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PROJECT NO. 49125

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

TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS ON PROPOSED QUESTIONS FOR COMMENT

I. INTRODUCTION

TIEC appreciates the opportunity to comment on the novel issues presented by widespread deployment of electric vehicle (EV) charging in Texas.

Today, it appears that PURA would allow only an electric utility or a non-opt-in-entity (NOIE), such as a municipally owned utility or electric cooperative, to own or operate EV charging facilities for compensation (i.e., commercial EV charging).[1] Relatedly, it appears that commodity sales of electricity to EVs can only be offered by (a) certificated retail electric utilities (including NOIEs), or (b) Retail Electric Providers (REPs), depending on whether an area is open to competition. In non-competitive areas, vertically integrated electric utilities or NOIEs could both own the EV charging facilities and sell the electricity to end-use EV owners at retail. However, in competitive areas of ERCOT, unbundling requirements[2] would require all electrical infrastructure for commercial EV charging to be owned by a utility, but all retail sales to EVs to be made through a REP.

While TIEC believes this is likely the best reading of PURA's existing requirements, it is not the best policy outcome. EV charging is not the type of electric service PURA was meant to restrict, or that regulated entities should exclusively provide. Unlike electric service to homes and businesses, charging EVs is not a fundamental public good or a natural monopoly. Commercial

[1] TIEC distinguishes "commercial" EV charging stations, where customers pay another party to charge their vehicles, from private charging stations provided as an amenity at businesses, or self-use charging stations that may be located at a customer's home or at a business for use by employees. When EV charging constitutes self-use, or where some other exemption applies, PURA already provides exemptions from regulation. *See* PURA § 31.002(6)(j)(i).

[2] *See* PURA § 39.105(a) (stating that a TDU "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* § 39.051(e), requiring utilities to spin off any competitive energy businesses as defined by the PUC.

EV charging is analogous to selling retail gasoline, except that EV charging uses electricity rather than hydrocarbons. Like retail gasoline sales, commercial EV charging should be offered by private, non-utility companies in a competitive market. Under a privatized model, the owner of a commercial EV charging station (similar to a gas station owner) could be treated as a traditional "retail customer" for purposes of PURA. Beyond the retail meter, facilities to serve EVs and any retail transactions with EVs would be offered competitively, unregulated by the PUC. Privatizing commercial EV charging would allow competitive businesses to adapt their services to meet the evolving needs of EV technologies, which is more difficult for utilities that are subject to comprehensive PUC regulation of their rates, services and operations. Private ownership would also allow retail gas terminals and EV charging stations to be co-located at existing convenience store chains like Buc-ee's or Love's, which leverages existing competitive infrastructure and makes the most practical sense.

Importantly, this approach would also ensure that owners of EV charging stations would be responsible for: (a) all of the capital costs of the EV charging facilities themselves, as well as (b) certain directly attributable system upgrades required on the TDSPs' side of the interconnection, consistent with the treatment for other commercial customers. Like retail gas stations, the EV charging terminal owners could recover their capital and overhead costs through private transactions with retail EV customers, minimizing the likelihood of potential subsidization through utility rate bases.

For these reasons, TIEC believes the best path forward is for the Legislature to adopt statutory changes that would exclude commercial EV charging from regulations that would otherwise apply to owning delivery facilities and making retail electricity sales in Texas, allowing the competitive market to advance EV charging services.

II. RESPONSES TO COMMISSION STAFF'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, TIEC believes the best approach is to allow private companies to own and operate commercial EV charging stations. However, this does not appear to be permitted

under current law and would likely require a statutory change. As noted above, it appears that EV charging facilities would qualify as delivery facilities that can only be owned or operated for compensation by regulated electric utilities (or NOIEs). Under PURA § 31.002, "electric utility" is defined as "a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state." If EV charging facilities are used to "distribute, sell, or furnish electricity," which would appear to be the case, then the only entities who could legally own or operate those facilities for compensation would be electric utilities or NOIEs.

As noted above, TIEC believes that commercial EV charging stations should ultimately be owned and operated by private, unregulated businesses in competition with one another. Private ownership of EV charging facilities will foster innovation and encourage the development of EV charging services while ensuring that private entities—as opposed to captive regulated ratepayers—bear the associated financial risks. Importantly, private EV charging stations would be treated like commercial or industrial interconnections, where the facility owner is responsible for its own capital costs as well as the costs of any required upgrades to TDSP facilities (with an allowance, in some instances).[3] Private EV charging station owners would bear the costs of building and interconnecting the charging facilities and, like any other commercial or industrial customer, could then recover those costs through private transactions with patrons who use the station's services. In contrast, if electric utilities (or NOIEs) are the only entities who can own commercial EV charging stations, there is a much greater risk that EV charging infrastructure will be subsidized by other customers through regulated rates.

To provide consistent treatment and avoid discrimination among electric utilities, the private ownership "gas station" model for EV charging stations should be applied throughout the state, including in areas outside ERCOT. Again, unlike electric service to residences and businesses, EV ownership and electricity sales is not a natural monopoly or an essential public service, and does not need to be regulated by the PUC in any area of the state. As a result, TIEC supports providing statewide, statutory exclusions from the definitions of "retail electric utility,"[4]

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[3] This is typically accomplished by the customer paying its utility a contribution in aid of construction (CIAC), or by the customer self-building some or all of its own interconnection facilities to meet its utility's specifications.

[4] PURA § 37.001(3).

"electric utility,"[5] and "retail electric provider" for commercial ownership and operation of EV charging facilities.[6]

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

Under PURA today, it appears that commercial sales of electricity from an EV charging station would constitute a retail sale of electricity. PURA defines a "retail customer" as a "separately metered end-use customer who purchases and ultimately consumes electricity."[7] EV owners who purchase and consume electricity to power their vehicles would appear to be retail customers under this definition. PURA generally restricts the entities who can make retail sales or electricity to certain specified entities, including electric utilities, NOIEs, and REPs.[8]

As a retail electricity sale, commercial EV charging would be subject to retail rate regulation in areas that are not open to competition. An EV charging station owner would likely be considered a "retail electric utility" under PURA § 37.001(3) as a "person . . . that operates, maintains, or controls in this state a facility to provide retail electric service." Vertically integrated utilities have the exclusive right to makes retail sales of electricity within their service areas—at rates that are set using traditional cost of service regulation principles. [9,10] Many of PURA's ratemaking methods are premised on providing service to captive ratepayers within a fixed geographic service area.[11] Given the transience of EV charging customers, who may not even be Texas residents, there is an increased likelihood that Texas homes and businesses will end up subsidizing EV charging under a utility ownership model. Again, TIEC believes that the best way

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[5] PURA § 31.002(6).

[6] PURA § 31.002(17).

[7] PURA § 31.002(16).

[8] As noted previously, PURA provides certain exemptions for retail use that would apply to some EV charging activities. Regulated activities under PURA must involve compensation, so providing power to EVs for free would not appear to be regulated. Similarly, PURA provides exemptions for self-use, which includes a business providing power to employees as an incident of employment. PURA § 31.002(6)(i). While inapplicable to EVs, there are also exemptions for certain qualifying cogenerators. PURA § 37.0521.

[9] *See* PURA § 37.051(b) ("Except as otherwise provided by this chapter, a retail electric utility may not furnish or make available retail electric utility service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility unless the utility first obtains a certificate that includes the area in which the consuming facility is located.").

[10] Similarly, in NOIE areas throughout the state (including within ERCOT), sales from EV charging stations could only be made by the certificated electric cooperative or municipally owned utility.

[11] *See generally,* PURA Chapter 36.

to avoid this outcome is to allow private ownership and operation of EV charging facilities, and to treat the owner of those facilities as the retail customer, similar to a retail gas station. [12]

For areas within ERCOT that are open to retail competition, only an electric utility could own the EV charging facilities as discussed above, but only a REP could sell power to EVs for compensation.[13,14] So, under PURA today, it does not appear that a single entity could both own an EV charging station and sell power to retail EV customers within competitive areas of ERCOT. This required separation of services does not make practical sense for EV charging.

There are a host of other issues that would need to be addressed for retail service to EV owners under a utility ownership model. In all areas of the state, new EV tariffs would need to be developed for regulated rates. This will be a novel exercise, given that the customers at a particular metering point (which would presumably be the EV charging terminal) would not be a fixed set of customers with assigned Electric Service Identifier IDs (ESI IDs) but a transient population of EV patrons. In addition, the existing customer protection requirements for the mass-market/Option 1 REPs are not suitable for sales to EV customers. For example, many restrictions around product offerings, customer deposits, disconnection policies, bill disclosures, and other requirements that were drafted in the context of providing service to traditional homes and businesses cannot realistically be applied to transactions at commercial EV charging stations. Under the current regulatory paradigm, the Commission would at least need to amend the REP rules to exempt EV sales from many of the existing customer protection requirements, and potentially create a new REP registration category. Similarly, REPs would have to find a way to handle ongoing true-ups for ERCOT charges (such as Unaccounted for Energy (UFE), Revenue Neutrality charges, ancillary service charges, etc.) that can occur for up to 180 days, given that the customer population at an EV charging terminal will be transient and REPs would have no practical means of reconciling prior charges to an EV customer. Instead of trying to fit a square

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[12] PURA § 39.105(b).

[13] *See* PURA § 31.002(17), defining a REP as "a person that sells electric energy to retail customers in this state."

[14] PURA § 39.105(a) prohibits TDUs from selling power, so they would have to own the facilities but could not make electricity sales to EV customers ("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.").

peg into a round hole, as these examples demonstrate, the better approach is to exempt EV charging activities from PUC regulation through statutory changes.

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?

Cost causation principles dictate that EV charging customers should fund (a) the cost of the charging stations themselves; (b) the cost of TDSP facility upgrades required to serve the charging station, and (c) their fair share of all other transmission and distribution system costs. TIEC believes that the best way to achieve that objective is to deregulate EV charging, and treat EV charging station owners as the ultimate retail customer for ratemaking purposes. Beyond certain specified minimum interconnection costs, a private entity building an EV charging station should be required to pay a contribution in aid of construction (CIAC) to fund any infrastructure improvements that are necessary to interconnect it to the grid. It can then recover the cost of those improvements through private transactions with its customers, just like an entity building a traditional gas station. Similarly, a private charging station owner can recover its general TDU costs from EV charging customers as part of its overhead through private transactions. This avoids the many complexities around trying to separately meter and settle individual EV charging transactions, and creating new tariffs and customer classes for EV charging customers. As noted previously, this model would require statutory exemptions to the statutory definitions of electric utility, retail electric utility, and retail electric provider.

Under a utility ownership model, new EV rate classes and tariffs would need to be created to ensure that EV charging customers are fairly contributing to the costs of regulated facilities in Texas. Current cost allocation methods and utility tariffs presume there is a specific, fixed customer assigned to a given meter, which would not apply to EV charging under a model where utilities own the EV charging facilities. Implementing EV tariffs under this construct would likely require a departure from the traditional concept of associating each "meter" with a particular customer, instead allowing many customers to share rate burdens through a single meter. This will require novel approaches to ratemaking, including determining how to assess costs that are caused and allocated based on maximum demand among customers that are intermittently sharing a single

meter over time. While this could theoretically be accomplished under PURA's ratemaking principles, it will be complicated and is not ideal compared to a private ownership model.

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?

There should not be any distinction for ratemaking purposes between EV charging stations that are located in remote areas and those that are primarily used by local motorists. There is no reliable correlation between the customers within a utility's certificated service area and the population of transient EV charging customers at a particular location. While it may be more likely that a customer at an urban EV charging station lives in the surrounding community, visitors and commuters who live in other service areas will still be a significant percentage of the users at any charging station. This is particularly true along the borders of utility service areas or in multiply certificated areas. Similarly, charging stations that are located within an urban area but along a major highway (like I-10 through Houston) may be used by both local and long-haul EV drivers. TIEC does not believe this type of rural/local distinction appropriately tracks cost-causation principles or provides a reliable basis for different rate treatment.

III. CONCLUSION

TIEC appreciates the opportunity to comment on these questions and looks forward to working with Staff and other parties as this project moves forward.

Respectfully submitted,

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