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PROJECT NO. 49125

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

COMMENTS OF CENTERPOINT ENERGY HOUSTON ELECTRIC

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") appreciates the opportunity to provide these comments in response to the Commission's Second Request for Comments issued on July 24, 2020. The Commission invited interested parties to comment on four questions concerning the ownership and operation of electric vehicle charging stations and the recovery of associated distribution system infrastructure costs.

As stated in our earlier comments filed in this Project on February 3, 2020, consumer adoption of electric vehicles is steadily increasing. This trend will likely take place to varying degrees across the state, and an efficient and effective regulatory environment will help to incent investment in charging stations and related electric infrastructure when and where needed. Private entities should be allowed to invest capital in electric vehicle charging stations, and electric utilities should be allowed a reasonable opportunity to recover costs prudently incurred to build electric infrastructure supporting those stations. Where competitive market forces do not meet the needs of Texas consumers, electric utilities could provide additional support, such as by building a greater portion of the make-ready facilities for private charging stations or by installing charging stations themselves where there is a general public need, like storm evacuation.

As discussed in more detail below, non-utility owned electric vehicle charging stations should ***not*** be classified as electric utilities so that private entities may invest in those facilities on a competitive basis. The Company understands that some view the current state of the regulations on this point to be unclear, however, and clarification of that point would be helpful to provide

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regulatory certainty. The nature of the transaction between a charging station customer and a charging station operator for the purchase and sale of electric vehicle charging services (i.e., is it a retail sale of electricity or a retail sale of electric vehicle charging services?) may also benefit from clarification. Because many of the policy reasons supporting regulation of traditional retail electric service to homes and businesses do not apply to electric vehicle charging services, CenterPoint Houston believes such service should ***not*** be regulated as a retail sale of electricity. In any event, clarity on these issues is essential to achieving the regulatory certainty necessary to unleash further private sector investments in this area.

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?

For purposes of these comments, CenterPoint Houston defines an electric vehicle charging station as a privately-owned facility that offers the sale of electric vehicle charging services for purchase by the general public.

As a general policy, private entities should be allowed to own or operate an electric vehicle charging station in the areas of the state open to retail competition. Electric utilities may also have a role in owning or operating electric vehicle charging stations, for example in those areas where competitive market forces do not meet the needs of consumers. Commission rules adopted following passage of Senate Bill 7 address the provision of competitive energy services by electric utilities. Those rules define competitive energy services,[1] provide that any person other than an electric utility may provide competitive energy services,[2] and establish an exception allowing an electric utility "to provide on an unbundled-tariffed basis a competitive energy service that is not

[1] 16 Tex. Admin. Code (TAC) § 25.341(3).

[2] *See* 16 TAC §§ 25.342(f)(2) (prohibiting "a transmission and distribution utility" from providing competitive energy services) and 25.343(c) (prohibiting "an electric utility" from providing competitive energy services).

widely available to customers in an area."[3] So if the Commission considers a charging station to be a competitive energy service, under current rules, an electric utility may petition the Commission for authority to own or operate electric vehicle charging stations in areas within its service territory where competitive energy services are absent. While this petition process may adequately address the role of electric utilities in providing charging stations, the competitive deployment of charging stations is still developing, and there may be a need for rules specific to electric charging stations in the future. For example, if competitive deployment does not result in sufficient charging station infrastructure in rural or economically depressed areas or in remote areas along hurricane evacuation routes, the Commission could adopt rules specifically addressing the role of electric utilities in the deployment of charging stations in those areas.[4]

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

No. Electric vehicle charging stations have existed in Texas in general, and in the Company's service territory specifically, for several years and have never been found to be engaging in the retail sale of electricity. The provision of a charging service to the public at electric vehicle charging stations is analogous to the provision of a charging service to the public at cell phone charging kiosks in airports, train stations, shopping malls and other public locations. The latter service is widespread but not considered or regulated as a retail sale of electricity. It would be incongruous to treat the former differently. An electric vehicle charging station sells a charging

[3] 16 TAC § 25.343(d)(1).

[4] *See* Kate Kahlert, *Transportation Electrification: An Examination of the Utility's Role*, 46 Mitchell Hamline L. Rev. 91, 121 (2019) (stating, "In most contexts today, the business case for investing in, owning, and operating public charging infrastructure is not attractive for private investment alone to appropriately scale the market. Therefore, utility ownership and operation of EV charging stations may be appropriate in places or in situations not served by the private market (for example, to serve rural or low-to-moderate income neighborhoods or communities that may not otherwise attract private investment)").

service to retail electric vehicle charging service customers, not electricity to retail electric customers.[5]

Public charging stations take electricity delivered to them by an electric utility as an input to provide a charging service to sell as their end-product to customers with battery-operated vehicles.[6] In that regard they are essentially no different than public liquified natural gas ("LNG") stations that take natural gas delivered to them by a natural gas utility as an input to provide an LNG filling service to sell as their end-product to customers with LNG-operated vehicles. Texas has many nonutility-owned LNG stations.[7] Although LNG service stations sell a service that includes natural gas as a component of that service, those sales are not regulated as retail sales of natural gas by a gas utility, the customers who purchase that product are not considered to be retail natural gas customers of a gas utility, and the stations selling that service are not treated as natural gas utilities.[8] These same characteristics also apply to electric vehicle charging stations and their customers.

An electric vehicle charging station should not be classified as either a retail electric provider ("REP") or an electric utility. 16 TAC § 25.107(a)(1) requires a person to obtain a REP certification "before purchasing, taking title to, or reselling electricity in order to provide retail

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[5] 16 TAC § 25.5(113) defines a "retail customer" as a "***separately metered*** end-use customer who purchases and ultimately consumes electricity." (Emphasis added). An electric vehicle charging station customer, like a cell phone charging kiosk customer, is not separately metered and not intended to be included in the Commission's retail customer definition. *But see Kansas City Power & Light Co. v. Missouri Pub. Serv. Comm'n*, 557 S.W.3d 460, 469-73 (Mo. Ct. App. 2018) (overturning the Missouri Commission's conclusion "that the charging stations perform a 'battery-charging service' rather than the 'sale or furnishing' of electricity").

[6] In areas open to competition, public charging stations would obtain the electric power commodity from retail electric providers with the delivery service provided by an electric utility.

[7] *See* Malewitz, J., 2014. Natural Gas Fueling Stations Surge in Texas. *Texas Tribune*, [online] Available at: <https://www.texastribune.org/2014/09/08/natural-gas-fueling-stations-surge-texas> [Accessed 27 August 2020].

[8] The Gas Utility Regulatory Act ("GURA"), at Tex. Utils. Code § 101.003(7)(C), defines "gas utility" as expressly ***excluding*** a person who "sells natural gas for use as a vehicle fuel."

electric service." As explained above, an electric vehicle charging station does not provide retail electric service to electric service customers; instead, it provides retail charging service to charging service customers.

CenterPoint Houston does not believe electric vehicle charging stations should be classified as electric utilities, as that would very likely inhibit private, non-utility investment in such stations. However, as the law exists today, there is no certainty that they can escape such a classification. An electric utility is defined to include "a person [who] owns or operates for compensation in this state equipment or facilities to . . . furnish electricity in this state."[9] For purposes of determining if an electric vehicle charging station is an electric utility, the provision of electric vehicle charging service includes the furnishing of electricity as a component of that service, which arguably would make the charging station an electric utility.[10]

A person who "furnishes an electric service or commodity only to . . . its ***tenants*** as an incident of . . . tenancy," is not an electric utility under Texas law.[11] But it is not clear that this concept applies to the operation of a charging station. As such, the Company sees value in an amendment to PURA's electric utility definition to expressly exclude persons who sell electric vehicle charging services in the same manner that REPs and various other entities are expressly excluded from the electric utility definition today,[12] and in the same manner that GURA's gas utility definition today expressly excludes a person who "sells natural gas for use as a vehicle fuel."[13]

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[9] Public Utility Regulatory Act ("PURA") § 31.002(6) (expressly excluding, *inter alia*, REPs).

[10] *Accord, Kansas City Power & Light*, 557 S.W.3d at 469-73.

[11] PURA § 31.002(6)(J)(i) (emphasis added).

[12] *Id.* § 31.002(6)(A)-(J).

[13] *See supra* n.8 and GURA § 101.003(7)(C).

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?

Increasing the number of electric vehicles in Texas is in the public interest, and the widespread availability of electric vehicle charging stations supports that public interest goal and provides important environmental and economic public benefits. The cost of the infrastructure associated with such widespread availability, however, may be a significant economic barrier to private investments in charging stations. To enable the growth of this market, the distribution system infrastructure associated with electric vehicle charging stations should constitute used and useful utility plant for the provision of electric power delivery services to the public and should be included in the utility's rate base.

CenterPoint Houston believes its facility extension policy should specifically address facility extensions to electric vehicle charging stations in order to lower the barriers to entry that may be currently inhibiting the growth in their public availability. Its existing facility extension policy places virtually all the infrastructure costs of the distribution system infrastructure associated with extending service to electric vehicle charging stations on the electric vehicle charging station owner or operator, despite the fact that such charging stations are serving and open to the public. The cost of the distribution infrastructure necessary to serve an electric vehicle charging station with direct current (DC) fast charging facilities (allowing vehicle charging in minutes rather than hours for standard charging facilities) can be significantly more than the existing standard allowance provided in the Company's retail tariff.[14]

[14] Under the Construction Services Policy in its retail tariff, the Company will credit a customer requiring a facility extension for the Company's provision of delivery service an amount equal to the cost of installing 2,000 feet of single-phase overhead cable or 1,000 feet of 3-phase overhead cable. Facility extensions to electric vehicle charging stations in urban areas will require underground installations of conductor cables and equipment, which are significantly more expensive than overhead installations, and charging stations with DC fast charging equipment will require more expensive 3-phase circuits.

All distribution system infrastructure associated with electric vehicle charging stations in front of the utility's delivery point should be considered utility plant and property and allowed to be included in its rate base for recovery. By delivering power to electric vehicle charging stations that are themselves open to the public, a utility's infrastructure associated with such stations is effectively being used to serve the public just as much as the infrastructure associated with other parts of its distribution system. The standard construction allowance for facility extensions in an electric utility' tariff should be set, for facility extensions to electric vehicle charging stations, at a level to cover the costs of 3-phase, underground facility extensions all the way to charging station.

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?

Generally, no. The distribution infrastructure for delivery service to electric vehicle charging stations in remote areas may be less costly if they can be served by overhead facilities. However, the public interest rationale for promoting increased private investment in charging stations generally is not diminished for charging stations in remote areas, where they can be used not only by long-distance motorists, but also by local motorists living in those remote areas.[15]

One difference that may exist in rural areas versus more urban areas is the need for electric vehicle charging stations in remote areas that are allowed to be owned by an electric utility. That may be especially true where access to such charging stations may also be critical for long-distance motorists during storm evacuations. For utility-owned electric vehicle charging stations authorized to meet this public interest need, the distribution system infrastructure included in the

[15] The implicit premise of question no. 4 is that charging stations in remote areas would be used predominantly by long-distance motorists, while charging stations in urban areas would not. That premise is not necessarily true. Charging stations in urban areas are just as likely to be used predominantly by long-distance motorists. Local motorists are more likely to have home charging equipment that they will use for local travel and will use public charging stations for their longer distance travels. Local motorists who do not have home charging equipment (because they live in apartments or other dwellings that, for economic or practical reasons, lack accessible charging facilities) will predominantly rely on public charging stations for their local travels.

utility's regulated rate base would also include the charging station itself, including the electric vehicle charging apparatus. Of course, this would only be done after a Commission determination that utility-owned charging stations were appropriate if such ownership is considered a competitive energy service.

Respectfully submitted,

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