BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1811

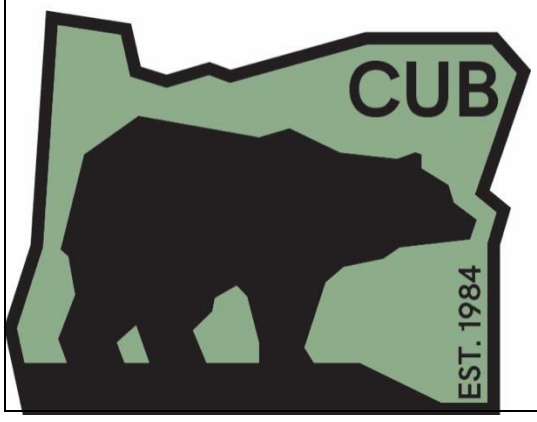
In the Matter of	)
	)
PORTLAND GENERAL ELECTRIC COMPANY,	)
	)
Application for Transportation Electrification Programs.	)
	)

REPLY BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

November 30, 2017



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I. INTRODUCTION

Pursuant to Administrative Law Judge ("ALJ") Harper's August 15, 2017 Ruling, the Oregon Citizens' Utility Board ("CUB") hereby submits its Reply Brief in docket UM 1811.

Portland General Electric ("PGE" or "the Company") filed its application for transportation electrification programs on December 27, 2016 in accordance with the guidance of Oregon Senate Bill 1547 ("SB 1547") Section 20, and the subsequent AR 599 Public Utility Commission of Oregon ("Commission") rulemaking proceeding. After months of stakeholder workshops and testimony, nine of the ten parties[1] to this docket reached settlement in principle on a set of reasoned changes to the Company's application at a May 12, 2017 settlement conference. These changes were memorialized

[1] The parties that reached a settlement in principle are PGE, Staff of the Commission ("Staff"), CUB, Industrial Customers of Northwest Utilities ("ICNU"), Forth, Oregon Department of Energy ("ODOE"), Tri-Met, Greenlots, and Tesla, Inc. Hereafter "the Stipulating Parties."

in a Stipulation and Joint Testimony thereafter. Subsequently, ChargePoint, Inc. ("ChargePoint") and the Electric Vehicle Charging Association ("EVCA")—who, previous to June 30, 2017 was not a party to this docket—filed comments objecting to the Stipulating Parties' Stipulation and Joint Testimony on July 12, 2017. CUB files this Reply Brief responding to arguments raised by ChargePoint and EVCA in their separately filed November 17, 2017 Response Briefs.

Though PGE's application for transportation electrification programs and the subsequent Stipulation contemplated several pilot programs to meet SB 1547's mandate to accelerate transportation electrification ("TE"),[2] only the Company's Electric Avenue Charging Stations pilot remains at issue.[3] Given SB 1547's broad language that PGE's programs are meant to "accelerate transportation electrification"[4], it is important for the Commission to examine the Stipulation's ability to do so as a holistic package. Therefore, ChargePoint and EVCA's piecemeal arguments attempting to demonstrate that one program—or even a portion of one program—fails to meet the over-arching vision contemplated by the Oregon Legislature should be weighted accordingly.

Accelerating TE in the state will require a much heavier lift than what is included in the Stipulation to conduct studies and analyses, gather data, and roll out a number of pilot projects. The Legislative Assembly declarations enumerated in SB 1547 § 20(2)(a)-(g) will take years to fulfill. At this point, CUB, along with the Stipulating Parties, urges the Commission to approve the Stipulation filed in this docket as a reasoned and

[2] SB 1547 § 20(3).
[3] *See generally* UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief *and* UM 1811 – EVCA's Response Brief. Indeed, EVCA notes that, "there is much more in the Stipulation that EVCA agrees with the Stipulating Parties on than areas of disagreement." UM 1811 – EVCA's Response Brief at 5.
[4] SB 1547 § 20(3).

thoughtful compromise that limits risks and costs to ratepayers while advancing the goals and intent of SB 1547.

II. ARGUMENT

It is uncontested in this proceeding that, in promulgating SB 1547, the Legislature contemplated a role for the Commission and the electric utilities in accelerating TE in the state.[5] While the Commission was given a clear signal by the Legislature,[6] disputes remain about the role PGE is playing in accelerating TE through the program applications that have been captured by the Stipulation. To distill this dispute down to its core essence is to say that ChargePoint and EVCA erroneously assert that a modest, time-limited, cost-limited, utility-owned charging station model that increases access to the use of electricity as a transportation fuel[7] fails to comply with the directives of SB 1547. Instead, both opponents would prefer a model in which PGE, through ratepayer funds, offers rebates to subsidize site-hosts to offset the costs of installing charging equipment, creating a greater margin for companies like ChargePoint.[8]

ChargePoint and EVCA parse the language in SB 1547 in a way that would provide the greatest benefit to their shareholders and constituent members. The opposing parties narrowly focus on one of the six factors that SB 1547 directed the Commission to consider when determining cost recovery for TE program application investments, arguing that PGE's Electric Avenue pilot is not "reasonably expected to stimulate

[5] *See* UM 1811 – Joint Opening Brief of Portland General Electric Company, Oregon Citizens' Utility Board, Forth, and Greenlots at 2-5 (here after "Joint Opening Brief"); UM 1811 – Staff's Opening Brief at 8-12; UM 1811 – EVCA's Response Brief at 5-12; UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief at 1-2.
[6] UM 1811 – Joint Opening Brief at 12
[7] SB 1547 § 20(b) ("Widespread [TE] requires that electric companies increase access to the use of electricity as a transportation fuel.").
[8] UM 1811 – CUB/200/Jenks/2-3.

innovation, competition, and customer choice[,]"[9] and should therefore not be approved. However, the Legislature did not intend that each factor delineated in SB 1547 § 20(a)-(f) must be fulfilled in order for a TE program application to be approved. ChargePoint in particular chooses to ignore well-established Oregon case law precedent[10] regarding legislative intent, and baselessly reads meaning into portions of SB 1547 to advance its individual interests. The Stipulation filed in this docket advances and captures the spirit of SB 1547, and should be approved by the Commission.

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

The unequivocal plain meaning reading of SB 1547 demonstrates that the factors delineated are *considerations* for the Commission to contemplate when determining cost recovery for TE investments. That is, they are not meant to be dispositive factors that must all be met. To determine the intent of the Legislature in directing the Commission to consider whether to approve a TE program application, an examination of applicable law is necessary. That examination ends with *State v. Gaines*, the controlling case on discerning legislative intent in Oregon. As discussed in Stipulating Parties' Joint Opening Brief, the Oregon Supreme Court stated that, "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.'"[11] A full discussion of the Oregon rules of

[9] SB 1547 § 20(4)(f).
[10] *State v. Gaines*, 346 Or 160 (2009).
[11] *State v. Gaines*, 346 Or 160, 171 (2009) citing *State ex rel Cox v. Wilson*, 277 Or 747, 750 (1977). *See* UM 1811 – Joint Opening Brief at 3.

statutory construction can be found in the Joint Opening Brief,[12] and CUB incorporates it here by reference.

The centerpiece of ChargePoint's misguided argument is that "the Legislative Assembly directed the Commission to approve [a TE program application] only if it found that the proposal could reasonably be expected to meet six listed criteria."[13] This rationale cuts against the plain, unambiguous meaning of the language contained in SB 1547 § 20(4). 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 SB 1547 § 20(4) could have easily written in language such as "all six factors in SB 1547 § 20(4) must be met in order for the Commission to approve a program application." Instead, in reference to the six factors listed, SB 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:
>
> (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.[14]

[12] UM 1811 – Joint Opening Brief at 2-4.
[13] UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief at 2.
[14] SB 1547 § 20(4) (emphasis added).

By using the word "consider," the Legislature gave an unambiguous signal to the Commission that the criteria enumerated in (a)-(f) are meant to be thought carefully about[15] before making a determination regarding a TE 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 SB 1547.[16] The six criteria listed are guideposts designed to give the Commission plausible measures against which to consider TE program applications. In this nascent industry, the proper role for a utility to play in TE is yet to be determined, and many of the criteria contemplated by SB 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. To quote EVCA, "[t]hese are big goals and are worthy of broader pilots."[17] CUB agrees. The Legislature never intended that a utility would fully meet each individual criterion by dipping its toe in the TE pool with an initial proposal. That will take time, and the information gathered from the Stipulation's pilots will provide a framework for a path forward. In the meantime, the Company's modest proposal aligns with the expectations in SB 1547 § 20(4) and should be adopted by the Commission.

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

Given the Commission's broad general authority generally to determine what to include in utility rates[18] and the discretion given to the Commission to determine how much weight to give to the aforementioned factors, the Commission is well within its

[15] UM 1811 – Staff's Opening Brief at 10, lines 1-7 citing Webster's Third New International Dictionary, Unabridged, "*Consider*" (2016).
[16] UM 1811 – Staff's Opening Brief at 10.
[17] UM 1811 – EVCA's Response Brief at 8.
[18] UM 1811 – Joint Opening Brief at 10.

authority to approve the Electric Avenue pilot even if it found that it did not fully address SB 1547 § 20(4)(f).[19] However, in contrast to ChargePoint and EVCA's arguments, the Stipulation as filed *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.[20] While CUB realizes that ChargePoint has expanded the definition of site-host to include residential customers who purchase charging equipment for their home,[21] it is clear from the record that the opposing parties would prefer a model that gives ratepayer money to private site-hosts to reduce the cost of installing charging equipment from companies like ChargePoint.[22] This is the crux of the opposing parties' argument that the Stipulation does not stimulate customer choice.

The fact is that the customers identified by the opposing parties[23] will not be the customer of record for the expanded PGE charging stations implicated in the Electric Avenue pilot in the Stipulation.[24] The primary customers served by the Company's proposed charging station expansion will be residential electric customers that own electric vehicles.[25] The Legislature gave no qualification to the expansion of customer choice referenced in SB 1547. By giving residential electric vehicle drivers increased options within PGE's service territory to charge besides their home—where the

[19] UM 1811 – Staff's Opening Brief at 12; *see also* UM 1811 – EVCA's Response Brief at 9 ("EVCA agrees that the Commission has been granted broad discretion to approve the Stipulation.").
[20] *See, e.g.,* UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief at 4.
[21] UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief at 4.
[22] UM 1811 – Staff's Opening Brief at 15.
[23] *See* UM 1811 – ChargePoint, Inc.'s Post-Hearing Reply Brief at 4 ("convenience stores, big-box retailers, multi-unit dwelling (MUD) owners, municipalities, and employers.").
[24] UM 1811 – CUB/200/Jenks/4, lines 24-25.
[25] UM 1811 – CUB/200/Jenks/4, lines 28-29.

majority[26] of charging currently occurs—expanded customer choice in charging siting, technology, and options will inherently occur. The expanded choice that PGE's Electric Avenue pilot will provide will also flow to many other customer classes beyond residential electric vehicle owners.[27] Further, allowing PGE to own six charging stations will not prevent other site-hosts who wish to install charging equipment from doing so.[28]

Following a similar logic, the Stipulation's utility-owned Electric Avenue model will stimulate innovation and competition in the public charging arena that would otherwise not be available. The competitive RFP process laid out in the Stipulation scores bids on both price and non-price criteria, and is designed to "meet the needs of customers through a mixture of affordability, reliability, quality, and customer experience."[29] That is to say that the RFP process will not be based solely on the least cost vendor, but will consider other factors like innovation. This is a recognition by the Company that, in a nascent industry, customer experience and quality should be considered alongside traditional utility procurement norms such as affordability and reliability. This utility-owned model may very well incent innovation in charging infrastructure to bring costs down while retaining a quality customer experience. Through the pilots envisioned in the Stipulation, innovation while working within a utility-owned framework that did not previously exist in PGE's service territory will undoubtedly occur.

[26] UM 1811 – CUB Exhibit 103 at 3.
[27] UM 1811 – Joint Opening Brief at 14 (". . . EV drivers, drivers who have not yet chosen to drive an EV, site-hosts, fleet managers, transit agencies, municipalities, homebuilders, TNCs underserved communities, and businesses interested in offering workplace charging opportunities.").
[28] UM 1811 – CUB/200/Jenks/6 at 21-22.
[29] UM 1811 – PGE/200/Milano-Goodspeed/5.

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 charging pilot. The assertions by ChargePoint and EVCA regarding why they believe the Stipulation does not further the goals of SB 1547 are centered on their disagreement with the utility-owned business model. The fact is that, while the Stipulating parties 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 ratepayer subsidized make-ready model is superior to a utility ownership model, or vice versa.[30] However, the knowledge, data, and takeaways gained during the course of PGE's pilot programs will inform the success of future programs that seek to accelerate TE.

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."[31] The Commission promulgated the rules prescribing the form and manner of TE program applications in AR 599. One of the TE 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

[30] UM 1811 – Staff's Opening Brief at 15.
[31] SB 1547 § 20(3).

infrastructure."[32] In addition, comments by Representative Vega Pederson in the Oregon House of Representatives regarding SB 1547 stated that the bill "allows utilities to construct and operate [ ] charging stations."[33] In the eyes of the Legislature, the Commission, and the vast majority of stakeholders, utility ownership of public charging infrastructure under the TE program applications in question is a distinct and feasible possibility.

D. *EVCA and Future Participation*

EVCA expressed concern at hearing and in briefing that it feels improperly restricted from participating in future processes and future pilots considered in the Stipulation and beyond.[34] CUB appreciates EVCA's concerns regarding participation in future matters. The experience of a trade association with expansive experience in the TE arena will likely prove fruitful as future pilots and proposals are considered. However, CUB agrees with Staff that the list of pilot learnings to be filed in this docket should be limited to Stipulating Party input because these learnings flow directly from the compromise and collaboration of the Stipulating parties.[35]

Beyond the development of these learnings, CUB is comfortable allowing EVCA and other interested parties the opportunity to participate in all future workshops, meetings, and proceedings that will flow from this docket. CUB notes that this is a pivot from its position in its Joint Opening Brief, but it is the correct policy maneuver to make to capture the spirit of broad stakeholder engagement and participation that the

[32] OAR 860-087-0030(1)(a)(G) (emphasis added).
[33] UM 1811 – Staff's Opening Brief at 14.
[34] UM 1811 – EVCA's Response Brief at 15-16.
[35] UM 1811 – Staff's Opening Brief at 18.

Commission embodies. As a final note, CUB agrees with Staff and other parties that, should the Commission adopt the Stipulation, it is non-precedential—as are all stipulations by their very nature.

III. CONCLUSION

The language that the Legislature used to direct the Commission to consider TE programs and determining cost recovery is unambiguous. The Commission has broad authority and discretion to approve the reasoned Stipulation reached by the vast majority of the parties to this docket. The Stipulation represents a thoughtful and reasonable first step in a nascent industry in which the role of utilities is critical, but the nature of utility participation is uncertain. What is certain is that the Stipulation furthers the goals and vision of SB 1547 and aligns with its criteria. CUB, along with the Stipulating parties, respectfully urges the Commission to adopt the Stipulation in this matter.

Dated this 30th day of November, 2017.

Respectfully submitted,

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