

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 1811**

In the Matter of	)	CHARGEPOINT, INC.'S
Portland General Electric's Application for	)	POST-HEARING REPLY BRIEF
Transportation Electrification Programs	)	

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**I. Introduction**

Through its Electric Avenue proposal, PGE seeks the Commission's blessing to embark on a new business venture: providing EV charging services to the public for a fee. Providing EV charging services would be a dramatically new business model for PGE. As evidenced by the prevalence of venture capital-backed technology companies in this industry, the public charging business has very little to do with the traditional, vertically integrated monopoly utility function of providing safe and reliable service to any customer within its service territory at just and reasonable rates. Under PGE's proposal, ratepayers would fund PGE's new Electric Avenue business venture at up to \$2.6 million.

Finding that it is necessary to accelerate transportation electrification in Oregon, the Legislative Assembly, in Senate Bill (SB 1547), required PGE to file an application, in a form and manner prescribed by the commission, for programs to accelerate transportation electrification.<sup>1</sup> A program proposed by an electric company may include prudent investments in or customer

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<sup>1</sup> SB 1547, § 20(3).

rebates for electric vehicle charging and related infrastructure.<sup>2</sup> Crucially, the Legislative Assembly directed the Commission to approve such a proposal only if it found that the proposal could reasonably be expected to meet six listed criteria. Among others, these criteria include stimulating innovation, competition, and customer choice; supporting the utility's electrical system; improving the utility's efficiency and flexibility, including the ability to integrate variable generation; and being prudent. A plain reading of SB 1547 indicates that each criterion is important either to ensure that a program actually accelerates transportation electrification over the long-term, or to ensure that the utility continues to play a role that is proper for a public utility, or both. The Legislative Assembly also stated that its intent in involving utilities such as PGE in transportation electrification was, among other things, to provide customers with increased options in charging infrastructure and services, attract private capital investment, and create high quality jobs.

With Electric Avenue, PGE and the Stipulating Parties have largely ignored the conditions that SB 1547 placed on PGE's ability to compete in the public EV charging market and the goals that the Legislative Assembly sought to achieve with the utilities' transportation electrification efforts. Largely because it fails to include any element of customer choice in EV charging infrastructure and services, Electric Avenue is much more likely to dampen the competitive public charging market than stimulate it. With the backing of ratepayer money and access to low-cost capital, PGE's anticompetitive advantages will distort the market and make it dependent on ratepayer subsidies for years to come. The best that the Stipulating Parties can argue is that Electric Avenue would not damage the market too significantly because of its relatively small size, and that PGE and the Commission need more data to fully vet transportation electrification (TE)

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<sup>2</sup> *Id.*

programs. However, limiting the size of Electric Avenue cannot transform it into a program that will actively stimulate innovation, competition, and customer choice. Likewise, there is no reason to collect data from a program that could not be approved on a large scale because of its market distorting effects and its failure to meet the statutory requirements of SB 1547.

The Commission should reject the Stipulating Parties' argument that PGE must study the public charging market by competing in that market with its Electric Avenue proposal before it can design an effective and compliant TE program. Accordingly, and because the Electric Avenue program does not meet SB 1547's criteria, the Commission should deny PGE's Electric Avenue proposal. The Commission is well-equipped to provide PGE with the guidance it needs to design a TE program now that would balance SB 1547's criteria and achieve the Legislative Assembly's goal to accelerate the use of electricity as a transportation fuel in Oregon.

**II. Using ratepayer money, Electric Avenue would allow PGE to become the dominant player in the public charging market in its service territory.**

- A. By participating directly in the market with the anticompetitive advantage of using ratepayer money, PGE is likely to dampen, rather than stimulate, innovation, competition, and customer choice.

When evaluating the Electric Avenue program, the Commission must consider whether PGE's proposed investments and expenditures "[a]re reasonably expected to stimulate innovation, competition, and customer choice in electric vehicle charging and related infrastructure and services."<sup>3</sup> The Commission should assume that the Legislative Assembly chose the word "stimulate" deliberately, and with that word choice intended that PGE would proactively encourage the development of innovation, competition, and customer choice in EV charging infrastructure and services.<sup>4</sup>

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<sup>3</sup> SB 1547, § 20(4)(f).

<sup>4</sup> See definition of "stimulate," Oxford English Dictionary, ("encourage development of or increased activity in (a state or process)"), available at: <https://en.oxforddictionaries.com/definition/us/stimulate>.

If the Commission were to approve the Electric Avenue program, PGE would become the dominant provider of public EV chargers in its service territory. Specifically, PGE would own up to 35 Electric Avenue chargers, including 28 DC fast chargers and 7 Level 2 chargers, in addition to the 11 stations that it currently owns that are not part of the Electric Avenue program.<sup>5</sup> By contrast, there are only ten ChargePoint DC fast chargers in the Portland metro area.<sup>6</sup> PGE and the Stipulating Parties have provided no evidence that allowing PGE to become the most dominant player in the public charging market would actively stimulate innovation, competition, and customer choice. The well-reasoned arguments of ChargePoint’s witness Dave Packard – the only witness to this proceeding with nearly two decades of experience in the EV charging industry – demonstrate that PGE’s ratepayer-funded dominance of the market would actively harm it.

- i. Regardless of how “customer” is defined, Electric Avenue does not incorporate any element of customer choice, much less stimulate it.*

SB 1547’s requirement that TE programs “stimulate ... customer choice,” refers to electric vehicle service equipment (EVSE) site-hosts – entities such as convenience stores, big-box retailers, multi-unit dwelling (MUD) owners, municipalities, and employers. Site-hosts can also include residential customers who purchase EVSE for their home. Since site-hosts are the most common purchasers of electric vehicle charging infrastructure and services, it makes sense that the Legislative Assembly wanted to protect site-hosts’ ability to choose the EVSE that best fits their unique needs, and thereby ensure a robust competitive market. Further, a site-host is the utility

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<sup>5</sup> PGE currently owns four DC fast chargers and one Level 2 charger at its existing Electric Avenue site in downtown Portland, Transcript, p. 18, lines 6-10. If approved, the Electric Avenue program would consist of up to four DC fast chargers at six sites, for a total of 24 new DC fast chargers and a combined total of 28 DC fast chargers and a total of 35 public chargers owned by PGE (not including PGE’s 11 existing chargers from the EV Highway program).

<sup>6</sup> ChargePoint Response to Data Request PGE-2, PGE/200, Appendix A, p. 2.

customer-of-record that pays the electric bill for a charging station, so it also makes sense that the site-host should be the one to choose the brand and features of the charging station.<sup>7</sup>

SB 1547 itself supports the conclusion that “customer” refers to site-hosts, as indicated by a separate provision establishing that “[a] program proposed by an electric company may include . . . *customer* rebates for electric vehicle charging and related infrastructure.”<sup>8</sup> This provision could not possibly refer to EV drivers or “the entire ecosystem of transportation electrification” in the context of publicly available chargers.<sup>9</sup> The only potential “customer” who would need a rebate for public electric vehicle charging and related infrastructure is a site-host. Further, SB 1547 also refers to “consumers,” who must be different from the “customers” referred to in the competition provision, and the context indicates that “consumers” refers to utility ratepayers or EV drivers, or both.<sup>10</sup> As a result, SB 1547 directs the Commission to consider whether Electric Avenue can be reasonably expected to stimulate site-hosts’ choice of charging infrastructure and services, which it does not even attempt to do.

Although a plain reading of SB 1547 indicates that “customer choice” refers to “site-host choice,” it is also plausible that “customer” refers to EV drivers, since drivers are the ultimate end-users of EVSE. As ChargePoint discussed in testimony, different types of EV drivers have different charging needs, and these needs can vary depending on when and where a driver needs to charge.<sup>11</sup> Even under this interpretation, Electric Avenue would still fail to stimulate customer choice, because it would offer only one choice to drivers – the choice that PGE would make through its Request for Proposals (RFP) process.

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<sup>7</sup> ChargePoint/200, Packard/5, line 23 – Packard/6, line 2.

<sup>8</sup> SB 1547, § 20(3).

<sup>9</sup> Forth/200, Allen-Shaw/4, line 10.

<sup>10</sup> SB 1547, § 20(2)(d) (“Widespread transportation electrification should . . . provide *consumers* with increased options in the use of charging equipment and in procuring services from suppliers of electricity” (emphasis supplied).)

<sup>11</sup> ChargePoint/200, Packard/6, line 2 – Packard/7, line 3; ChargePoint/100, Packard/10, line 3 – Packard/11, line 16.

Regardless of who the relevant customer is, it is clear that PGE is not the customer intended by SB 1547's reference to "customer choice," and no party has argued that it is. Nevertheless, PGE proposes to be the only entity to choose the EVSE in the Electric Avenue program. The Commission should reject the Stipulating Parties' arguments that PGE would be stimulating customer choice simply by offering EV drivers a choice that they do not have today;<sup>12</sup> PGE does not need to own and operate EVSE procured through an RFP in order to offer drivers a choice that they do not currently have. Further, PGE could help provide drivers with *multiple* charging options that they do not currently have through a rebate or a make-ready program, as ChargePoint has recommended.

Similarly, the Commission should reject PGE's post-hoc rationalization that it would stimulate customer choice by chatting with EV drivers at its existing Electric Avenue site and taking their thoughts into account during the RFP process.<sup>13</sup> Regardless of the rigor with which PGE plans to investigate drivers' preferences, taking those preferences into account in an RFP process falls far short of SB 1547's requirement to stimulate customer choice. In short, PGE simply cannot "stimulate ... customer choice" in EVSE by choosing the EVSE for everyone.

- ii. *Ensuring customer choice in charging infrastructure and services is the lynchpin of a successful utility TE program, and protecting choice will ensure that the public charging market is self-sustaining.*

In ChargePoint's extensive experience in North America and Europe, ensuring that site-hosts can choose the brand and features of EVSE is the most important program design element that determines the program's success. As ChargePoint explained comprehensively in testimony, the EV drivers that visit a particular location will have different needs and preferences that depend

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<sup>12</sup> See, e.g., CUB/200, Jenks/5, lines 1-3.

<sup>13</sup> Transcript, page 70, lines 8-12.

on where and when they are charging.<sup>14</sup> Because the drivers that will charge at their charging station are also their customers, tenants, employees, and constituents, site-hosts are far better equipped than a utility to determine these unique needs, and site-hosts, too, have their own unique reasons for installing EVSE.<sup>15</sup> PGE’s proposed “one-size, fits-all” RFP proposal for Electric Avenue could not possibly account for the diverse needs of different types of EV drivers at different times and at different locations.

When site-hosts choose the brand and features of the EVSE that is installed on their property, and when they have “skin-in-the-game” through sharing the cost of the EVSE, site-hosts are motivated to maximize the utilization of the charging stations.<sup>16</sup> Site-hosts should have the freedom to experiment with different driver pricing options to best meet the needs of the drivers who use the EVSE on their property, and could be required to share their data and insights with the utility as a condition of participating in a utility TE program. Active site-host involvement in managing EVSE is essential to demonstrate the business case for hosting charging stations, which depends on more than the revenue generated from driver payments.<sup>17</sup> Without a sustainable business case for charging stations, the publicly available charging market in PGE’s service territory is likely to stall and become dependent on ratepayer funds over the long-term.

*iii. Effective innovation revolves around customers’ needs and preferences.*

While ChargePoint appreciates PGE’s clarifications that its RFP evaluation process for Electric Avenue would include non-price factors, and that it plans to invite vendors to propose “alternative bids,” PGE still fails to understand how innovation occurs. Companies such as ChargePoint work to create innovative products that they believe will excite and satisfy the needs

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<sup>14</sup> ChargePoint/200, Packard/6, line 2 – Packard/7, line 3; ChargePoint/100, Packard/10, line 3 – Packard/11, line 16.

<sup>15</sup> *Id.*

<sup>16</sup> ChargePoint/100, Packard/10, line 20 – Packard/11, line 16; ChargePoint/100, Packard/22, lines 7-17.

<sup>17</sup> *Id.*

of the purchasers of those products (such as site-hosts) or the end-users of those products (such as EV drivers). Companies are motivated to innovate when they believe that they can create new market opportunities for themselves by offering features that potential customers want and that their competitors do not offer.

Additionally, companies in the competitive private sector innovate their products and services at a faster pace than that of the regulatory environment in which utilities operate. Traditionally, utilities rate base capital assets and amortize those costs over several, sometimes tens of years. This model works when there is very little change in the products that utilities are deploying, such as a service transformer. The pace of innovation and change of EV charging infrastructure and network services, such as those offered by ChargePoint, are much more akin to the fast-changing pace of consumer electronics' product cycles. As an analogy, if PGE had proposed to take a similar approach and jumped into the mobile phone business in 2007 and rate base assets over ten years, their ratepayers would still be stuck using flip-phones today. Such a market approach would fail to stimulate customer choice, competition, and innovation, and it should not be adopted for the EV charging infrastructure market either.

In the case of Electric Avenue, the RFP (or RFPs) would be the only market opportunity that the program offers.<sup>18</sup> Vendors would be unable to create new market opportunities for themselves through innovation, and therefore their motivation to do so would be greatly diminished. Rather than designing products with customers and/or end-users in mind, vendors would be motivated only to design according to the specifications of the RFP. The RFP's specifications would be designed by the utility, which does not have the collective qualifications

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<sup>18</sup> CUB has argued that Electric Avenue would not prevent vendors such as ChargePoint from continuing to sell to interested site-hosts. CUB/200, Jenks/6, lines 21-22. While technically true, this argument misses the point because PGE's TE programs themselves must stimulate innovation, competition, and customer choice.

or experiences of an established market participant such as an electric vehicle service provider (EVSP). Though PGE promises that it would entertain innovative “alternative” bids, such a promise falls far short of PGE’s obligation to actively stimulate innovation.

- iv. *Electric Avenue would offer an RFP as the only opportunity for competition. PGE’s ability to provide ratepayer-funded charging stations would discourage other potential site-hosts from investing in publicly available chargers.*

PGE’s proposed RFP process or processes for Electric Avenue would admittedly involve a one-time competitive bid, but it falls short of actively stimulating competition. As ChargePoint pointed out in testimony, utility RFPs tend to focus competition on the cost of the goods or service the utility is procuring, which is why RFPs work well for purchasing commodities like utility poles and transformers.<sup>19</sup> Though PGE has pointed out that it can select a more expensive option through the RFP, doing so would increase PGE’s burden to demonstrate the prudence of its investment in Electric Avenue.

More importantly, PGE’s participation in the public charging market is more likely to discourage competition in that market than stimulate it because PGE would be participating in that market with a massive anti-competitive advantage over other market participants: access to ratepayer money. If Electric Avenue were approved, PGE would install charging stations either on its own property or a right-of-way, or at no cost to a site-host.<sup>20</sup> Importantly, because PGE would be authorized to spend up to \$2.6 million of ratepayer money, PGE would not need to demonstrate a business case for these charging stations the way a private vendor would, as long as PGE can demonstrate that they meet the minimal “used-and-useful” standard.

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<sup>19</sup> ChargePoint/100, Packard/9, lines 16-21; Objections to Stipulation and Request for Hearing of ChargePoint, Inc., p. 8.

<sup>20</sup> PGE Application for Transportation Electrification Programs, filed March 15, 2017 (PGE’s Supplemental Application), pp. 52, 62

It would be exceedingly difficult for competitive EVSE providers such as ChargePoint to compete against “free” charging stations. For example, why would a convenience store invest in charging stations to attract customers to its store if PGE would install one at no cost to the convenience store, or if PGE installed one down the street at no cost to anyone except ratepayers? Despite PGE’s insistence that “only” six Electric Avenue sites would not distort the competitive market, PGE’s proposal to deploy up to 24 new fast chargers (potentially all at once, or potentially in one or two phases) and own up to 35 Electric Avenue chargers would have a dramatic effect on the market for the precedent it would set. In this nascent market, customer expectations are still being established, and Electric Avenue would teach the market that the utility will provide charging stations at ratepayer expense, so there is no reason for anyone else to invest in them. The market will care little about the Stipulating Parties’ insistence that the Stipulation is non-precedential from a legal perspective, and the precedent set by Electric Avenue would set the public charging market up for long-term dependency on ratepayer dollars.

PGE undoubtedly has an important role to play in accelerating transportation electrification, and ChargePoint supports PGE having a role. However, that role should not require PGE’s ratepayers to become the primary funders of transportation electrification efforts indefinitely. PGE’s initial TE programs should begin accelerating transportation electrification by supporting the public charging market in such a way that it will eventually be able to sustain itself without repeated infusions of ratepayer money.

- B. ChargePoint’s recommended site-host rebate or make-ready programs would stimulate innovation, competition, and customer choice, but ChargePoint’s recommendations were rejected by the Stipulating Parties.

PGE would be more effective at accelerating transportation electrification through a program in which PGE provided rebates to site-hosts who were interested in installing EVSE to

reduce the upfront cost of the EVSE. To assuage any concerns on PGE's part that such a program would not be a good business model, SB 1547 contemplates that PGE could even put the value of customer rebates into rate base.<sup>21</sup> Alternatively, PGE could either install or offset the upfront cost of the "make-ready" infrastructure that is needed to install a charging station, such as the trenching, conduit, and wiring connected to a charging station. As capital assets, make-ready also could be put into PGE's rate base.

More importantly for purposes of complying with the goals and criteria of SB 1547, a rebate or make-ready program would allow a site-host to choose the brand and features of the charging stations that would be installed on its property from a list of qualified vendors and equipment. A site-host would be motivated to choose the type and number of stations that would best meet the needs of the EV drivers who visit that location. The site-host would also be motivated to maximize the stations' utilization in order to recoup its investment. If site-hosts were given choices, EVSE vendors would begin competing to sell charging stations to site-hosts and innovate to try to create the most exciting and desirable product. EVSE vendors would also deploy teams of sales and marketing professionals to PGE's service territory, furthering SB 1547's goal of creating high-quality jobs.<sup>22</sup>

A rebate program would also further the legislative goal of attracting private capital investments, as site-hosts would contribute their own resources to helping accelerate transportation electrification.<sup>23</sup> By requiring site hosts to share in the upfront cost of the charging stations, the

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<sup>21</sup> SB 1547, § 20(5)(a)(A) allows a utility to recover through rates both a return of and a return on TE program investments made pursuant to subsection (3), which includes customer rebates.

<sup>22</sup> SB 1547, § 20(2)(d).

<sup>23</sup> *Id.*

\$2.6 million of ratepayer money that PGE would spend on Electric Avenue could deploy double or triple the 35 total stations that PGE has proposed.<sup>24</sup>

Finally, as a condition of participating in the program, PGE could require both the site-host and participating charging station vendors to provide any and all of the data that PGE needs to achieve the learnings that appear in Appendix 1 to the Stipulation. PGE could also use contracts to require participating site-hosts to surrender Clean Fuels Program credits generated by the charging stations to help offset the cost of the rebates or make-ready for ratepayers. In short, the rebate or make-ready program that ChargePoint proposed in this docket would achieve each of the goals PGE and the Stipulating Parties say they want to achieve with Electric Avenue, while also stimulating innovation, competition, and customer choice as directed by SB 1547. Unfortunately, PGE and the Stipulating Parties rejected ChargePoint's recommendations.

C. Utility ownership is not prohibited by SB 1547, but is allowed only if the program meets SB 1547's criteria, which Electric Avenue does not.

SB 1547 does not technically prohibit PGE from proposing to own EVSE as part of its TE program application. However, a utility ownership program must still meet SB 1547's six criteria, including that it stimulates innovation, competition, and customer choice. For example, PGE could propose a program in which it would own charging stations but a site-host would choose the brand and features of the charging stations from a list of qualified vendors and equipment. The site-host would still have "skin-in-the-game" by giving up part of its property to host the charging stations, and ideally would have some input into the pricing options offered to drivers. By giving site-hosts a choice, the program would also stimulate innovation and competition for the same reasons that a rebate or make-ready program would do so, as discussed above. Accordingly, if PGE continues to insist on an EVSE ownership model, it should design a TE program that incorporates customer

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<sup>24</sup> ChargePoint/200, Packard/19, lines 16-19.

choice, rather than asking the Commission’s approval to choose the EVSE for the entire program through an RFP process.

**III. According to unrebutted evidence, the Legislative Assembly intended that SB 1547’s competition provision would protect the competitive EVSE industry.**

The Oregon Supreme Court has found that a court may look to the legislative history of a statute if the “legislative history appears useful to the court’s analysis,” regardless of whether or not the statute is ambiguous.<sup>25</sup> Here, ChargePoint’s witness Ms. Anne Smart was the only witness to provide testimony about the legislative history of SB 1547, which is based on her on-the-ground experience with the negotiations leading up to the bill’s passage. Ms. Smart’s testimony regarding SB 1547’s history stands unrebutted in this proceeding.

According to Ms. Smart’s unrebutted testimony, “legislators desired numerous changes to the [originally filed] bill in order to pass it into law.”<sup>26</sup> One of these changes, which was also important to ChargePoint, was to require the Commission to consider whether a utility’s proposed TE program could reasonably be expected to stimulate innovation, competition, and customer choice, which now appears at SB 1547, § 20(4)(f). “This language ... was intended to protect the consumer/ratepayer and *the competitive EV charging marketplace* in Oregon by ensuring that customers would be able to choose among different charging station infrastructure and services.”<sup>27</sup>

In other words, the requirement that a TE program “stimulate ... customer choice in electric vehicle charging and related infrastructure and services” in SB 1547 means exactly what it says: customers (whether site-hosts or EV drivers) must be allowed to choose among different types of charging stations and services. PGE does not comply with this provision merely by offering a choice that does not exist today, because an additional choice would result from any public

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<sup>25</sup> *State v. Gaines*, 346 Ore. 160, 172, 206 P.3d 1042, 1050 (2009)

<sup>26</sup> ChargePoint/300, Smart/7, line 4.

<sup>27</sup> *Id.* at lines 5-8 (emphasis supplied).

charging station program. PGE also does not comply with this provision merely by considering drivers' expressed preferences when designing an RFP process. Based on Ms. Smart's experience with the development and passage of SB 1547, the Commission should resolve any ambiguity it finds with respect to the meaning of SB 1547's competition provision in favor of protecting the ability of customers (both drivers and site-hosts) to choose, and in favor of the competitive EVSE industry's ability to compete in sustainable market over the long-term rather than just one or two RFPs. PGE's proposed RFP process for Electric Avenue would actively undermine those legislative goals.

**IV. PGE and the Stipulating Parties have failed to meet their burden to explain why Electric Avenue is consistent with SB 1547 or in the public interest.**

As the proponents of the Electric Avenue proposal, the burden is on PGE and the Stipulating Parties to show that the Electric Avenue program complies with the legislative directives in SB 1547 and the Commission's implementing regulations, and is in the public interest. As indicated by their collective statement in the Stipulation that "the Stipulating Parties have not agreed that the TE proposals meet the six statutory criteria outlined in SB 1547," even the Stipulating Parties recognize that they have not met their burden.<sup>28</sup> The Commission should find that none of the justifications that the Stipulating Parties provide for Electric Avenue not meeting SB 1547's criteria can excuse this failure.

- A. The Stipulating Parties provide no evidence that Electric Avenue would stimulate innovation, competition, and customer choice, arguing instead that the small size of Electric Avenue means it will not meaningfully harm the market.

ChargePoint concurs with the Stipulating Parties that deploying additional public charging stations is a crucial part of accelerating transportation electrification in Oregon, and that doing so will increase the number of EV drivers and thereby further increase the overall demand for

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<sup>28</sup> Stipulation, ¶ 2.

charging stations.<sup>29</sup> However, as discussed above, *any* TE program that involves the deployment of public charging stations would result in additional public charging stations, so there is no reason to presume that PGE should own and operate those stations or procure them itself through an RFP process.

Rather than simply direct PGE to deploy charging stations and hope that doing so would indirectly increase demand for even more charging stations, SB 1547 established six criteria by which the success of any TE program would be measured. If the Legislative Assembly were merely concerned with increasing the number of and overall demand for charging stations through EV “lift,” it would not have needed to include the competition provision in SB 1547. The Legislative Assembly notably decided not to leave innovation, competition, and customer choice to the wisdom of the free market; rather, it directed PGE to stimulate innovation, competition, and customer choice with its TE programs, and thereby stimulate the development of a sustainable market for the long term.

Because they cannot plausibly argue that Electric Avenue would actively stimulate innovation, competition, and customer choice, the Stipulating Parties instead focus on the allegedly “modest” size of the investment PGE has proposed for Electric Avenue and argue that it would not be “detrimental to the market, or to an entity as large as ChargePoint.”<sup>30</sup> The Stipulating Parties apparently forget that not being “detrimental to the market” is not the standard for TE programs established by SB 1547. If the best Staff can say about Electric Avenue’s expected effects on the competitive EVSE market is that it would not be “detrimental,” the Commission should be

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<sup>29</sup> Joint Opening Brief of PGE, Oregon CUB, FORTH, and Greenlots, p. 8; FORTH/200, Allen-Shaw/4, lines 8-10.

<sup>30</sup> Staff/400, Klotz/12, line 3 and Klotz/9, line 18; *See also* Staff’s Opening Brief, p. 15; *see also* CUB/200, Jenks/3, lines 18-19.

confident that the program would fail to actively stimulate the market, as it is required to do by SB 1547.

Moreover, Staff actually *agrees* with ChargePoint’s arguments about the negative effects that Electric Avenue would have on the market, but simply believes that these effects would not be significant enough to matter or worry about.<sup>31</sup> ChargePoint appreciates that Staff acknowledged ChargePoint’s concerns when Staff witness Mr. Jason Klotz admitted that a theoretical large-scale Electric Avenue program would “very likely disrupt private market investment and activity.”<sup>32</sup> However, Staff provides no explanation for why Electric Avenue as proposed would actively stimulate the market if a large-scale version of program would disrupt it. The Legislative Assembly expected more from PGE’s TE programs than that they would try to avoid harming the competitive market too much, and the Commission should expect more, too.

B. The size of Electric Avenue and the fact that it would be limited in cost, time, and scope do not change the standard under which the Commission evaluates Electric Avenue.

The Stipulating Parties, particularly Staff and CUB, place considerable importance on the fact that Electric Avenue would be limited in cost, time, and scope.<sup>33</sup> As an initial matter, the time limitation placed on Electric Avenue is ten years, which is equal to the useful life of most charging stations, so this is not a meaningful limitation on the program or a concession on PGE’s part.<sup>34</sup>

ChargePoint recognizes that the \$2.6 million of ratepayer money that PGE is limited to spending on Electric Avenue is not very significant relative to other capital expenditures that PGE makes, but that is not the appropriate yardstick. Allowing PGE to spend \$2.6 million of ratepayer money, with no obligation to recoup that money, will have a major impact on the nascent EVSE

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<sup>31</sup> Staff/400, Klotz/9, line 18 – Klotz/10, line 1; Staff/400, Klotz/11, line 9 – Klotz/21.

<sup>32</sup> Staff/400, Klotz/11, line 9 – Klotz/21.

<sup>33</sup> Stipulation, ¶ 2; Staff/400, Klotz/4, lines 13-18; CUB/200, Jenks/3, lines 5-9.

<sup>34</sup> CUB/102, Jenks/1.

market. Even PGE’s “limited” amount of spend gives it a massive anti-competitive advantage in this market, because private competitive entities such as ChargePoint typically do not have \$2.6 million available to spend without expecting to recoup it. Site-hosts similarly cannot invest in EVSE unless they see a value proposition for doing so (such as increased customers, more loyal employees, or more satisfied tenants). The Stipulating Parties offer no rationale for why limiting ratepayers’ risk exposure to Electric Avenue should change the standard by which the Commission evaluates the program, except to suggest that the risk to ratepayers is low if the program is unsuccessful.<sup>35</sup> As discussed above, this money could be deployed through a rebate or make-ready program in a way that would actually stimulate innovation, competition, and customer choice, so the “limited” amount of ratepayer money does not excuse Electric Avenue’s failure to do so.

Further, the Stipulating Parties inconsistently argue on the one hand that the Commission can safely approve Electric Avenue because it is “only” \$2.6 million dollars, and, on the other hand, argue that it is important that the Commission approve Electric Avenue rather than ChargePoint’s recommended rebate or make-ready programs because ratepayers would have the opportunity to recoup some of their investment. If the \$2.6 million is too little to worry much about, then the Commission should ensure that it is spent in a way that results in the maximum number of charging stations and is consistent with the goals of SB 1547, such as ChargePoint’s recommended programs. If it is important that ratepayers have the opportunity to recoup the \$2.6 million, then the Commission should likewise ensure that it is spent in a way that results in the maximum number of charging stations because more EVs on the road will increase PGE’s total sales and put downward pressure on its rates.

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<sup>35</sup> Staff/400, Klotz/15, line 20.

Moreover, while PGE has agreed to only recoup \$2.6 million from ratepayers, there is no limitation on the total amount of money that it could spend on Electric Avenue, which is the relevant data point for evaluating the impact Electric Avenue would have on the competitive public charging market.<sup>36</sup> It is also irrelevant (from a market impact perspective) that PGE would recover the \$2.6 million from ratepayers over a period of ten years, as Staff misleadingly argued in testimony.<sup>37</sup> PGE estimates that it would spend a total of \$4.1 million on Electric Avenue, and it could spend all of it in the first year or two of the program, if approved.<sup>38</sup> The impact of such an investment in this nascent market is anything but reasonable, and would irreparably distort it.

Finally, the Stipulating Parties have confusingly argued that Electric Avenue would result in “only” six charging stations, and misleadingly compared those stations to ChargePoint’s ten DC fast chargers in the Portland Metro Area.<sup>39</sup> As explained during the hearing, ChargePoint has a total of ten DC fast chargers (dual-head), while Electric Avenue would result in the deployment of up to 24 new DC fast chargers across six sites for a total of up to 35 Electric Avenue chargers.<sup>40</sup> The Electric Avenue program, if approved, would allow PGE to become the most dominant player in the public charging market in its service territory virtually overnight, even if it were to deploy the stations in phases – a possibility that was first revealed at the hearing.<sup>41</sup> The proposed limit on the number of Electric Avenue stations means very little when that limit is so much greater than the market share of any other competitor in the market.

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<sup>36</sup> Transcript, p. 13, lines 15-20.

<sup>37</sup> Staff/400, Klotz/12, lines 7-11.

<sup>38</sup> Transcript, p. 101, lines 3-10.

<sup>39</sup> Staff/400, Klotz/9, lines 14-18. *See also*, PGE/200, Appendix A (ChargePoint Response to PGE-2).

<sup>40</sup> Transcript, p. 27, lines 9-25.

<sup>41</sup> Transcript, p. 36, lines 6-19.

C. Characterizing Electric Avenue as a pilot program does not change the standard under which the Commission evaluates Electric Avenue.

In Staff’s initial Reply Testimony, Staff found “that the only way to recommend approval of several of these first-step proposals is to view them as pilot programs,” including Electric Avenue.<sup>42</sup> Staff also found that the Electric Avenue proposal “does not meet all of the statutory factors.”<sup>43</sup> While Mr. Klotz admitted at hearing that he had an “evolving view” of the requirements of SB 1547, the only substantive changes that have been made to the Electric Avenue proposal since Staff’s Reply Testimony have been to make it “time-limited, cost-limited, and ... designed to produce specific learnings,” consistent with Staff’s initial recommendations.<sup>44</sup> Finally, Staff initially posited, without support or explanation, that “[t]he Commission has leeway to approve pilot programs subject to a lower standard,” but admitted in briefing that “[t]he Commission has not expressed a specific approval standard for pilot programs.”<sup>45</sup>

The purpose of a pilot program is typically to test a new program design that holds promise as a potential new utility offering.<sup>46</sup> Typically, a utility will use a pilot program to collect data and test hypotheses about a program design that will allow the utility, the Commission, and other stakeholders to determine whether the pilot (or a substantially similar program) should be rolled out to customers on a large scale.<sup>47</sup> The Stipulating Parties place great importance on the fact that PGE would collect data and explore specific learnings through the proposed Electric Avenue program, but they forget that the data and learnings that Electric Avenue would produce would not

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<sup>42</sup> Staff/100, Klotz/7, lines 6-8.

<sup>43</sup> Staff/200, Hanhan/2, line 16.

<sup>44</sup> Transcript, p. 147, lines 3-7; Stipulation, ¶ 2.

<sup>45</sup> Staff/200, Hanhan/2, lines 17-18; Staff’s Opening Brief, p. 13.

<sup>46</sup> ChargePoint/200, Packard/16, lines 12-22.

<sup>47</sup> *Id.*

be relevant to any other TE program except Electric Avenue, or a program substantially similar to Electric Avenue.

Given PGE witness Mr. Aaron Milano's statement at hearing that it has "no plans beyond what is in the Stipulation for broader deployment of Electric Avenue," there is no point in PGE conducting a pilot on this business model.<sup>48</sup> Any data and learnings produced by the pilot program would have questionable applicability to a different TE program involving public charging stations, such as ChargePoint's recommended rebate or make-ready programs. If PGE has no plans to expand Electric Avenue, the value of the data and learnings that would be collected by Electric Avenue cannot justify the cost of the program to ratepayers. Such purposeless data also cannot justify approving Electric Avenue despite its failure to comply with SB 1547's criteria.

Further, it should concern the Commission that Mr. Milano's statement at hearing contradicts PGE's earlier statements in discovery that its long-term plans to expand Electric Avenue to 13 additional sites beyond the six sites contemplated by the Stipulation was unchanged by the Stipulation (except for the fact that it would need to obtain additional Commission approval, per the Stipulation).<sup>49</sup> If such an expansion were approved, PGE would own a total of 20 sites with up to 80 DC fast chargers and 20 Level 2 chargers.<sup>50</sup> Such a large utility-owned public charging program could not plausibly be called a "pilot" program, and could therefore not be approved even under the "lower standard" that Staff and the Stipulating Parties have asked the Commission to adopt for this proceeding. If Electric Avenue could not be approved on a large scale – and PGE

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<sup>48</sup> Transcript, p. 58, lines 2-4.

<sup>49</sup> See Exhibit 1 to Objections to Stipulation and Request for Hearing of ChargePoint, Inc., filed on July 12, 2017. See also, Stipulation, ¶ 24.

<sup>50</sup> Adding the existing Electric Avenue site, plus the six contemplated by the Stipulation, plus 13 potential new sites equates to a total of 20 sites. If each site had four DC fast chargers and one Level 2 as contemplated by the Stipulation, PGE would own 80 DC fast chargers and 20 Level 2 chargers.

has not attempted to demonstrate that it could be – there is no point in allowing PGE to spend ratepayer money to pilot the Electric Avenue business model.

D. The Commission should reject assertions that it can or should ignore any of SB 1547's criteria with respect to Electric Avenue.

i. *The requirements of SB 1547 apply to Electric Avenue.*

PGE filed its Application for Transportation Electrification Programs pursuant to the Commission's directive to file such an application by December 31, 2016.<sup>51</sup> Until Staff filed its Reply Testimony responding to ChargePoint's and EVCA's Objections, there was absolutely no indication from PGE or any of the other parties that the requirements of SB 1547 and the Commission's implementing regulations at OAR 860-087-0001, *et. seq.*, would not necessarily apply to Electric Avenue.<sup>52</sup> At this late stage of the proceeding, Staff now argues that the Commission can and should approve Electric Avenue *without regard to* SB 1547's criteria.<sup>53</sup> ChargePoint acknowledges Staff's point that SB 1547 did not remove the Commission's ability to approve pilot programs, but Electric Avenue is not just any pilot program – it is a program that was proposed pursuant to SB 1547 and the Commission's regulations, which specify the criteria the Commission must use to evaluate the program. The Commission should decline Staff's invitation to disregard statutory directives and its own regulations.

It is telling that Staff makes this argument at all. If Staff were confident that Electric Avenue satisfied each of SB 1547's six criteria, it would not need to suggest to the Commission that it could approve the program using its existing authority and without reference to the statute.

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<sup>51</sup> Order No. 16447, Docket No. AR 599; Application for Transportation Electrification Programs, filed December 27, 2016; Supplemental Application for Transportation Electrification Programs, filed March 15, 2017.

<sup>52</sup> Staff/400, Klotz/14, line 20 – Klotz/15, line 2.

<sup>53</sup> *Id.*; Transcript, p. 111, lines 17-22; Staff's Opening Brief, pp. 13-14.

ii. *The Commission can and should expect each TE program to meet each criteria.*

As an alternative to ignoring SB 1547 altogether, PGE, Staff, CUB, and several other Stipulating Parties argue that Electric Avenue does not need to meet each of the criteria, even suggesting that *no* TE program could possibly meet all six factors.<sup>54</sup> The Commission should decline the parties' invitation to second-guess the mandate of the Legislative Assembly. SB 1547 states that the Commission "shall consider" the six criteria and uses the word "and," indicating that the Commission's evaluation of a TE program with respect to each factor is not discretionary, and that it must consider each and every factor in its evaluation.<sup>55</sup> The Legislative Assembly believed that it was reasonable to expect a TE program to meet the six factors in order to effectively accelerate transportation electrification, otherwise it would not have listed all six factors with the conjunctive "and."

The Stipulating Parties offer no plausible explanation for why the Commission should ignore any of the factors, except that they apparently believe that it would be very difficult for a TE program to meet each one. Staff nonsensically posits in its Opening Brief that factor (c), the "used and useful" requirement, would not apply to ChargePoint's recommended rebate program or the Stipulation's Outreach and Education program.<sup>56</sup> If PGE designed its rebate program properly in such a way that it was able (through contracting, for example) to ensure that any charging station purchased with a rebate remained operational and available to drivers, the Commission would find that those rebates were reasonably expected to result in used and useful assets and therefore complied with the statute. Likewise, PGE's educational materials can reasonably be expected to be used and useful, unless PGE neglects to provide them to customers,

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<sup>54</sup> Staff's Opening Brief, pp. 11-12; Joint Opening Brief of PGE, Oregon CUB, FORTH, and Greenlots, p. 16; CUB/200, Jenks/5, lines 19-24.

<sup>55</sup> SB 1547, § 20(4)(a)-(f).

<sup>56</sup> Staff's Opening Brief, p. 11.

for example. Similarly, while a final prudency determination occurs after a project is completed as Staff points out, the Commission only approves a project if the project’s proposed budget would be a prudent use of ratepayer funds.<sup>57</sup> Staff’s suggestion that it is “illogical” to expect that a TE could meet all six factors it is required to meet is simply incorrect, and indicates that Staff is unwilling to push PGE to propose a public charging station program that actually complies with the law.<sup>58</sup>

Finally, SB 1547 directs the Commission to consider the statute’s six criteria “[w]hen considering a transportation electrification program *and* determining cost recovery for investments and other expenditures related to a program *proposed* by an electric company.”<sup>59</sup> Here again, the conjunctive “and” indicates that the Commission must consider all six criteria both when a program is proposed and when the utility seeks cost recovery for the programs.

*iii. The Commission must not ignore any of SB 1547’s criteria.*

The Commission undoubtedly has discretion to consider the extent to which a TE program meets each factor, and how much weight to give each factor. However, the statutory language does not give the Commission discretion to ignore any one factor altogether, or approve a program despite failing to meet a factor. While the statute does not explicitly say that a TE program must “meet” each and every criterion, the Commission would not have the authority necessary to approve a program if it found that it did not meet one or more criteria. To take a hypothetical example, if the Commission found that a utility’s proposed TE program investments would not be “within the service territory of the electric company,” the Commission could not approve such a program – even if the program promised to produce valuable data and learnings.<sup>60</sup> Likewise, if the

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> SB 1547, § 20(4) (emphasis supplied).

<sup>60</sup> SB 1547, § 20(4)(a).

Commission found that a proposed TE program – say, an EV discount program – would not result in used and useful assets because the owners of the discounted EVs could move out of state, it would not make sense for the Commission to then approve the program in spite of that failure.<sup>61</sup>

The competition provision of SB 1547 that concerns ChargePoint invokes the Commission’s discretion to evaluate the *extent to which* a TE program is “reasonably expected to stimulate innovation, competition, and customer choice.” With respect to Electric Avenue, however, PGE has not even tried to involve any aspect of customer choice – regardless of how “customer” is defined – because PGE and PGE alone would choose the EVSE. As a result, the Commission could not, even with all its discretion, find that the program would stimulate customer choice. As discussed above, PGE’s promise to take drivers’ opinions into account when it designed the RFP falls far short of any reasonable definition of “customer choice,” and providing a choice that drivers do not have today would occur as a result of any public charging station program. Because PGE and the Stipulating Parties cannot offer any plausible explanation for how Electric Avenue would actually stimulate customer choice, the Commission cannot find that it would do so and must therefore deny the program.

E. The Stipulating Parties have failed to meet their burden to show that Electric Avenue would meet SB 1547’s other five criteria.

ChargePoint’s advocacy has focused largely on SB 1547’s competition provision, but the Stipulating Parties also bear the burden to show that Electric Avenue can reasonably expected to meet SB 1547’s other five criteria, listed in subsection (4)(a)-(e). Most notably, the record is sparse regarding criteria (d) and (e), which require that a TE program be reasonably expected to enable PGE to support its electrical system and to improve the utility’s efficiency and operational flexibility, including the ability to integrate variable generating resources such as solar and wind.

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<sup>61</sup> SB 1547, § 20(4)(c).

PGE and the Stipulating Parties admit that they have not attempted to design Electric Avenue to meet these goals, but are hopeful that the learnings that the planned learnings from Electric Avenue might “lead to the sort of information that is reasonably expected to enable PGE to support its electrical system and to help it improve its electrical system efficiency.”<sup>62</sup> In testimony, PGE asserts, without further support, that ChargePoint’s proposed rebate or make-ready programs would not support these goals, but does not bother to explain how or why Electric Avenue would.<sup>63</sup>

The Commission can and should expect more from PGE. PGE has a lot to learn about transportation electrification, but as a monopoly utility it should at least know what sorts of actions are likely to support its electrical system and improve its sufficiency, rather than the opposite. If it cannot explain at least how it expects Electric Avenue would support the grid and improve efficiency, the Commission should find that it would not do so, contrary to the directives of SB 1547. Compounding Electric Avenue’s failure to even attempt to comply with SB 1547’s competition and customer choice provision, Electric Avenue’s failure to meet criteria (d) and (e) is an additional and equally sufficient reason for the Commission to deny the program.

- F. The Legislative Assembly reasonably found that utilities should only expand their business models into TE if they could meet the six criteria, and the Commission should not allow PGE to do so if it does not believe Electric Avenue meets these criteria.

The Commission should reject any suggestion from the Stipulating Parties that more data on transportation electrification is needed before PGE can design a TE program that would meet each of SB 1547’s criteria.<sup>64</sup> The Legislative Assembly would not have specified the six criteria if it did not believe that it was reasonable to expect a utility to meet each of them. While additional

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<sup>62</sup> Joint Opening Brief of PGE, Oregon CUB, FORTH, and Greenlots, p. 14.

<sup>63</sup> PGE/200, Milano-Goodspeed/6, lines 3-7.

<sup>64</sup> Staff’s Opening Brief, p. 12-13; Joint Opening Brief of PGE, Oregon CUB, FORTH, and Greenlots, p. 14.

data will doubtless improve the value and effectiveness of TE programs, PGE is perfectly capable of designing TE programs that meet the six criteria now and should not be excused from meeting them based on the early stage of the market.

ChargePoint supports PGE taking an active role in stimulating transportation electrification in its service territory, consistent with the statutory mandate. Recognizing that stimulating transportation electrification would be a new role for utilities, the Legislative Assembly was careful to specify and limit the conditions under which it would be appropriate for PGE to do so. If PGE cannot meet those conditions – SB 1547’s six criteria – then it should not and cannot assume this new role. Given that PGE seems uninterested in offering a public charging program that would stimulate innovation, competition, and customer choice, PGE’s customers and the competitive EVSE market would be better served by PGE focusing on outreach and education efforts. Because Electric Avenue does not even attempt to comply with SB 1547’s statutory criteria, it will fail to accelerate transportation electrification in the manner intended by the Legislative Assembly.

- V. **PGE does not need to own its own public charging stations in order to collect useful data or recoup value for ratepayers, and any data that it collects will reflect PGE’s own market distortions.**
  - A. The Stipulating Parties have provided no evidence demonstrating that utility ownership is necessary.

The Stipulating Parties’ justification for supporting PGE’s proposal to own the Electric Avenue stations seems to be simply that ownership is PGE’s preference. Given the severe market distortions that PGE’s proposed ownership and RFP selection process will cause in the market, the Commission should reasonably expect that PGE and the Stipulating Parties would seek to justify the proposed ownership structure and the proposed RFP procurement process, but they cannot do so under SB 1547’s statutory scheme.

When questioned at the hearing by Commissioner Decker about the importance of ownership, PGE’s witness Mr. Milano first asserted, without any evidence, that third-party owned charging stations are often broken or occupied by non-electric vehicles.<sup>65</sup> Setting aside the baselessness of Mr. Milano’s assertions, these potential problem (to which utility owned stations would not be immune) can be easily resolved through proper program design and contracting with site-hosts and third-party vendors. Commissioner Decker then pressed Mr. Milano to explain why utility ownership was necessary to the success of Electric Avenue and Electric Avenue’s ability to produce the learnings that supposedly justify the program.<sup>66</sup> Mr. Milano’s response focused on the value of “visible, co-located charging infrastructure” – features that can easily be designed into a site-host or rebate program, and which site-hosts would themselves be motivated to provide.<sup>67</sup> Mr. Milano then pointed to “having a little more control over the rate schedules” for these chargers.<sup>68</sup> Mr. Milano forgets that under a site-host or make-ready program, the site-host would be paying the electric bill, and PGE would have full control over the rate schedule that applied to the site-host. The site-host could then decide how much of the electric bill’s cost to pass along to drivers. Further, there is no reason for PGE to experiment with different rate schedules unless PGE wants to expand Electric Avenue in the future.

Finally, Mr. Milano posited that ownership of Electric Avenue would allow PGE to “have both charger-specific data and customer-specific data,” whereas it “would just have potentially site data” if it did not own the charging stations. The hearing was the first time that ChargePoint had heard this justification for utility ownership, and it is completely baseless. ChargePoint’s chargers are capable of collecting charger-specific and customer-specific data and of sharing that data with

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<sup>65</sup> Transcript, p. 64, line 11 – p. 65, line 5.

<sup>66</sup> *Id.* at 65, lines 6-10.

<sup>67</sup> *Id.* at lines 11-16.

<sup>68</sup> *Id.* at lines 18-20.

the utility in near real-time pursuant to properly executed agreements and confidentiality and data security protocols. PGE has failed to meet its burden to demonstrate that utility ownership and RFP procurement of charging stations is necessary or important to the success of Electric Avenue, while ChargePoint has demonstrated that this structure would actually impede transportation electrification efforts in PGE's service territory.

B. PGE should have collected the data it claims it needs from the existing Electric Avenue site.

PGE activated its existing Electric Avenue site over two years ago on July 18, 2015.<sup>69</sup> There is no reason to allow PGE to spend ratepayer money to “pilot” a business model that it has been piloting for over two years. The Commission should reasonably expect that PGE has either been collecting data from this existing site, or that it should have been doing so. If PGE has failed to produce any valuable learnings from the Electric Avenue model over the last two years, the Commission should not allow PGE to spend \$2.6 million of ratepayer money to try again. On the other hand, if PGE has produced learnings from its existing site, it should not be allowed to spend ratepayer money to produce those learnings again.

Even though Staff relies heavily on the learnings Electric Avenue would produce as a justification for the program, Staff witness Mr. Klotz admitted at hearing that Staff had not even *asked* PGE about any data or learnings that PGE may have collected from the existing Electric Avenue site.<sup>70</sup> The existing site was free to EV drivers until recently, but the impact of driver pricing is relevant to only four of the approximately 24 draft learnings that appear in Appendix 1 to the Stipulation. Now that PGE has begun charging drivers for using the existing Electric Avenue site, it can and should analyze charging data and share it with the Commission and other interested

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<sup>69</sup> PGE Application for Transportation Electrification Programs, filed March 15, 2017 (Supplemental Application), p. 49.

<sup>70</sup> Transcript, p. 96, lines 18-21.

stakeholders. Replicating this data across PGE's six proposed additional Electric Avenue sites does not justify allowing PGE to so drastically disrupt the competitive EV charging market.

C. PGE does not need to own charging stations or procure them through an RFP in order to monetize Clean Fuels Program credits for ratepayers.

Staff also makes much of the fact that PGE has committed to monetizing any Clean Fuels Program (CFP) credits that the Electric Avenue stations would generate and use those funds to offset the cost of the program to ratepayers.<sup>71</sup> However, as Staff admits, PGE does not need to own charging stations or procure them through its proposed RFP process in order to monetize these credits.<sup>72</sup> If PGE were to offer a site-host rebate or make-ready program such as ChargePoint has recommended, PGE could use contracting to require participating site-hosts and/or participating EVSE vendors to aggregate CFP credits and use the value of those credits to offset the cost of the rebates or make-ready. Here again, PGE's willingness to monetize CFP credits for the benefit of ratepayers does not justify PGE's proposal to disrupt the competitive EVSE market through its Electric Avenue program.

D. PGE's proposed analysis of its proper market role would not be objective because any such analysis would reflect PGE's direct participation the market.

Though such a provision does not appear in the Stipulation itself, the Stipulating Parties state in testimony that "PGE shall assess its role in the charging market, addressing whether its participation in the market is necessary as presently structured."<sup>73</sup> The Stipulating Parties provide no explanation for why PGE would only perform this assessment sometime in the future, rather than now, when it is seeking Commission approval for a dramatic expansion of Electric Avenue. Further, this statement's promise that PGE would evaluate "*if*[it] should exit the charging market"

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<sup>71</sup> Staff/400, Klotz/13, lines 5-13.

<sup>72</sup> Transcript, p. 109, lines 10-22.

<sup>73</sup> Stipulating Parties/100, Spak-Klotz-Jenks-Mullins-Shaw-Ashley-Whiteman-Hess-Ratcliffe/8, lines 18-21.

contradicts Mr. Milano’s statements at hearing that PGE has no plans to participate in the charging market beyond the 30 charging stations it has proposed to own for Electric Avenue.<sup>74</sup>

Moreover, PGE cannot objectively or fairly evaluate the health of the public charging market if it is directly participating in that market, as it would be with Electric Avenue. Any assessment of the market would reflect PGE’s participation, and PGE could use any analysis to justify continuing to directly compete in the market if it so desired. For example, if the Commission approved Electric Avenue contrary to ChargePoint’s recommendations and Electric Avenue discouraged private competitors from competing in PGE’s service territory (as ChargePoint has predicted), then PGE’s assessment would likely conclude that the competitive market is unhealthy and requires PGE’s continued participation to keep it afloat. If, on the other hand, the competitive charging market remained relatively healthy in spite of Electric Avenue’s distorting effects (perhaps because EV adoption occurs faster than predicted, for example), PGE’s assessment would be that its participation in the market had not been harmful, so there is no need for it to exit the market.

Since there will never be a “control group,” it would be difficult if not impossible for PGE to objectively determine whether the role it has proposed for itself with Electric Avenue is appropriate, and whether PGE’s direct participation in the market has had a positive or negative effect on the market. Instead, the Commission should look to SB 1547’s criteria, which establish the conditions under which PGE may permissibly participate in the public charging market. As discussed extensively above, since Electric Avenue does not incorporate any aspect of customer choice, Electric Avenue fails to satisfy the conditions that the Legislative Assembly imposed on PGE’s participation in the public charging market, and must therefore be rejected.

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<sup>74</sup> *Id.* (emphasis supplied); Transcript, p. 56, lines 16-18 and p. 58, lines 1-4.

**VI. The Commission should only approve TE programs that hold promise for the future.**

As mentioned, ChargePoint supports PGE having an active role in transportation electrification efforts in Oregon. As the monopoly utility with captive ratepayers and access to low-cost capital, PGE should play a role in transportation electrification that only PGE can play. Any EVSE vendor can compete in the market to build and own charging stations or to sell charging stations to interested and willing site-hosts. Only PGE, however, can provide incentives to site-hosts who want to install charging stations, or make a business case for installing make-ready infrastructure for its customers (by putting the costs in its rate base).

Contrary to Staff's accusations, ChargePoint has not intervened in this docket because it is hoping for a TE program that would transfer "wealth from ratepayers directly to private entities (like ChargePoint)." <sup>75</sup> (Ironically, PGE has proposed to transfer ratepayer money directly to the one vendor won the RFP.) ChargePoint's advocacy in this docket has focused consistently on designing a TE program in which PGE would work with any interested ratepayer to subsidize *the ratepayer's* installation of charging infrastructure in a way that will stimulate innovation, competition, and customer choice among as many charging station vendors as possible, not just ChargePoint, in the nascent public charging market. <sup>76</sup> The goal of such a program is that the market eventually be able to sustain itself *without* ratepayer subsidies, consistent with the goals of SB 1547. <sup>77</sup> Based on its extensive experience, ChargePoint has found that the best way for a utility to promote the development of a self-sustaining market is for the utility to stimulate the market through site-host rebates and make-ready incentives, rather than use ratepayer money to compete

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<sup>75</sup> Staff/400, Klotz/17, lines 8-12.

<sup>76</sup> ChargePoint/100, Packard/17, lines 8-17 and Packard/21, line 9 – Packard/24, line 21; ChargePoint/200, Packard/12, line 21 – Packard/13, line 12.

<sup>77</sup> ChargePoint/200, Packard/19, lines 1-21.

directly in that market. If the Commission shares Staff's concern with unwarranted wealth transfers from ratepayers, it should find that it would be better for ratepayers not to fund TE efforts at all than for them to fund PGE's proposal to dominate this nascent market.

Despite the Stipulating Parties' attempts to characterize Electric Avenue as a non-precedential first step for PGE to study how best to accelerate transportation electrification, Electric Avenue, if approved, would set the stage for the future.<sup>78</sup> As mentioned, the market will care little for whether or not Electric Avenue has precedential value from a legal perspective; Electric Avenue would set customer expectations that PGE will use ratepayer money to fund public charging stations, so there is no reason for anyone else to invest in EVSE. If PGE truly has no intention to expand Electric Avenue beyond the 35 total stations it has proposed in the Stipulation, then it should not set such misleading customer expectations. If, on the other hand, PGE hopes to expand Electric Avenue again in the future, then the Commission should require it to demonstrate now that the program would comply with SB 1547, which, for all the reasons discussed herein, it cannot do.

PGE undoubtedly has a lot to learn about how to most effectively accelerate transportation electrification in its service territory, but PGE, the Stipulating Parties, and the Commission already have all the resources and information they need to design a public charging program that complies with SB 1547. Limiting Electric Avenue's scope and cost impact to ratepayers, and requiring PGE to collect some data, cannot transform the program from one that the Stipulating Parties hope will not cause too much harm to the market into a program that would actually stimulate customer choice, as it is required to do. The Commission should find that even PGE's first step TE program

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<sup>78</sup> Staff/400, Klotz/15, lines 12-16; Joint Opening Brief of PGE, Oregon CUB, FORTH, and Greenlots, p. 18.

must comply with the clear directives of SB 1547, and should reject Electric Avenue for its failure to do so.

## **VII. Conclusion**

Despite SB 1547's requirement that PGE stimulate customer choice in EV charging and related infrastructure and services, PGE and the Stipulating Parties ask the Commission to authorize PGE to choose the only EVSE that would be deployed through its proposed Electric Avenue expansion. By failing to involve any aspect of customer choice into the design of its program, PGE would also fail to stimulate innovation or competition. PGE would actively discourage competition by entering the market with ratepayer backing – a massive anti-competitive advantage unavailable to private market participants. The best that the Stipulating Parties can say about Electric Avenue's impact on the market is that it would not be too detrimental.<sup>79</sup>

That Electric Avenue would generate some data and be limited in its scope and its cost to ratepayers do not justify its failure to comply with SB 1547. Electric Avenue would set a market precedent that would discourage private investment and set the public charging market up for long-term dependency on ratepayer funds.

As discussed extensively herein and in ChargePoint's advocacy in this docket, PGE must stimulate customer choice in charging station infrastructure and services in order to comply with SB 1547 and to achieve the Legislative Assembly's goals for SB 1547. Stimulating customer choice can be achieved most expediently through a site-host rebate program or a make-ready incentive program, as ChargePoint has described – programs that can even accommodate utility ownership, if that is PGE's goal. The Commission should provide PGE with guidance for

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<sup>79</sup> Staff/400, Klotz/9, lines 14-18.

designing a public charger TE program that would comply with SB 1547 and reject its Electric Avenue proposal.

Respectfully submitted this 17<sup>th</sup> day of November, 2017,

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