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PROJECT NO. 49125

REVIEW OF ISSUES RELATING TO
ELECTRIC VEHICLES

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PUBLIC UTILITY COMMISSION
OF TEXAS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
RESPONSE TO PUBLIC NOTICE OF SECOND REQUEST FOR COMMENTS**

The Office of Public Utility Counsel (“OPUC”) respectfully submits these comments in response to the Public Notice of Second Request for Comments approved by the Public Utility Commission of Texas (“Commission”) on July 31, 2020. The Commission’s Second Request for Comments seeks stakeholder input on the following policy questions: (1) As a matter of policy, which entity or entities should be permitted to own or operate an electric vehicle (“EV”) charging station in the Texas competitive electric market? Is a different ownership structure appropriate for service areas not open to retail competition? (2) Is the operation of an EV charging station a retail sale of electricity? (3) As a matter of policy, how should the cost of the distribution system infrastructure associated with an EV charging station be recovered in the Texas competitive electric market? and (4) Is the answer to Question 3 different for an EV charging station located in a remote area, primarily for use by long-distance rather than local motorists? OPUC supports the Commission’s proactive effort to address these important policy issues that will impact residential and small commercial consumers in the state as EVs and associated EV charging station infrastructure continue to proliferate in Texas. OPUC believes that the Commission should determine whether the operation of an EV charging station is a retail sale of electricity before making a policy decision on what entity or entities should be permitted to own or operate an EV charging station in the competitive electric market in the Electric Reliability Council of Texas (“ERCOT”) region and non-competitive areas of the state located outside of the ERCOT region in Texas. OPUC, therefore, offers the following comments for the Commission’s consideration.

I. IS THE OPERATION OF AN EV CHARGING STATION A RETAIL SALE OF ELECTRICITY?

Based on a strict reading of the Public Utility Regulatory Act (“PURA”) and the Commission’s rules, the operation of an EV charging station could arguably constitute a retail sale of electricity both in the non-competitive areas of the state that are outside of ERCOT and the

competitive market in ERCOT. However, EV charging stations currently exist in the state and can be operated in a variety of ways that may not be specifically addressed by PURA and the Commission’s rules. Therefore, statutory clarification may be needed to adequately address this issue for future purposes as EVs and EV charging station infrastructure continue to evolve in the state.

A. Non-Competitive Areas Outside of ERCOT

PURA § 31.002(6) defines an “electric utility” 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.¹ Therefore, an EV charging station that sells and furnishes electricity for compensation in the state could arguably be operating as an electric utility based on a strict reading of the statutory definition. PURA § 37.001(3) defines a “retail electric utility” 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.² To the extent that an EV charging station is operated, maintained, or controlled to provide retail electric utility service in the state, an EV charging station could arguably be operating as a retail electric utility. However, the EV charging station could be viewed as the consuming facility that is being served by a retail electric utility, and therefore, the retail customer of the retail electric utility serving the area.

B. Competitive Market in ERCOT

The statutory definition of an electric utility in PURA § 31.002(6), as described above, specifically excludes a retail electric provider (“REP”).³ Under PURA § 31.002(17), a “REP” is a person that sells electric energy to a retail customer in this state.⁴ A “retail customer” is broadly defined in PURA § 31.002(16) as the separately metered end-use customer who purchases and ultimately consumes electricity.⁵ Therefore, based on these statutory definitions, an EV charging

¹ PURA § 31.002(6); 16 TAC § 25.5(41)

² PURA § 37.001(3).

³ PURA § 31.002(6)(H)

⁴ PURA § 31.002(17); 16 TAC § 25.5(114).

⁵ PURA § 31.002(16); 16 TAC § 25.5(113)

station could arguably be selling electricity to retail customers in the competitive market in ERCOT. However, the EV charging station could be viewed as the consuming facility or retail customer of a REP that is providing electric service to the charging station.

II. AS A MATTER OF POLICY, WHICH ENTITY OR ENTITIES SHOULD BE PERMITTED TO OWN OR OPERATE AN ELECTRIC VEHICLE (“EV”) CHARGING STATION IN THE TEXAS COMPETITIVE ELECTRIC MARKET? IS A DIFFERENT OWNERSHIP STRUCTURE APPROPRIATE FOR SERVICE AREAS NOT OPEN TO RETAIL COMPETITION?

After addressing whether the operation of an EV charging station is a retail sale of electricity under PURA and the Commission’s rules, the Commission should then determine what entity or entities should be allowed to own and operate an EV charging station in the state from a policy perspective based on existing law.

A. Competitive Market in ERCOT

As described above, a REP is a person that sells electric energy to retail customers in this state.⁶ Under PURA § 39.352(a), in areas with retail customer choice (i.e., the competitive electric market in ERCOT), a person must be certified by the Commission as a REP to provide retail electric service in the state.⁷ Under the Commission’s REP Certification Rule, 16 Texas Administrative Code (“TAC”) § 25.107, a person currently has three options for obtaining certification as a REP. The first certification option (Option 1) is for a REP whose service offerings will be defined by geographic service area.⁸ The second certification option (Option 2) is for a REP whose service offerings will be limited to specifically identified customers, each of whom contracts for one megawatt or more of capacity.⁹ Finally, the third certification option (Option 3) is for a REP that sells electricity exclusively to a retail customer other than a small commercial

⁶ PURA § 31.002(17); *see also* PURA § 31.002(16) (defining a retail customer as the separately metered end-use customer who purchases and ultimately consumes electricity)

⁷ *See* PURA § 39.352(a) (“[a]fter the implementation of customer choice, a person, including an affiliate of an electric utility, may not provide retail service in this state unless the person is certified by the commission as a retail electric provider, in accordance with this section”); *see also* 16 TAC § 25.107(a)(1) (“A person must obtain a certificate pursuant to this subsection before purchasing, taking title to, or reselling electricity in order to provide retail electric service”)

⁸ 16 TAC § 25.107(d)(1).

⁹ 16 TAC § 25.107(d)(2)

and residential customer from a distributed generation facility located on a site controlled by that customer.¹⁰

Although 16 TAC § 25.107 currently provides only three REP certification options, PURA § 39.352 does not provide a limitation on the number and scope of REP certification options that can be created by the Commission. Therefore, if the Commission determines that EV charging stations are providing retail electric service to retail consumers in the state and the existing REP certification options do not appropriately accommodate EV charging stations, the Commission could amend 16 TAC § 25.107 to establish a fourth REP certification option for EV charging stations.¹¹ The Commission has historically used the REP certification process to provide retail consumers with customer protection safeguards in the competitive electricity market in ERCOT. Since its original inception, the Commission has modified the REP Certification rule to strengthen the certification requirements, including credit requirements, to help ensure adequate customer protection safeguards for retail consumers and provide three certification options for persons seeking to sell retail electric service in varying levels in the state. The Commission, therefore, could modify its REP Certification rule to create a fourth REP certification option for EV charging stations with certification requirements and customer protection safeguards that are appropriate for EV charging stations.

B. Service Areas Not Open to Retail Competition

Investor-owned electric utilities (“IOUs”) operating solely in the non-competitive areas of the state do not currently have retail customer choice,¹² and therefore, REPs do not operate in these areas of the state. Under PURA § 37.051, a retail electric utility is required to obtain a CCN that includes the area in which the consuming facility is located prior to furnishing retail electric service in an area in which retail electric utility service is being lawfully furnished by another retail electric utility. Because the areas outside of ERCOT are not open to retail electric competition and are already being served by a retail electric utility, a strict reading of PURA would arguably result in an EV charging station being unable to obtain a CCN to provide retail electric service in these non-competitive areas of the state. Therefore, if the Commission found that an EV charging station is

¹⁰ 16 TAC § 25 107(d)(3)

¹¹ See PURA § 39 352 (outlining the statutory requirements for certification of a REP)

¹² See PURA §§ 39 401, 39.451, 39.501, and 39.551.

providing retail electric service in these non-competitive areas of the state, a statutory change to PURA would be required to enable EV charging stations to sell retail electric service to retail customers in a certificated retail electric utility's service territory in the areas outside of ERCOT. OPUC does not take a position on what entity or entities should own and operate EV charging stations in service areas not open to retail competition that are served by electric cooperatives and municipally owned utilities ("MOUs").

III. AS A MATTER OF POLICY, HOW SHOULD THE COST OF THE DISTRIBUTION SYSTEM INFRASTRUCTURE ASSOCIATED WITH AN EV CHARGING STATION BE RECOVERED IN THE TEXAS COMPETITIVE ELECTRIC MARKET?

Electric utilities are required to provide non-discriminatory access to the ERCOT grid under PURA.¹³ Therefore, an electric utility would incur the cost of any necessary distribution system infrastructure associated with EV charging stations. A major component of an electric utility's rate base is the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public,¹⁴ which is then borne by all ratepayers in the electric utility's service area.¹⁵ However, contributions in aid of construction ("CIAC") must be deducted from an electric utility's rate base.¹⁶ Thus, with the exception of CIAC, an electric utility would recover the cost of distribution system infrastructure from its ratepayers through its rate base under the Commission's existing ratemaking process.

As the stakeholder responses to the Commission's First Request for Comments indicate, the number of customers that currently own EVs and thus specifically benefit from the operation of EV charging stations is minimal when compared to the total number of customers that consume electricity in the state. However, an electric utility's rate base is a cost that is borne by all of the utility's ratepayers. Therefore, consistent with established cost causation principles in the Commission's ratemaking process that seek to ensure equity in the allocation of costs to consumers, OPUC believes that owners of EV charging stations should be required to pay for associated distribution system infrastructure through a CIAC mechanism in the Commission's

¹³ See PURA §§ 36.003, 36.004, and 39.056

¹⁴ 16 TAC § 25.231(c)(2)

¹⁵ See PURA § 36.053(a) (defining the basis for electric utility rates).

¹⁶ 16 TAC § 25.231(c)(2)(C)(iv).

ratemaking process, or in the alternative, should be required to pay for distribution line extensions to EV charging stations pursuant to the applicable electric utility's tariff.

From a policy and equity standpoint, OPUC does not believe that all ratepayers, including residential and small commercial consumers who choose not to own EVs and low-income residential consumers who cannot afford EVs, should be required to pay for the distribution system infrastructure costs associated with EV charging stations. These costs would be non-bypassable transmission and distribution ("T&D") charges that residential and small commercial consumers would not be able to avoid in the competitive electric market in ERCOT. The additional non-bypassable T&D charges would disproportionately impact low income residential customers without EVs since a larger portion of their income would be spent on electricity costs. Therefore, in order to help ensure equity for all ratepayers, owners of EV charging stations should be required to pay for their associated distribution system infrastructure either through the CIAC mechanism in the Commission's ratemaking process or the applicable electric utility's tariff provisions for distribution line extensions.

IV. IS THE ANSWER TO QUESTION 3 DIFFERENT FOR AN EV CHARGING STATION LOCATED IN A REMOTE AREA, PRIMARILY FOR USE BY LONG-DISTANCE RATHER THAN LOCAL MOTORISTS?

The cost recovery process for distribution system infrastructure associated with EV charging stations should be the same for EV charging stations located in remote areas and more densely populated areas of the state. A uniform cost recovery process is particularly important when EV charging stations are primarily used by long-distance motorists, rather than local motorist. From an equity and policy perspective, OPUC believes that an electric utility's ratepayers should not be required to pay for distribution infrastructure costs associated with EV charging stations that are primarily used by consumers that do not have to pay for the distribution infrastructure costs.

V. CONCLUSION

OPUC appreciates the opportunity to provide these comments and looks forward to working with the Commission and other stakeholders in this project.

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