July 24, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Third Party Electric Vehicle Charging Resale/Redistribution of Utility Service
Docket No. M-2017-2604382

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate’s Additional Comments in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

Harrison W Breitman
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Attachment

cc: Public Utility Commission Office of Competitive Market Oversight
ra-oermo@pa.gov

*254369
CERTIFICATE OF SERVICE

Resale/Redistribution of Utility Service :

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate’s Additional Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of July 2018.

SERVICE BY INTEROFFICE MAIL

Scott Thomas
Joseph Cardinale
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Harrisburg, PA 17120

Office of Attorney General
Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120

Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Pennsylvania Office of Small Business Advocate
300 North Street, Suite 202
Harrisburg, PA 17101

Energy Association of Pennsylvania
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Harrisburg, PA 17102

Pennsylvania Department of Environmental Protection
Office of Policy
400 Market Street
Harrisburg, PA 17101

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Resale/Redistribution of Utility Service :

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ADDITIONAL COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

On July 8, 2017, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued its first Secretarial Letter seeking comments from all interested parties regarding tariff provisions of electric distribution companies (“EDCs”) concerning the resale/redistribution of electric power to third-party public EV charging stations. See, 47 Pa.B. 3790. Specifically, the Commission sought comments in regard to how EDC tariff provisions may affect the operation and viability of public third-party Electric Vehicle (“EV”) charging stations. Id. The OCA filed comments regarding the Secretarial Letter on August 22, 2017.


As noted by the Commission, most commentators were in agreement that Section 1313 of the Public Utility Code, 66 Pa. C.S. § 1313, creates uncertainty which should be eliminated to encourage the development of EV charging stations and that EV charging stations should not be subject to Section 1313 since EV charging is a service and not a resale of electricity. Proposed Policy Statement at 2. The disagreements between the parties largely concerned which procedural vehicle would be appropriate to alleviate any confusion. Proposed Policy Statement at 2-3.

In its Comments, the OCA argued that a policy statement and corresponding tariff language could provide improved clarity surrounding the definition of resale/redistribution without requiring a lengthy rulemaking proceeding or adjudication. The OCA suggested that a Policy Statement and clear tariff language would mitigate the likelihood of any potential future litigation. OCA Comments at 16-17. Moreover, since a policy statement does not constitute a binding precedent, the Commission has the ability to revisit any determinations regarding public third-party EV charging stations should the nature of public third-party EV charging businesses change.

In the Proposed Policy Statement, the Commission clarifies that while Section 1313 of the Public Utility Code applies restrictions on the resale of electricity service to residential
customers, it shall be the policy of the Commission that a person, corporation or other entity, not a public utility, electric cooperative corporation, municipal authority or municipal corporation, 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 customer and should therefore not fall under the pricing requirements of 66 Pa. C.S. § 1313. Proposed Policy Statement at 6; Proposed 52 Pa. Code § 69.3501(b). Through this Proposed Policy Statement, the Commission is also proposing that all jurisdictional EDCs have language in their tariffs to provide clarity to their rules regarding third party owned and operated EV charging stations. Proposed Policy Statement at 7; Proposed 52 Pa. Code § 69.3502. The Proposed Policy Statement instructs EDCs to reflect in their tariffs that Section 1313 of the Public Utility Code excludes public third party owned electric vehicle charging stations from the pricing requirements of Section 1313. Id. Moreover, through the Proposed Policy Statement, the Commission directs the EDCs to clarify in their tariffs how and when the owners and operators of third party EV charging services are to notify the EDC of a planned installation of the EV charging facilities and the information the EDC needs in advance. Id. The Proposed Policy Statement is intended to not only clarify the policy of the Commission in relation to EV charging and Section 1313, but also to have EDCs expressly address EV charging stations in their tariffs. Id.

The OCA agrees with the Commission's conclusion that publically available third-party EV charging stations do not constitute the resale of electricity to residential customers under Section 1313 of the Public Utility Code. The OCA supports the proposed Policy Statement, specifically the two major steps that it takes. First, the proposed Policy Statement clarifies any confusion that could arise from a reading of Section 1313 of the Public Utility Code in relation to
EV charging. According to the OCA’s understanding of Section 1313 of the Public Utility Code, the Section is intended to prohibit the resale of electricity to a residential consumer above the amount that a public utility would bill its own residential customer for the same service under its residential rate. 66 Pa. C.S. § 1313. The Commission’s proposed Policy Statement correctly recognizes that public third party owned EV charging should not fall under the pricing requirements of 66 Pa. C.S. § 1313. Proposed Policy Statement at 5-6. As noted in the OCA’s Comments, EV charging equipment outputs electricity as a transportation fuel, and is not designed to merely resell electric utility service to a residential consumer. See, OCA Comments at 12. The clarification contained in the proposed Policy Statement resolves any uncertainty and will allow development of third party owned EV charging stations open to the public to move forward.

Secondly, by establishing a policy that electric distribution companies (EDCs) should additionally have language in their tariffs defining when and how owners and operators of EV charging services notify the EDC of a planned installation, the Proposed Policy statement alleviates EDC concerns regarding any upgrades that may be required to support EV charging infrastructure. See, Proposed Policy Statement at 3. Efficient integration of EV charging infrastructure avoids adverse impacts on the system, and on customers, from EV loads. Furthermore, encouraging notification for the purpose of distribution planning minimizes system risks and allows for adequate information to be provided to the utility. The OCA submits that the Commission’s proposal to encourage EDCs to place notification requirements in their tariff is reasonable for planning purposes.

The Office of Consumer Advocate appreciates the opportunity to provide additional comments on this important issue. The OCA supports the Commission’s proposed Policy
Statement as it is consistent with the Public Utility Code and will provide much needed clarity in regards to the emerging EV charging market.

Respectfully Submitted,

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Dated: July 24, 2018

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