



August 21, 2017

**VIA OVERNIGHT MAIL**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2nd Floor  
400 North Street  
Harrisburg, PA 17120

**RE: Docket No. M-2017-2604382: Comments of the Sierra Club**

Dear Secretary Chiavetta:

Pursuant to the Pennsylvania Bulletin’s July 8, 2017 notice, the Sierra Club submits these comments regarding Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service. The Sierra Club is the nation’s oldest grassroots environmental organization with more than 825,000 members nationwide and more than 32,000 members in Pennsylvania. A core mission of Sierra Club is to “explore, enjoy, and protect” the planet. To advance this mission, Sierra Club works to move America beyond the use of fossil fuels and to promote the responsible use of natural resources. Vehicle electrification is a critical part of this effort, as widespread use of electric vehicles (“EVs”) can reduce our reliance on oil, improve air quality, and limit the emissions of greenhouse gases and other pollutants. Vehicle electrification also has the potential to reduce electricity rates by increasing grid efficiency and reliability, and to facilitate the integration of renewable energy onto the grid.

The Sierra Club commends the Commission for opening this docket to address an important potential barrier to the deployment of public electric vehicle charging infrastructure. The transportation sector is now the largest contributor of greenhouse gas emissions in the United States.<sup>1</sup> Reducing emissions from the transportation sector will require rapid and significant electrification of vehicles. And facilitating this rapid electrification will necessitate a build-out of public EV charging stations, including both Level 2 and direct current fast chargers. An important first step to support the needed build-out of EV charging stations is to eliminate any regulatory uncertainty for potential site hosts. As the Commission observes in its Notice, two sets of provisions potentially implicate the rates that site hosts can charge to EV drivers: 66 Pa.C.S. § 1313, and individual Electric Distribution Company (“EDC”) tariffs. As discussed below, while we do not believe that 66 Pa.C.S. § 1313 or existing utility tariffs actually implicate the provision of EV charging services by a site host, we believe there is value both in the Commission affirming that interpretation of existing tariffs (consistent with the conclusions

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<sup>1</sup> See, e.g., Energy Information Administration, Monthly Energy Report: July 2017, at 184-85, Tbl. 12.5 & 12.6, available at <https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf>.

reached by other states including New York and Massachusetts) and also for the individual EDCs to include language in their tariffs expressly disclaiming any limitations on sale of electricity for EV charging, as has already been done by Duquesne Light Company. The Sierra Club provides the following responses to the questions posed by the Commission in its Notice:

**(1) What restrictions, if any, each EDCs existing tariff places on the resale/redistribution of electric power by third-party EV charging.**

The Sierra Club believes that, properly construed, none of the EDCs' tariffs currently implicates the provision of charging services. As an initial matter, the Sierra Club agrees with the Commission that, by its plain terms, 66 Pa.C.S. § 1313 does not affect the resale of electricity to vehicle owners for purposes of vehicle charging. Section 1313 provides that whenever a non-EDC "purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its own residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect." As the Commission notes, Section 1313 applies only to resale of electricity "to any residential customer." An EV driver is not a residential customer, particularly when receiving electricity for purposes of charging an EV battery.

Other states that have considered analogous provisions have reached the same conclusion. For example, the Massachusetts Department of Public Utilities distinguished sale of EV charging services from re-sale of electricity and found that owners or operators of EV supply equipment ("EVSE") are "not selling electricity within the meaning of" its utility regulations. Mass. Dept. of Pub. Utilities, Order No. 13-182-A (Aug. 4, 2014), at 7. As the Department explained, "the EVSE owner or operator is selling EV charging services, i.e., the use of specialized equipment -- EVSE -- for the purpose of charging an EV battery." *Id.* The Department ruled that "[t]his result is true regardless of the business model the EVSE owner/operator uses to charge customers for charging services, even if the charge is by a per-kilowatt hour basis or other volumetric energy basis." *Id.*

Likewise, the New York Public Service Commission concluded that EV charging stations "do not fall within the definition of 'electric plant' because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power" but rather "are used to provide a service, specifically, charging services." See *In the Matter of Electric Vehicle Policies*, N.Y.P.S.C. 13-E-1099, at 4 (Nov. 14, 2013). The Commission in New York noted that "while the customer is using electricity, this is incidental to the transaction." *Id.* And like Massachusetts, the New York PSC concluded that "the method of calculating the transaction fee, specifically the use of a per kWh price, will not confer jurisdiction where none otherwise exists." *Id.*

Consistent with the determinations in other states, the Public Utility Commission should clarify in its order in this docket that 66 Pa.C.S. § 1313 does not apply to resale of electricity for provision of EV charging services.

Moreover, properly read, the EDC tariffs do not currently implicate the resale of electricity for EV charging. As identified by the Commission in its Notice, the Duquesne Light

Company's tariff expressly allows EV charging stations to resell power<sup>2</sup> and the FirstEnergy companies' tariffs do not impose any restrictions on the resale of power. In addition, the PECO tariff does not constrain resale of service beyond the limitations of 66 Pa.C.S. § 1313.<sup>3</sup> Because, as discussed above, Section 1313 does not implicate resale for third-party EV charging (only resale to "residential customers"), the PECO tariff does not impose any constraints for site hosts. The PPL Electric Utilities and UGI Utilities tariff provisions pertaining to redistribution of service are not a model of clarity in how they pertain to resale for third-party EV charging.<sup>4</sup> However, it is apparent that the focus of both provisions is resale of electricity to tenants. A clarification by the Commission that resale/redistribution for third-party EV charging is not resale/redistribution of electricity would be useful in demonstrating that these provisions do not implicate third-party EV charging (although, as discussed below, updating the provisions themselves would provide even greater clarity).

**(2) 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.**

There are two distinct benefits of tariffs expressly authorizing unrestricted resale/redistribution of electricity for purposes of third party charging: (a) regulatory clarity; and (b) eliminating economic barriers to the deployment of EV charging stations. As discussed above, adoption by each EDC of a provision clearly stating that resale/redistribution of electric power for purposes of third-party EV charging is not subject to any constraints would eliminate any lingering confusion raised by the resale/redistribution constraints in the EDCs' current tariffs and provide valuable regulatory clarity. In addition, authorizing unrestricted resale/redistribution of electric power for third-party EV charging will eliminate a potential barrier to the deployment of EV charging stations by giving site hosts the freedom to establish rates for EV charging that generate a viable business model.

A potential disadvantage of having no restrictions on site hosts is that some site hosts may seek to impose excessive rates for EV charging services at their stations. Ultimately, however, this is a concern that is best addressed by the competitive market. It is important to note that one situation in which the calculus is different is where EDCs develop EV charging infrastructure programs through which ratepayers are ultimately subsidizing a portion of the cost of EV charging infrastructure. In such a situation, it would be appropriate for the Commission to impose limitations on the rates that site hosts can charge EV drivers using these ratepayer-subsidized EV charging stations. For situations in which there is no ratepayer support for EV chargers or charging infrastructure, it is appropriate to give site hosts full discretion regarding rates.

**(3) Whether it is appropriate to encourage EDCs across this Commonwealth to move toward a tariff design, such as that of Duquesne, which includes provisions permitting the resale/redistribution of electric power for third-party EV charging.**

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<sup>2</sup> Duquesne Light Company Tariff Rule 18 and Rule 18.1.

<sup>3</sup> PECO Energy Company Electric Service Tariff, Rule 13.1 (eff. July 1, 2017).

<sup>4</sup> PPL Electric Utilities General Tariff Rule 5F (eff. July 1, 2017); UGI Electric Utilities Electric Service Tariff, Rule 9-a (eff. Sept. 1, 2017).

As previously noted, there is value in eliminating any lingering regulatory uncertainty raised by the absence of provisions in EDC tariffs directly addressing resale/redistribution of electricity for the specific purpose of third-party EV charging. Because most of the EDC tariffs in Pennsylvania do not include provisions expressly addressing resale/redistribution for this purpose, the Sierra Club believes it is appropriate for the Commission to encourage these EDCs to add tariff provisions, like those of Duquesne, allowing resale/redistribution for third-party EV charging.

**(4) What other resale/redistribution tariff provision designs may aid in establishing clear rules for third-party EV charging stations.**

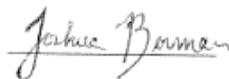
The additional tariff provisions regarding resale/redistribution for third-party EV charging need not be complex. These provisions should simply state that resale/redistribution of electric power for third-party EV charging constitutes the provision of EV charging services and is not subject to the limitations of 66 Pa.C.S. § 1313.

**(5) What other regulatory options may aid in establishing clear resale/redistribution rules for third-party EV charging stations.**

As noted in response to question (4) above, the Sierra Club does not encourage the Commission or the EDCs to add complexity to this issue. The clarification that would be valuable to make to the EDC tariffs is that they do not restrict the pricing options for EV charger site hosts. The next step is for the Commission to encourage or require the EDCs to develop EV charging infrastructure proposals to ramp up deployment of EV charging infrastructure in the Commonwealth, overcome barriers to EV adoption and increase deployment of EVs in Pennsylvania with all of their attendant environmental, economic, climate and public health benefits.

Thank you for your consideration.

Respectfully submitted,



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