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PROJECT NO. 49125

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

THE REP COALITION'S RESPONSES TO STAFF'S SECOND REQUEST FOR COMMENTS

The REP Coalition[1] respectfully files these Responses to the Second Request for Comments filed by the Public Utility Commission of Texas ("Commission") Staff regarding the Review of Issues Relating To Electric Vehicles. These comments are timely filed by the August 28, 2020 deadline established by the Commission.

I. INTRODUCTION

The REP Coalition appreciates the keenly focused questions posed in its most recent request for comments. The REP Coalition also appreciates the opportunity to respond to those fundamental questions. The REP Coalition supports the use of electric vehicles ("EVs"), and urges that there not be unnecessary regulatory impediments to the installation and operation of electric vehicle charging stations ("EVCSs") to support the use of EVs. Neither should the introduction of this new load source disrupt the fundamentals of the competitive electric market in Texas. The risk and cost of owning and operating EVCSs should be borne by the competitive businesses that choose to operate and provide electricity to the electric vehicle operators. The infrastructure of transmission and distribution utilities ("TDUs") will provide the necessary backbone to support the integration of EV loads into the grid. The cost of any additional build-out of the delivery system to interconnect EVCSs should be covered under existing tariff provisions for interconnecting new load. The ownership and operation of the EVCS itself, however, should rest within the competitive market.

These comments reflect the unanimous common ground among the REP Coalition. To the extent individual associations or member companies have additional feedback on any particular point, those comments are separately filed.

[1] For purposes of these Comments, the REP Coalition is comprised of the following: the Alliance for Retail Markets ("ARM") and Texas Energy Association of Marketers ("TEAM"). The participating members of ARM are Direct Energy, NRG Retail Companies, and Vistra Energy Retail Companies. The participating members of TEAM are: Amigo Energy, APG&E, Iberdrola Energy, Infinite Energy, Hudson Energy, Just Energy, Stream Energy, Tara Energy and Veteran Energy.

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II. COMMENTS

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 this analysis, the REP Coalition will focus primarily on EVCSs that are offered on a commercial basis for public use. EVCSs that are owned and operated behind the meter at an ESIID premise that are used by the customer (or their tenants) would be considered a form of self-use that is not the subject of regulation by the Commission.[2] Examples of EVCSs that are not the focus of this analysis are:

- EVCSs located behind the meter of a residential premise;
- EVCSs located at an office building where the stations are available only for tenants of the building; or
- EVCSs located behind the meter of a commercial or industrial customer where the EVCSs are used for vehicles operated by that customer or its employees.

If the Commission determines that the operation of an EVCS is a retail sale of electricity, then that service may only be lawfully provided by specified entities as set forth in Public Utility Regulatory Act ("PURA"). Therefore, the ownership and operation of EVCSs that provide electric power to the public would be open to entities that meet the statutory and regulatory requirements:

- Retail Electric Providers ("REPs") in areas open to retail customer choice;[3]
- Electric utilities within their certificated retail service area in areas not open to retail customer choice;[4]
- Municipally-owned electric utilities within their certificated retail service area in areas not open to retail customer choice;[5] and
- Electric cooperatives within their certificated retail service area in areas not open to retail customer choice.[6]

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[2] *See* PURA § 31.002(6)(J)(i) (a person that "furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity not resold or used by others" is not an electric utility).

[3] *See* PURA § 39.352 ("After the date of customer choice, a person...may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider"); *see also* 16 TAC § 25.107.

[4] *See* PURA § 37.001(3) ("Retail electric utility" is defined as "a person, political subdivision, electric cooperative, or agency that operates, maintains, or controls in this state a facility to provide retail electric utility service."

[5] *See id.*

[6] *See id*

Monopoly TDUs would not be permitted to own and operate EVCSs because by statute, a TDU may "may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs."[7] Consistent with the competitive market structure as outlined in PURA, the provision of EVCS to the public is not a natural monopoly and therefore is not appropriate for TDU provision. Furthermore, as explained in responses to Question Nos. 3 and 4, the cost risk associated with installation of an EVCS should be borne by the owner of the EVCS and should not be socialized across all end-use customers in ERCOT. Accordingly, a TDU may not sell or otherwise furnish electricity to an end-user through an EVCS.

In a non-competitive area, whether inside ERCOT or outside ERCOT in other parts of Texas, entities that are allowed to sell electricity to the end user are the entities that may sell electricity through EVCS (subject to the self-provision limitations identified above) if the provision of the EV charging service is deemed to be a retail sale of electricity. Specifically, under statute, no one other than the cooperative or municipally-owned utility may "provide, furnish, or make available electric service at retail within the certificated service area of an electric cooperative that has not adopted customer choice or a municipally owned utility that has not adopted customer choice."[8] Similarly, PURA requires that in areas served by investor-owned electric utilities outside of ERCOT, which have not adopted retail customer choice, only the certificated utility may provide retail electric utility service.[9] As such, any classification of EV charging as a retail sale of electricity would be dispositive; however, there is significant discretion for those entities that are authorized to provide such service related to the commodity sale to work with third parties that might actually own or operate the EVCS facilities.

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

Although PURA and the Commission's rules do not directly address the operation of an EVCS and it was likely not contemplated by the Legislature at the time of passage of the relevant statutes, there is good legal and policy support for the Commission to reach the conclusion that the ownership or operation of an EVCS for a fee constitutes selling and furnishing electricity to retail customers, and therefore may only be provided by specific entities regulated by the Commission.

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[7] PURA § 39.105(a).

[8] PURA § 39.105(b).

[9] PURA § 37.051.

PURA § 31.002(6) provides that "a person . . . that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state" is an electric utility unless it qualifies under one of the specific exceptions from the definition. The ownership and operation of an EVCS providing service to the public necessarily involves selling or furnishing electricity for compensation. REPs are excluded from the definition of electric utility and are elsewhere defined in PURA §§ 17.002 and 31.002(17) as the entities permitted to sell electric energy to retail customers in areas open to customer choice.

There is no definition of "retail sale" in PURA, but it is generally understood to be sales of electric energy to ultimate (end-use) customers.[10] The sale of power to the public at a EVCS is similar to all other retail sales in the competitive retail market in that it too involves a transfer of electricity for compensation to another entity, namely EV operators whose vehicles are charged by the electricity purchased from the EVCS. As such, classifying the ownership and operation of an EVCS to the public as a retail sale of electricity is wholly consistent with the competitive market structure as outlined in PURA.

Assuming that the Commission were to conclude that electricity provided to charge the EV through an EVCS is a retail sale of electricity, a REP must be involved in that sale in areas open to customer choice. The fact that the furnishing of the electricity commodity would be a retail sale does not mean that it should be subject to the existing customer protection standards in 16 TAC §§ 25.474 and 25.475, such as contract enrollments, verifications, and disclosure requirements. For example, the person or entity to whom electricity is provided at an EVCS is conceptually distinct from a residential customer or small commercial customer.[11] The Commission, of course, has the discretion to develop any customer protection provisions if deemed necessary that would be applicable to commercial operation of an EVCS.

Moreover, if the Commission chooses to, it could adopt rules that add the flexibility for a third-party owner of EVCS facilities to be certified as a REP to sell electricity to charge EVs in

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[10] Tex. Gov't Code Ch. 311, *Code Construction Act,* § 311.011 (providing that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage" and that "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

[11] *See* 16 TAC § 25 5(112) (defining residential customer as "Retail customers classified as residential by the applicable bundled utility tariff, unbundled transmission and distribution utility tariff or, in the absence of classification under a residential rate class, those retail customers that are primarily end users consuming electricity at the customer's place of residence for personal, family or household purposes and who are not resellers of electricity."), *see also* 16 TAC § 25 471(d)(11) (defining small commercial customer as "A non-residential customer that has a peak demand of less than50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12-month period.").

areas open to customer choice. For example, the Commission could consider creating an Option 4 REP certification, similar to the Option 3 REP certification that is limited to a specific type of sale of electricity—sales of power from on-site third-party owned distributed generation. The Commission adopted the Option 3 REP standards in 16 TAC § 25.107 under its general authority to implement PURA and to regulate the sale of electricity to end-users in the market. With the number and variety of REPs in the market today that would be permitted under existing statute and Commission rules to perform the commodity sale involved in EVCS service to the public, it is not certain that a need for a new REP certification Option actually exists. However, the REP Coalition offers this suggestion for a limited Option 4 REP certification here to demonstrate a possible solution to ensure that the introduction of this new load source does not disrupt the fundamentals of the competitive electric market in Texas and that there are no undue regulatory barriers to entry for other entities to pursue this business model.

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 cost of distribution system infrastructure needed to serve EVCS should be recovered under the same longstanding rules and practice that all other distribution system infrastructure is recovered by utilities for all other new service requests. Upon customer request for electric service to connect to a new EVCS, the utility would evaluate the need for infrastructure upgrades on the distribution system to accommodate the anticipated load of the EVCS. The requesting customer then would pay for necessary infrastructure upgrades through a contribution in aid of construction payment as offset by the standard allowance in accordance with the TDU's tariff. This approach for recovering the cost of utility system infrastructure to meet the needs of loads of all types has well served the electric market in Texas. The REP Coalition therefore urges the Commission to apply the same policy to recovery of the cost of distribution system infrastructure for EVCSs.

It should be noted that, depending on the size of the EVCS facilities, it is possible that the EVCS operator may want to interconnect with the grid at transmission voltage and operate their own private substation. The cost of the TDU infrastructure to connect to this transmission voltage level load should be recovered the same way as it is today under the TDUs' retail delivery service tariff where each installation is evaluated for a cost in aid of construction with an allowable offset.

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?***

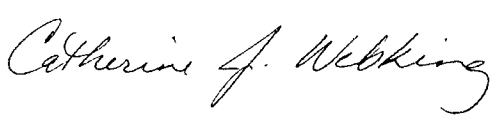
No, the cost of distribution (or possibly transmission) infrastructure to accommodate public EVCS in remote areas should be addressed the same way as other customer requests for service. Any grants or other types of federal or state funding for grid infrastructure in remote areas should be accounted for in a utility's rate case to increase the allowance for new customer service requests for EVCS in those areas, thus reducing the amount directly allocated to requesting customers. To the extent the interconnection requires a cost in aid of construction, the applicable utility tariff should accommodate the construction of the facilities.

III. CONCLUSION

The REP Coalition appreciates the opportunity to file these Comments and looks forward to working with the Commission to address issues regarding deployment of EVs in Texas.

Date: August 28, 2020

Respectfully submitted on behalf of the REP Coalition,



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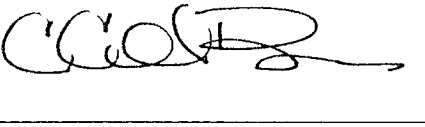

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