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E-File

February 21, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17120-3265

Re: Electric Utility Rate Design for Electric Vehicle Charging
Docket No. M-2023-3040755

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") are PPL Electric's Reply Comments in the above-captioned proceeding. These Comments are being filed pursuant to the Proposed Policy Statement Order entered November 15, 2023 in this matter, and published in the *Pennsylvania Bulletin* on December 23, 2023.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on February 21, 2024, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael J. Shafer", is written over a light blue horizontal line.

Michael J. Shafer

Enclosure

cc via email: Patrick Cicero, Esquire
NazAarah Sabree
Joseph P. Cardinale, Jr.
Karen Thorne

Allison Kaster
Regi Sam
Tiffany L. Tran

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Electric Utility Rate Design for :
Electric Vehicle Charging : Docket No. M-2023-3040755

**REPLY COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION ON
THE PROPOSED POLICY STATEMENT ORDER**

I. INTRODUCTION & BACKGROUND

On February 4, 2022, ChargeVC-PA, a group consisting of Electrification Coalition, Greenlots, Keystone Energy Alliance, Natural Resources Defense Council, Plug In America, Sierra Club, and Adams Electric Cooperative filed a Petition at Docket No. P-2022-3030743 requesting that the Pennsylvania Public Utility Commission (“Commission”) start a proceeding to issue a Policy Statement concerning electric vehicle (“EV”) charging rate design.

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed Comments regarding ChargeVC-PA’s Petition.

On December 1, 2022, the Commission entered an Order directing, among other things, the Commission’s Bureau of Technical Utility Services to convene a working group to discuss EV charging rate design and provide recommendations from the working group by March 31, 2023.

PPL Electric and many other entities participated in the working group and submitted informal comments.

The working group recommended that: (1) the Commission draft a proposed Policy Statement concerning EV charging rate design; (2) the proposed Policy Statement consider the topics contained in the informally filed comments; and (3) the Commission’s staff use the working group, as necessary, to prepare the proposed Policy Statement.

On May 18, 2023, the Commission entered an Order agreeing with the working group's recommendations and approving ChargeVC-PA's Petition to initiate a Policy Statement proceeding to address EV charging rate design.

On November 15, 2023, the Commission issued a Proposed Policy Statement Order ("Order") containing the proposed Electric Vehicle Rate Design Policy Statement ("Policy Statement"). The Commission's Order directed interested parties to file Comments on the Policy Statement within 30 days after publication of the Order in the *Pennsylvania Bulletin* and to file Reply Comments within 60 days after publication of the Order in the *Pennsylvania Bulletin*. (Order, p. 14.)

On January 22, 2024, PPL Electric timely filed its Comments on the Commission's Order. Several other interested parties filed Comments on or about January 22, 2024, as well.

PPL Electric respectfully submits these Reply Comments in response to some of the other parties' Comments. Although the Company does not respond to every concern or recommendation set forth in the other parties' Comments, PPL Electric's failure to respond should not be interpreted as the Company's agreement with those concerns or recommendations.

II. COMMENTS

A. THE POLICY STATEMENT SHOULD ESTABLISH POLICY, NOT IMPOSE REGULATORY REQUIREMENTS

After reviewing the other parties' Comments, PPL Electric is concerned that certain recommendations, if adopted, could inappropriately transform a non-binding policy statement on EV charging rate design into a set of binding requirements. For example, Advanced Energy United ("United") proposed the addition of a Section 69.3555 to the Policy Statement that would, among other things, "direct[] electric distribution companies to file with the Commission, and ma[ke]

public at least annually, reporting on customer enrollment and utilization of EV charging-specific rates.” United Comments, p. 7. United also “recommends the Commission require a deadline date of 90 days from the final adoption of the Policy Statement as the date for EDCs to file EV-specific rates.” *Id.*, p. 9. Additionally, the Office of Consumer Advocate (“OCA”) recommends that the Commission’s Policy Statement “include specific requirements of the proposed review” of EV charging rates “in order to increase clarity and effectiveness of these reviews.” (OCA Comments, p. 7.) The OCA also expresses a concern that the Policy Statement “does not include a requirement for well-designed pilots to test various rate design options, including incentives.” (OCA Comments, p. 7.) The Retail Energy Supply Association (“RESA”) and NRG Energy, Inc. (“NRG”) also propose revising Section 69.3553 of the Policy Statement to “prohibit[]” EDCs from “subsidizing the default service rate through distribution rates.” (RESA/NRG Comments, Exh. A, p. 2.)

Policy statements in Pennsylvania cannot and should not impose regulatory requirements. As appellate courts have made clear, “a statement of policy does not have the force of law,” “is merely interpretive in nature,” and “is not binding upon a reviewing court.” *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996). Indeed, a policy statement simply “announces the agency’s tentative intentions for the future” and “does not establish a ‘binding norm.’” *Dep’t of Env’tl. Resources v. Rushton Mining Co.*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991) (quotation omitted). “[I]n determining whether an agency action is a regulation or a statement of policy, one must look to the extent to which the challenged pronouncement leaves the agency free to exercise discretion to follow or not follow the announced policy in an individual case.” *Id.* (citation omitted).

Here, PPL Electric supports the Commission’s efforts to adopt a Policy Statement addressing EV charging rate design. However, that Policy Statement cannot and should not place specific requirements on electric distribution companies (“EDCs”) or otherwise impose a binding norm, such as reporting requirement or a requirement that EDCs file EV-specific rates by a certain deadline. Thus, when finalizing its Policy Statement, the Company respectfully requests that the Commission keep these considerations in mind and avoid making any changes to the Policy Statement that would transform it into a regulation.

B. RATE DESIGN, INCLUDING EV RATE DESIGN, SHOULD BE BASED ON COST OF SERVICE

PPL Electric echoes other commenters in their support for cost-of-service-based EV charging rates. Some commenters, however, expressed concerns with EDCs’ current rate designs, particularly demand charges, and the alleged impact those rates and charges have on the EV charging industry. (Alliance for Transportation Electrification Comments, p. 3; Charge Ahead Partnership Comments, pp. 3-4; Electrification Coalition Comments, p. 2; EVSPs Comments, pp. 3-6; Joint Fuel Retailers Comments, p. 3.) Some of those commenters even recommended waivers or reductions of demand charges for EV charging stations during this period of “market transformation.” (Alliance for Transportation Electrification Comments, p. 3; Electrification Coalition Comments, p. 2.)

The Company maintains that the proper evaluation of rate design for EV charging stations should be addressed in the appropriate proceeding, whether a base rate case or a default service proceeding – not in the context of a policy statement proceeding. Notwithstanding, an EDC’s distribution system must be designed to meet peak demands, including the demands of EV charging stations. Therefore, depending on the particular set of circumstances, demand-based charges are appropriate. This could include the time when EV charging utilization is initially low.

Moreover, the Commission should reject outright calls for waivers or permanent reductions of demand charges. Rate design must be founded upon cost of service to avoid cross-subsidization and unreasonable rate discrimination issues.¹ Therefore, EDCs cannot allow other ratemaking concerns to trump cost of service.² When EDCs' rates are proposed in appropriate proceedings, such as distribution base rate cases or Default Service Plan proceedings, the design of such rates is evaluated based on a complete evidentiary record from interested parties and ultimately approved by the Commission. It would be inappropriate and contrary to ratemaking fundamentals to make a blanket rate waiver or reduction determination in this Policy Statement proceeding.

C. THE COMMISSION SHOULD REJECT CALLS TO FORECLOSE THE POSSIBILITY OF UTILITY OWNERSHIP OF EV CHARGING FACILITIES

Multiple commenters also recommended that the Commission's Policy Statement should encourage third-party ownership of EV charging facilities instead of utility ownership of those facilities. (CAP Comments, pp. 4-5; IECPA and Walmart Comments, p. 3; Joint Fuel Retailers Comments, p. 4.)

PPL Electric believes that the Commission's Policy Statement should remain neutral on third-party versus utility ownership of EV charging facilities. At this time, the Commission should keep all options open. Indeed, there may be scenarios where EDCs' ownership of EV charging facilities is necessary and appropriate. Furthermore, the competitive market may be unwilling or unable to provide EV charging offerings, such as in disadvantaged communities, low-income

¹ See *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006); NARUC, *Distributed Energy Resources Rate Design and Compensation*, at 20 (Nov. 2016) ("The basic purpose of rate design is to implement a set of rates for each rate class—residential, commercial, and industrial—that produces the revenues necessary to recover the cost of serving that rate class."), available at <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>; PA PUC, *A Guide to Utility Ratemaking*, at 146 (2018) ("[A]bsent other considerations, customer classes should pay their cost of service without subsidization by other classes."), available at https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf.

² See *Lloyd*, 904 A.2d at 1020.

customers, and multi-family buildings. The Policy Statement can best support and encourage the growth of EV charging facilities throughout the Commonwealth by remaining neutral with respect to facility ownership.

D. MANAGED CHARGING

PPL Electric supports the Comments of MCR Performance Solutions about Managed Charging. (*See* MCR Performance Solutions Comments, pp. 7-8.) PPL Electric agrees that managed charging programs are worth investigating, as they can help customers save money on EV charging during peak demand situations. Additionally, EVs may be able to support the grid as vehicle to grid use cases are developed. Thus, the Company agrees that “the Policy Statement should encourage Pennsylvania utilities to consider active management programs as they develop their EV-specific rate design.” (MCR Performance Solutions Comments, p. 8.)

E. RESA AND NRG COMMENTS

PPL Electric agrees that the Commission should address third party data access to EDCs’ customer information. (RESA/NRG Comments, p. 4.) However, PPL Electric disagrees with RESA and NRG’s proposal to amend Section 69.3553 of the Policy Statement to state that “[d]efault service generation rates shall also include all administrative costs needed to support the default service rate offer” and that EDCs “prohibited from subsidizing the default service rate through distribution rates.” (RESA/NRG Comments, Exh. A, p. 2.) Such express prohibitions are inappropriate for policy statements, as explained previously. Moreover, both the Commission and the Commonwealth Court previously rejected NRG’s argument about an alleged subsidization of default service generation rates through distribution rates. *See NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936 (Pa. Cmwlth. 2020), *allowance of appeal denied*, 2021 Pa. LEXIS 150 (Pa. 2021).

F. PERIODIC REVIEW OF EV CHARGING RATES

Some commenters recommended that the Commission adopt formal processes for periodically reviewing EDCs' EV charging rates. (Electrification Coalition Comments, pp. 1-2; OCA Comments, p. 7.) As an example, the OCA "encourages the Commission to include specific requirements of the proposed review in order to increase the clarity and effectiveness of these reviews." (OCA Comments, p. 7.)

PPL Electric disagrees with these recommendations. EV charging rates should be treated no differently than other distribution and default service rates charged by EDCs. The existing processes for reviewing those rates and approving adjustments work well. To the extent that parties want to challenge those rates once they are established, they can file complaints pursuant to Section 701 of the Public Utility Code.

III. CONCLUSION

PPL Electric appreciates the opportunity to provide these Reply Comments and respectfully requests that the Commission take these Comments into consideration when developing its final Policy Statement.

Respectfully submitted,



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