

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2017-2604382]

Third Party Electric Vehicle Charging—Resale/ Redistribution of Utility Service Tariff Provisions

The Pennsylvania Public Utility Commission (Commission) on November 8, 2018, adopted a policy statement that is intended to encourage the development of electric vehicle (EV) charging infrastructure by clarifying that it is the policy of the Commission that an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale to a residential consumer, and requiring that electric distribution companies expressly address EV charging stations in their tariffs.

Public Meeting held
November 8, 2018

Commissioners Present: Gladys M. Brown, Chairperson, statement follows; Andrew G. Place, Vice Chairperson; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr.

Policy Statement on Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service Tariff Provisions; M-2017-2604382

Final Policy Statement Order

By the Commission:

The Pennsylvania Public Utility Commission (Commission) issued a Proposed Policy Statement at this docket on May 4, 2018 (May 4 Order). The Proposed Policy Statement was designed to reduce regulatory uncertainty surrounding the operation of electric vehicle (EV) charging stations, thereby promoting increased investment in EV charging infrastructure in the Commonwealth. It would reduce regulatory uncertainty by (1) making clear that it is the policy of the Commission that the service provided by an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale of electricity to a residential consumer and (2) requiring that electric distribution companies (EDCs) expressly address EV charging stations in their tariffs. By this Order, the Commission adopts the Policy Statement on Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service Tariff Provisions contained in the Annex to this Order.

The May 4 Order, including the Annex containing the Proposed Policy Statement, was published in the *Pennsylvania Bulletin* on June 16, 2018. 48 Pa.B. 3584. Comments on the Proposed Policy Statement were due by July 31, 2018.

Comments were filed by Advanced Energy Economy (AEE); ChargePoint, Inc. (ChargePoint); Duquesne Light Company (Duquesne); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, FirstEnergy); the Industrial Energy Consumers of Penn-

sylvania¹ (IECPA); the Pennsylvania Department of Environmental Protection (DEP); the Pennsylvania Office of Consumer Advocate (OCA); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); and the Sierra Club.

Procedural History

Given the continued growth in the number of EVs registered in Pennsylvania and throughout the nation, the need for EV charging stations will continue to grow as well. The Commission recognized that the resale/redistribution of electricity by third party EV charging stations in the Commonwealth is governed primarily by EDC tariff provisions; however, the Commission also recognized that most EDCs' tariffs do not expressly address EV charging stations. To support increased investment in EV charging infrastructure, the Commission found it necessary to take steps to reduce any regulatory uncertainty surrounding the operation of EV charging stations.

Recognizing that questions exist regarding (1) the impact of Section 1313 of the Public Utility Code, 66 Pa.C.S. § 1313 (relating to price upon resale of public utility service; hereafter "Section 1313"), and (2) the EDC resale/redistribution tariff provisions on third party EV charging stations, and given the increasing need for those stations, the Commission was concerned that regulatory uncertainty would limit the number of operators willing to enter the Pennsylvania market. As such, on June 15, 2017, the Commission issued a Secretarial Letter seeking Comments on EDC resale/redistribution tariff provisions and how they may affect the operation of third party EV charging stations. Specifically, the Commission sought Comments on the following topics:

- What restrictions, if any, each EDC's existing tariff places on the resale/redistribution of electric power by third party EV charging.
- The advantages and disadvantages of specific tariff provisions permitting unrestricted resale/redistribution of electric power when done for the purpose of third party EV charging.
- Whether it is appropriate to encourage EDCs across the state to move toward a tariff design, such as that of Duquesne Light Company, which includes provisions permitting the resale/redistribution of electric power for third party EV charging.
- What other resale/redistribution tariff provision designs may aid in establishing clear rules for third party EV charging stations.
- What other regulatory options may aid in establishing clear resale/redistribution rules for third party EV charging stations.

Comments on the Secretarial Letter were received from numerous interested parties. Most Commenters agreed on three main points: (1) that EV charging stations should not be subject to Section 1313 because they are providing a service, not reselling/redistributing electricity; (2) that the various EDC resale/redistribution tariff provisions create uncertainty and inconsistency throughout the

¹ IECPA is an association of energy-intensive industrial consumers of electricity and natural gas. For purposes of this matter, IECPA's membership includes Air Products & Chemicals, Inc.; AK Steel Corporation; Arconic, Inc.; ArcelorMittal USA LLC; Benton Foundry, Inc.; Carpenter Technology Corporation; East Penn Manufacturing Company; Knouse Foods Cooperative, Inc.; Praxair, Inc.; Procter & Gamble Paper Products Company; and United States Gypsum Company.

state; and (3) that eliminating such regulatory uncertainty is a necessary step to encourage the development of EV charging station infrastructure. Further, commenters generally agreed that as part of the effort to alleviate regulatory uncertainty, EDCs should be encouraged to adopt tariff provisions expressly addressing third party EV charging stations, including provisions requiring EV charging station operators to notify the appropriate EDC in advance of the construction of an EV charging station to allow the EDC an opportunity to assess the impact of the additional load and take any necessary remedial action. May 4 Order at 3—5.

The OCA highlighted the distinction between electricity for use as a transportation fuel and electricity as an essential public utility service. AEE further elaborated on this distinction, stating that third party EV charging station businesses are unique and should be permitted to resell electricity to drivers as needed. The Sierra Club submitted that an EV driver receiving charging service from a commercial operation is not a residential customer and therefore the provisions of Section 1313 of the Public Utility Code should not apply. The Commission concurred with this position and believed it would be prudent to foster further transparency of this distinction to reduce any uncertainty related to EDC tariff restrictions for resale/redistribution and/or statutory restrictions pursuant to Section 1313. Such transparency, the Commission found, could be accomplished through the development of tariff provisions for EV charging stations that establish clear terms and conditions for service. May 4 Order at 5.

Although there were areas of disagreement among commenters—whether there should be tariff-based restrictions on third party EV charging stations at all; whether there should be uniform tariff provisions across the state—and additional areas that some commenters wanted to address—the allocation of EDC costs for making upgrades to prepare for the installation of EV charging facilities; the prices EV charging stations pay for electricity and the prices they charge their customers; whether the proceeding should be expanded into a formal rulemaking—based on a review of the comments, the Commission made the following conclusions:

- The number of EVs as well as the corresponding infrastructure for charging continues to grow throughout the Commonwealth.
- Notification of third party EV charging station locations is vital to EDCs' distribution planning.
- Elimination of any regulatory uncertainty is an important step in supporting, and potentially accelerating, the continued build-out of EV infrastructure.
- There is a lack of clarity as to the resale/redistribution restrictions applicable to third party EV charging stations pursuant to EDC tariffs and pursuant to Section 1313 of the Public Utility Code.
- There is a lack of uniformity among EDC tariffs relating to the application of resale/redistribution restrictions on third party EV charging stations.
- It should be the Commission's policy to remedy this lack of clarity across the Commonwealth for the betterment of the EV marketplace in the Commonwealth.

May 4 Order at 4—6.

The Commission believed that the regulatory uncertainty created by the question of Section 1313's applicability to third party EV charging stations and the lack of consistency regarding EDC tariff provisions addressing EV charging stations may serve as a barrier to their

entry into Pennsylvania's EV marketplace. Given the increasing need for EV charging stations, the Commission sought to promote investment in EV charging infrastructure by eliminating this regulatory uncertainty. Accordingly, the Commission issued for comment its Proposed Policy Statement.

The Proposed Policy Statement consists of two sections:

A. *52 Pa. Code § 69.3501 (Section 1313 of the Public Utility Code)*

This section is to make clear the Commission's policy that a third party—any entity other than a public utility—owning and operating an EV charging facility that is open to the public for the sole purpose of recharging an EV battery should not be construed to be a sale to a residential consumer and should therefore not fall under the pricing requirements of Section 1313.

B. *52 Pa. Code § 69.3502 (Electric vehicle charging tariff provisions)*

This section is to require EDCs to address, at a minimum, two issues relating to EV charging facilities in their tariffs: (1) reflect the statement of law in Section 1313, along with the Commission's policy to exclude third party EV charging stations from the pricing requirements of Section 1313, as described in § 69.3501(b) and (2) rules for when and how owners and operators of such third party EV charging stations are to notify the EDC of a planned installation of the EV charging facilities and for what information the EDC will need in advance.

Discussion

The issues discussed above clearly demonstrate the Commission's desire to promote the development of third party EV charging infrastructure throughout the Commonwealth by reducing the regulatory uncertainty faced by EV charging station operators. The purpose of this Policy Statement is to promote investment in EV charging infrastructure by (1) making clear that it is the policy of the Commission that an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale of electricity to a residential consumer and (2) requiring that EDCs expressly address EV charging stations in their tariffs. As such, the Commission adopts this Policy Statement on Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service Tariff Provisions.

1. *Comments*

AEE, DEP, Duquesne, FirstEnergy, OCA, PECO, PPL, and the Sierra Club support the Proposed Policy Statement.² They assert that the Proposed Policy Statement will provide regulatory clarity—by making clear that Section 1313 of the Public Utility Code does not apply to the operation of EV charging stations and by requiring EDCs to address EV charging in their tariffs—and thereby promote investment in third party EV charging infrastructure in Pennsylvania.³

Further, AEE requests that the Commission finalize the Proposed Policy Statement as soon as possible.⁴ DEP notes the environmental and health benefits that will accrue from promoting EVs and the development of EV charging infrastructure.⁵ Duquesne notes its appreciation

² AEE Comments at 1; DEP Comments at 2; Duquesne Comments at 3; FirstEnergy Comments at 1; OCA Comments at 3, 4-5; PECO Comments at 1; PPL Comments at 3, 5; and Sierra Club Comments at 1.

³ AEE Comments at 1-2; DEP Comments at 1-2; Duquesne Comments at 3; FirstEnergy Comments at 1-2; OCA Comments at 2—4; PECO Comments at 1-2; PPL Comments at 3-4; and Sierra Club Comments at 1-2.

⁴ AEE Comments at 2.

⁵ DEP Comments at 1.

of the Commission's recognition of the importance of advance notice for distribution system planning.⁶ PPL requests that the Proposed Policy Statement include a streamlined procedure for EDCs to obtain Commission approval to amend tariffs consistent with the policy statement.⁷ And the Sierra Club requests that any notice requirements in EDC tariffs be reasonable so as not to significantly delay or impede the development of EV charging infrastructure.⁸

IECPA supports the Proposed Policy Statement in general; however, the group believes it is incomplete. IECPA asserts that EDC tariff provisions should address the allocation of EDC costs associated with upgrading distribution networks to meet additional loads and connecting to EV charging stations. In IECPA's opinion, tariffs should make clear that those costs are to be directly allocated to EV charging station owners and operators consistent with standard cost causation principles as identified in the Public Utility Code.⁹ 66 Pa.C.S. § 1301(a).

ChargePoint also generally supports the Proposed Policy Statement, though does assert that it leaves some non-utility EV charging station operators ("site hosts") facing regulatory uncertainty regarding the applicability of Section 1313. Site hosts, ChargePoint notes, often provide EV charging equipment as an ancillary benefit/service for their customers or employees (for example, a hotel, retail establishment, or workplace). Those facilities may not be open to the public or may be available for public use only during limited hours. Even if the charging equipment is available to the public, ChargePoint argues that the Proposed Policy Statement may not protect such operations because the "sole purpose" of the business is not to recharge EV batteries.¹⁰

Given those concerns, ChargePoint requests that the Proposed Policy Statement be expanded so that it clearly applies to (1) all third party EV charging stations, not strictly only those open to the public, or (2) sites that offer EV charging equipment as an ancillary service and sites that provide equipment for semi-public EV charging. Further, ChargePoint requests that the policy statement with its proposed modifications be implemented by the Commission and thereafter that the Commission establish an investigatory docket "to consider the full range of regulatory issues related to EVs and EV charging."¹¹

2. Disposition

The Commission agrees with AEE, DEP, Duquesne, FirstEnergy, OCA, PECO, PPL, and the Sierra Club that this Policy Statement will provide regulatory clarity and thereby promote investment in EV charging infrastructure throughout Pennsylvania. Further, the Commission recognizes the importance of this Policy Statement to EV drivers, third party EV charging station owners and operators, and EDCs, among other interested parties. As such, as requested by AEE, the Commission will act without delay to finalize this Policy Statement.

The Commission also agrees with PPL that there should be a streamlined procedure for EDCs to amend their tariffs consistent with this Policy Statement; however, the Commission will not modify the Policy Statement itself to create such a procedure. The Commission will request that EDCs amend their tariffs to address

third party EV charging stations consistent with this Policy Statement by filing tariff modifications with the Commission after the Policy Statement's publication in the *Pennsylvania Bulletin*. The standard 60-day notice period for public comment required for tariff changes will be reduced to 30 days as permitted by Commission regulations. See 52 Pa. Code § 53.31. Then, after the comment/protest deadline passes—assuming no protests are filed and the Commission's Bureau of Technical Utility Services (TUS) agrees with the proposed tariff changes—TUS will prepare an Order for the next public meeting approving the changes.

The Sierra Club requests that the advance notice requirements in EDC tariffs be reasonable. IECPA requests that the Policy Statement make clear that EDC costs associated with upgrades and connection to EV charging stations be allocated to EV charging station owners and operators. And ChargePoint requests that (1) the Policy Statement be expanded so that it clearly applies to all third party EV charging stations and (2) the Commission broadly investigate regulatory issues related to EVs and EV charging.

To be clear, the Commission does not regulate the operation of EVs or EV charging stations. And there is a limit to the extent that the Commission can impose requirements on EDCs through a policy statement. The terms proposed by the Sierra Club, IECPA, and ChargePoint cannot necessarily be imposed through a policy statement. They may require the Commission to engage in a formal rulemaking proceeding—a proceeding that would address activity not regulated by the Commission and issues best left to the operation of the free market.

Further, the proposals of the Sierra Club, IECPA, and ChargePoint are beyond the limited scope of this proceeding. The purpose of this Policy Statement is to provide regulatory clarity, thereby promoting the development of EV charging infrastructure in Pennsylvania, by (1) making clear the Commission's policy that an EV charging facility for the sole purpose of recharging an EV battery should not be construed as a sale to a residential consumer—that is, that Section 1313's pricing limitations do not apply to EV charging stations—and (2) requiring that EDCs expressly address the applicability of Section 1313 and advance notice requirements in their tariffs. The Policy Statement is not meant to address all issues associated with EVs and EV charging.

Regarding the Sierra Club's concerns, the Commission believes that EDCs support the Policy Statement and will not create notice requirements that will unreasonably delay or impede the development of EV charging infrastructure. In addition, the Commission notes that the purpose of the advance notice requirement is to ensure the safety and reliability of the distribution system by giving the EDCs time to evaluate and prepare for the additional load required to serve a new EV charging station. The Commission believes that EDCs will take the steps necessary to ensure the safety and reliability of the distribution system without unreasonably delaying the development of EV charging stations.

Regarding ChargePoint's concerns, the Commission intends for the Proposed Policy Statement to apply to all EV charging facilities—including those at hotels, retail establishments, and workplaces. Like a stand-alone EV charging station, EV charging facilities at those sites would not constitute resale of utility service to a "residential consumer," so Section 1313 would not apply to the transaction. However, as discussed in Section 3 below, the

⁶ Duquesne Comments at 4.

⁷ PPL Comments at 3-4.

⁸ Sierra Club Comments at 2.

⁹ IECPA Comments at 2-3.

¹⁰ ChargePoint Comments at 2-3.

¹¹ ChargePoint Comments at 3.

Commission will amend its Policy Statement to address ChargePoint's concerns regarding the "semi-public" nature of some EV charging facilities.

Aside from the modification relating to the semi-public nature of some charging facilities, the Commission will not amend its Policy Statement to address the issues raised by the Sierra Club, IECPA, and ChargePoint. If significant problems arise with respect to those issues, they will be brought to the Commission's attention and can be addressed through a more appropriate proceeding.

3. *Minor Revisions to Section 69.3501(b)*

The Commission will make minor changes to Section 69.3501(b) of the Policy Statement to make the statement more concise. First, the Commission will add language to make clear that the Policy Statement applies to "electricity sales by" an entity "for compensation" (lines one and five, respectively). Second, the Commission will remove "electric cooperative corporation, municipal authority, or municipal corporation" (lines two and three) to make clear that the Policy Statement applies to any third party entity (that is, any entity that is not a regulated "public utility"). Finally, for plural subject agreement, the Commission will change "a sale to a residential consumer" to "sales to residential consumers" (line five).

Further, as noted above, the Commission will remove the language "that is open to the public" (line four) from Section 69.3501(b). That modification will make clear that the Policy Statement applies to the operation of any third party EV charging facility, regardless of whether it is open to the public or not.

Conclusion

Based on the foregoing discussion, we will adopt this Policy Statement regarding Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service Tariff Provisions; *Therefore,*

It Is Ordered That:

1. The final policy statement as set forth in Annex A is adopted.

2. Each electric distribution company should file a tariff amendment with the Commission to address third party EV charging consistent with this Policy Statement after the Policy Statement's publication in the *Pennsylvania Bulletin*.

3. The Commission will waive the 60-day public notice requirement for tariff changes and reduce that notice period to 30 days pursuant to Commission regulations at 52 Pa. Code § 53.31.

4. The Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review of its fiscal impact.

5. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

7. A copy of this Order, together with Annex A, be served on all jurisdictional electric distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the Office of Attorney General—Bureau of Consumer Protection, and all parties that filed comments under this docket.

8. The contact person for technical issues related to this matter is Darren Gill, Deputy Director, Bureau of

Technical Utility Services, at (717) 783-5244 or dgill@pa.gov. The contact persons for legal issues related to this matter are Scott Thomas, (717) 783-2812 or sjthomas@pa.gov, and Joseph Cardinale, (717) 787-5558 or jcardinale@pa.gov, Assistant Counsel in the Law Bureau.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-321 remains valid for the final adoption of the subject regulations.

Statement of Chairperson Gladys M. Brown

Today the Commission acts to finalize policies which foster regulatory clarity for the Commonwealth's electric vehicle charging industry. Furthermore, we take a large step toward designing a regulatory landscape which supports innovative and dynamic pricing for electric vehicle charging. The Commission does so via a Policy Statement announcing that third-party charging stations are not subject to resale/redistribution pricing restrictions and by advising electric distribution companies to codify this policy in their respective tariffs. I am pleased to take this action today as I believe it will work to facilitate progress in the Commonwealth's burgeoning electric vehicle landscape.

Additionally, the Commission's action today supports tariff provisions requiring customers to notify electric distribution companies of any planned build-out of electric vehicle charging stations. Technological advancements, including the advent of electric vehicles, are transforming the electric consumption profiles of customers and the grid as a whole. As such, it is of paramount importance that electric utilities be able to adapt their infrastructure to support this transformation in an economic manner. These tariff provisions will work to enhance utility's informational awareness and thus support more efficient distribution system planning.

I look forward to reviewing the tariff filings made pursuant to the Commission's action today.

GLADYS M. BROWN,
Chairperson

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

THIRD PARTY ELECTRIC VEHICLE CHARGING—RESALE/REDISTRIBUTION OF UTILITY SERVICE TARIFF PROVISIONS—STATEMENT OF POLICY

§ 69.3501. Section 1313 of the Public Utility Code (66 Pa.C.S. § 1313).

(a) Section 1313 of the Public Utility Code, 66 Pa.C.S. § 1313 (relating to price upon resale of public utility services), applies restrictions on the resale of utility service to residential customers.

(b) It shall be the policy of the Commission that electricity sales by a person, corporation or other entity, not a public utility, owning and operating an electric vehicle charging facility for the sole purpose of recharging an electric vehicle battery for compensation should not be construed to be sales to residential consumers and should therefore not fall under the pricing requirements of 66 Pa.C.S. § 1313.

§ 69.3502. Electric vehicle charging tariff provisions.

It is the policy of the Commission that all jurisdictional electric distribution companies should have tariff language providing clarity as to its rules regarding third party owned and operated electric vehicle charging stations that should address at least the following issues:

(1) Reflect the statement of law in 66 Pa.C.S. § 1313 (relating to price upon resale of public utility services), along with this Commission's policy statement that excludes third party electric vehicle charging stations, as

described in § 69.3501(b) (relating to Section 1313 of the Public Utility Code (66 Pa.C.S. § 1313)), from the pricing requirements of 66 Pa.C.S. § 1313.

(2) When and how owners and operators of such third party electric vehicle charging services are to notify the electric distribution company of a planned installation of the electric vehicle charging facilities and the information the electric distribution company needs in advance.

[Pa.B. Doc. No. 19-143. Filed for public inspection February 1, 2019, 9:00 a.m.]