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**PROJECT NO. 49125**

**REVIEW OF ISSUES RELATING § BEFORE THE**  
**TO ELECTRIC VEHICLES § PUBLIC UTILITY COMMISSION**  
**§ OF TEXAS**

**CONSERVATIVE TEXANS FOR ENERGY INNOVATION  
RESPONSES TO SECOND REQUEST FOR COMMENTS**

**INTRODUCTION**

Conservative Texans for Energy Innovation (“CTEI”) appreciates the opportunity to file these comments in response to the Second Request for Comments of the Public Utility Commission of Texas (“Commission” or “PUCT”) as published in the Texas Register on August 14, 2020.<sup>1</sup> CTEI is a non-profit clean energy education and advocacy organization comprised of thousands of Texans seeking to promote energy innovation and clean energy policies grounded in the conservative principle of common sense, market-based solutions that allow fair competition and provide greater access to clean, affordable and reliable energy.

The growth of electric vehicles in Texas presents an opportunity for Texas to be a leader at the intersection of clean energy, energy innovation, and transportation technology. CTEI commends the Commission for its diligence and foresight as it considers the opportunities and challenges that this fundamental shift in transportation technology presents for the Texas electricity grids, both inside and outside the Electric Reliability Council of Texas (ERCOT) region, as well as the competitive market dynamics presented by the electric vehicle (EV) charging industry. As the Commission considers these issues, CTEI strongly recommends that the Commission support competitive market solutions that will encourage innovation in this quickly evolving field and resist calls to impose regulatory burdens on new market entrants that will stifle

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<sup>1</sup> 45 Tex. Reg. 5691 (Aug. 14, 2020).

growth and cost effective solutions needed to meet customers' needs. This fundamental objective underlies CTEI's following responses to the Commission's questions.

**1. As a matter of policy, which entity or entities should be permitted to own or operate an electric vehicle charging station in the Texas competitive electric market? Is a different ownership structure appropriate for service areas not open to retail competition?**

As a matter of policy, the Commission should support the development of a robust, competitive market for the ownership and operation of EV charging stations throughout Texas. Due to the different regulatory and market structures that are present in the state's electric industry, the specific approaches the Commission should take to achieve this policy objective will vary for different parts of the state. Importantly, the Commission should respect the framework of the competitive electric market in ERCOT as compared to those areas of Texas that are not open to retail competition.

In the areas of the ERCOT region that are open to retail competition, the Commission should follow the fundamental premise the Texas Legislature established over 20 years ago – competitive businesses and services should be provided by competitive companies and the regulated electric utilities should not participate in the competitive markets.<sup>2</sup> Today, many private companies are investing in the development and operation of EV charging stations. The current level of activity of these entities demonstrates that the ownership and operation of EV charging stations is competitive. As a result, the ownership and operation of EV charging stations generally should not be within the scope of business activities of a regulated electric utility in the ERCOT region.

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<sup>2</sup> See Utilities Code § 39.051(a) (separation of regulated utility services from competitive customer energy services) and § 39.105(a) ("After January 1, 2002, a transmission and distribution utility may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs"), see also PUC Subst. R. 25.341(3) ("Competitive energy services – Customer energy services business activities that are capable of being provided on a competitive basis in the retail market.")

There are limited instances where the Commission may decide that it is appropriate to allow incumbent electric utilities to address “failures” in the competitive market, such as a lack of service to rural areas and urban areas that traditionally are underserved. In such instances, the Commission should allow such encroachment by the regulated utilities into the competitive market only in extremely limited circumstances.<sup>3</sup>

In electric service areas that are not open to retail competition, the prohibition against participation of a regulated utility, electric cooperative, or municipal electric utility in an otherwise competitive business that applies to a regulated utility in the ERCOT region is not applicable. At the same time, though, the Commission should not allow utilities in service areas that are not open to retail electric competition to exclude non-utility companies from owning and operating EV charging stations. In addition, the Commission, through its traditional oversight of regulated utilities, should ensure that any investments in charging stations made by a regulated utility do not unduly burden captive ratepayers with unreasonable costs associated with the development, ownership, and operation of these resources, especially if the utility is leveraging its unique position in the market to freeze out competitive providers. In other words, the Commission should ensure that a utility that is subject to PUC regulation and that owns and operates an EV charging station should not cross-subsidize its competitive operations by captive ratepayers who have no choice but to be served by the utility.

The Commission does not have the same level of regulatory oversight over municipal electric utilities and electric cooperatives as it does over ERCOT and non-ERCOT utilities. In these instances, a confirmation by the Commission that the provision of EV charging service is

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<sup>3</sup> See, for example, Utilities Code § 39 905(i) (allowing electric utilities to provide rebates or incentive funds directly to customers in rural areas when the utility’s energy efficiency goals cannot be met by REPs and Competitive Energy Service Providers).

not a retail sale of electricity (as discussed below) will help ensure that municipal electric utilities and electric cooperatives do not prohibit private companies interested in providing EV charging service in those companies' service areas from being able to own and operate EV charging stations and provide EV charging services as well.

**2. Is the operation of an electric vehicle charging station a retail sale of electricity?**

No, the operation of an EV charging station to charge an EV battery is a service, like a traditional gas station dispensing fuel to an automobile. The mere fact that the charging station provides electric charging to “fuel” a vehicle does not require a higher level of regulatory burden than imposed on a traditional gas station. A determination to contrary would subject to Commission regulation as Retail Electric Providers (REPs) many companies that have been providing charging services to their customers within the current competitive environment. There is no evidence that there has been any failure of the competitive market to warrant such a significant encroachment of regulatory oversight.

Some might argue that additional regulation of EV charging service providers is necessary because there is a potential that an EV could provide services to the electric grid, such as demand response service or discharging their energy charge to the grid in times of need. While these potential solutions may be enabled in the ERCOT region at some point, this alone also does not require the charging service to be regulated as a REP transaction – the primary use and purpose of charging of an EV is to enable transportation, not to provide electric grid services. This is like instances in which other electric customers can provide grid services by reducing their consumption (e.g., demand response). In such cases, the reduced consumption frees up electricity to serve other customers, but this valuable interaction with the electricity market alone does not warrant a high level of regulatory oversight.

**3. As a matter of policy, how should the cost of the distribution system infrastructure associated with an electric vehicle charging station be recovered in the Texas competitive electric market?**

The costs of distribution system infrastructure associated with an EV charging station should be recovered by the distribution utility in the same manner as they are recovered in conjunction with the development of any other similarly sized retail customer location on the distribution grid. As with any other retail customer, the cost the EV charging station will incur as a result of connecting its load to the distribution grid is a cost that the customer must consider to determine whether its proposed site is economically prudent.

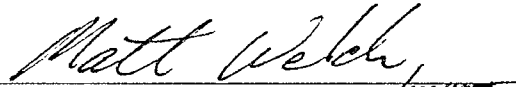
**4. Is the answer to Question 3 different for an electric vehicle charging station located in a remote area, primarily for use by long-distance rather than local motorists?**

No. While applying the same cost allocation and recovery approach to a charging station in a remote area may make its development more costly, that is a situation faced by other fueling stations and loads in remote areas as well. For example, the robust development of oil and gas production in rural areas has caused a need for investment in transmission and distribution infrastructure to meet the needs of those customers. The state has not taken the position that those loads should receive special treatment for the costs incurred to develop necessary infrastructure to serve their needs. Similarly, there is no need for special treatment for EV charging stations in remote areas.

## CONCLUSION

CTEI appreciates the opportunity to provide these responses and welcomes the opportunity to work with the Commission and other interested stakeholders to address these important issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Matt Welch". The signature is written in a cursive style and is positioned above a horizontal line.

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