject to review by EVCA and other stakeholders. The only section of the Stipulation that Staff
10 sees as potentially imprecise with regard to future participation is Paragraph 29, which to be
11 clear, is open to EVCA and other stakeholders. The nine Stipulating Parties practiced
12 collaboration and continue to support the use of collaboration in the future.

13 **3. The nine stipulating parties offer a reasonable resolution in the Stipulation.**

14 Staff recommends approval of the Stipulation for the following reasons: *First*, it protects
15 ratepayers and the market because it is modest in scope and cost, yet will test the evolving
16 market using three different transportation acceleration approaches. *Second*, it requires the
17 gathering and production of data and learnings to determine what is effective and what is not
18 going forward. *Third*, it provides for a public process and utility-buy-in for developing
19 attribution and cost-effectiveness methodologies necessary to confidently recommend larger
20 programs in the future. *Fourth*, besides imposing reasonable cost caps, the Electric Avenue Pilot
21 further minimizes costs to ratepayers through offsets, including tax credits, revenue generated
22 from the EV charging stations, and CFP credit value.⁵⁸ *Fifth*, it implements the transportation
23 electrification law in a way that numerous parties with disparate interests could support, and was
24 greatly improved upon by the collaboration of the nine Stipulating Parties.

25

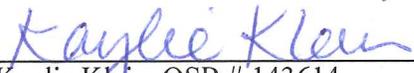
26 _____
⁵⁸ This comports with the Commission's rule at OAR 860-087-0300(1)(c)(B) to coordinate with other state
programs, in this case, the Department of Environmental Quality's Clean Fuels Program.

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IV. CONCLUSION

Staff, PGE, Oregon Citizens' Utility Board, Industrial Consumers of Northwest Utilities, Oregon Department of Energy, Tesla, Forth, TriMet, and Greenlots respectfully request that the Commission approve the Stipulation filed in this docket. The Stipulation was reached in June of 2017 after significant discourse and debate between parties with interests ranging from customer advocacy, EV adoption, environmental protection, EVSE sales, Oregon energy policy, and mass transit electrification. The Stipulation is modest both in its cost to ratepayers and the size and scale of individual pilot programs, but was crafted to produce significant learnings that Staff and other parties believe are essential to meaningfully make progress toward electrifying our transportation sector and beneficially integrating electric vehicles into the grid. Commission adoption of the multi-party Stipulation offered in this inaugural docket will drive Oregon forward on the road to vehicle and mass transit electrification.

DATED this 31st day of October 2017.

Respectfully submitted,
ELLEN F. ROSENBLUM
Attorney General


Kaylie Klein, OSB # 143614
Assistant Attorney General
Of Attorney for Staff of the Public Utility
Commission of Oregon