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February 21, 2024

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the reply comments of the Energy Association of Pennsylvania to the Commission's Proposed Policy Statement Order the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads 'Donna M.J. Clark'. The signature is fluid and cursive.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: Joseph P. Cardinale, Jr. (jcardinale@gov.pa)
Tiffany L. Tran (tiftran@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Electric Utility Rate Design for
Electric Vehicle Charging

:

Docket No. M-2023-3040755

**REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA TO THE PROPOSED POLICY
STATEMENT ORDER**

I. INTRODUCTION

A petition filed pursuant to 66 Pa. C.S.A. §§ 510, 1301, 1330, 1501 and 2807(f) and 52 Pa. Code § 5.41 by ChargeVC-PA on February 4, 2022 (“Petition”)¹ laid the groundwork for the current proceeding in which the Pennsylvania Public Utility Commission (“Commission” or “PUC”) seeks public input on a Proposed Policy Statement that identifies “factors to be considered in determining just and reasonable distribution and default service rates” to promote implementation of electric vehicle (“EV”) rate design in Pennsylvania. Proposed Policy Statement Order Re: Electric Utility Rate Design for Electric Vehicle Charging, Docket No. M-2023-3040755 (November 15, 2023) (“Proposed Policy Statement Order”) at p. 1.

The Proposed Policy Statement Order provides that “the utility landscape is evolving rapidly, none more rapidly than the electric industry” and that “increasing penetration of distributed energy resources and EVs presents both **a challenge and an opportunity** for regulators and utilities.” Proposed Policy Statement Order at p. 4. (Emphasis added.) The Proposed Policy

¹ Petition to Initiate a Proceeding to Consider Issuance of a Policy Statement on Electric Utility Rate Design for Electric Vehicle Charging, Docket No. P-2022-3030743.

Statement Order seeks to establish appropriate guidance to avoid circumstances where the adoption of new technologies by customers would “work to decrease utilities’ distribution system network capacity utilization – or the ratio of average demand to peak demand” which could, in turn, place “significant headwinds” on distribution rates, negatively impact generation prices, and further stress wholesale generation resource adequacy by adding hours of EV charging load to hours of already existing peak demand. *Id.*

Concurrently, the Commission recognizes that electric distribution companies (“EDC” or “EDCs”) have an opportunity to adopt new technologies to “better accommodate the evolving demand profiles created by this new energy landscape.” *Id.* at p. 5. The Proposed Policy Statement Order suggests that technologies available to manage the grid and evolving demand profiles, such as “advanced metering, advanced grid monitoring, energy efficiency, demand response, and smart thermostats,” when coupled with tools such as “time-of-use [rates], real-time pricing, demand charges, rebates, automatic control devices, and others” may work both to avoid increased usage in hours of peak demand and to provide the proper price signals to customers to support the move to EVs or the use of distributed energy resources generally. *Accord*, Proposed Policy Statement Order at pp. 5 and 12. The Commission seeks to create a policy which encourages EDCs to address the challenges posed by the projected growth of EVs over the next decade with technologies and tools best suited to account for each electric utilities’ unique demographics, grid characteristics, and demand profiles. *Id.* at p. 12.

Comments were filed by numerous interested parties including the Energy Association of Pennsylvania (“EAP” or “Association”) and its EDC members.² EAP maintains that the guidance

² EAP is trade association with EDC members including Citizens’ Electric Company; Duquesne Light Company; First Energy Pennsylvania Electric Company; PECO Energy Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc. - Electric Division; and Wellsboro Electric Company.

offered by a finalized policy statement should provide flexibility, outlining and identifying possible issues for consideration without limiting or dictating possible solutions that might be proposed by an EDC for EV charging rates in tariff proceedings or other actions before the Commission. EAP believes that the proposed policy statement set forth in Annex A together with the clarification edits offered in EAP's initial comments achieves that objective.

EAP submits these general reply comments on behalf of its EDC members, incorporating by reference its initial comments and clarification edits offered to the language set forth in Annex A to the Proposed Policy Statement Order. Additionally, EAP supports the comments and reply comments offered by its individual EDC members in this proceeding.

II. COMMENTS

Initially, EAP reiterates its support for a policy statement which recognizes the demand that transportation electrification will place on existing infrastructure, encourages the design of EV charging rate structures without dictating specific and prescriptive requirements, and enables EDCs to incentivize customers to use excess off-peak capacity. EAP agrees that avoiding unreasonable cross-subsidization between customers and rate classes, prioritizing cost-of-service principles, and planning appropriate customer education provides the necessary guidance and flexibility for EDCs to propose EV rate designs that are utility-specific and account for differences in demographics, grid characteristics, and demand profiles in their respective service territories.

A. Policy statements establish guidance for the regulated community, not mandates, directives or prescriptive requirements.

EAP respectfully asks the Commission to refrain from adopting various suggestions of stakeholders that seek to insert mandates, directives, or prescriptive requirements into the final version of the proposed policy statement. For example, certain commentators ask that the final policy statement require an initial temporary waiver or reduction in demand charges as a component of an EV charging rate during a “period of market transformation” to improve the economics for charging station owners to fund and develop infrastructure.³ Other commentators request that the policy statement require the development of a specific rate for “direct current fast chargers” as a priority to encourage private investment in publicly accessible fast charging stations while prohibiting utility investment in such infrastructure. *See, e.g.*, Comments of Joint Fuel Retailers at pp. 1 – 3 and Comments of Advanced Energy United at pp. 8 - 9. EAP contends that such ideas do not necessarily adhere to cost-of-service principles and should not become requirements in a policy statement aimed at identifying “factors to be considered in determining just and reasonable distribution and default service rates that promote the implementation of proper EV rate design.” Proposed Policy Statement Order at p. 1.

Commentators also seek the incorporation of mandated EV charging rate pilots coupled with detailed reporting requirements and stringent review periods in the final policy statement. *See, e.g.*, Comments of the Office of Consumer Advocate (“OCA”) at p. 7 which express concern “that the proposed policy statement does not include a requirement for well-designed pilots to test various rate design options, including incentives,” and Comments of Advanced Energy United at

³ *See*, Comments of Alliance for Transportation Electrification at p. 3, Comments of the Electrification Coalition at p. 2, and Comments of Advanced Energy United at pp. 8 -9.

pp. 7 – 8 which recommend a new section 69.3555 named “Electric vehicle charging reporting requirements”. EAP maintains that the use of pilots may be encouraged but not mandated via a policy statement and that the lack of a reference to a pilot in the proposed policy statement does not preclude its use.⁴ Further, reporting requirements and specific time periods for review can be considered in the context of a utility specific proposal and proceeding and, again, should not be prescribed via a policy statement. The establishment of prescriptive requirements for application in a regulatory proceeding is accomplished in a rulemaking process not in the development of guidance under a policy statement.

Further, some stakeholders desire to supplant the prioritization of cost-of service principles in the design of EV charging rates with concepts focused on market competitiveness⁵ or on “fairness and equity” principles.⁶ EAP counters that neither of these concepts are distinct or defined principles in the general context of ratemaking with its traditional emphasis on designing rates that are non-discriminatory as well as “just and reasonable.” *See*, 66 Pa. C. S. §§ 501, 1301, 1304, 1501, and 1502. Such broad concerns may be relevant in utility specific proceedings where the applicability and appropriateness of these positions can be considered in the context of a particular proposal for an EV charging rate design.

OCA appears to suggest that an EDC’s consideration of the effect of an EV charging rate on low-income customers and disadvantaged communities supports a separate rate within the

⁴ As referenced by the Commission in its Proposed Policy Statement Order, PECO and Duquesne “are currently running pilot programs for EV charging, that are offered on a voluntary, opt-in basis.” Proposed Policy Statement Order at p. 7.

⁵ *See*, Comments of RESA-NRG at pp. 2 – 5.

⁶ Compare Comments of OCA at p. 11 and Comments of CAUSE-PA at pp. 1 – 2 with the Comments of PPL at p. 7 which state that “other principles such as the promotion of ‘fairness and equity’ should not trump cost of service in the design of EV charging rates” and Comments of Duquesne at p. 3 and p. 7 which provide that the ratemaking concept of “just and reasonable” covers principles of fairness and equity and that the existing standard that rates, including EV charging rates, must be “just and reasonable” should not be diluted or be made less clear by the use of new language.

residential rate class based on income or the attributes of a particular community or region within the service territory. *See*, Comments of OCA at p. 11. EAP contends that such a rate design amounts to unlawful, intra-class rate discrimination, creates an unsupportable and unfair precedent, and is not necessary to guard against approving rates which are unduly discriminatory or to establish the impact of a proposed rate design on low-income customers or disadvantaged communities.

Finally, EAP notes that certain commentators seek to interject prescriptive requirements into the policy statement; requirements that were not consensus recommendations by the EV Charging Rate Design Working Group but were considered pursuant to the Commission’s May 18, 2023 at Docket No. P-2022-3030743. *See*, Comments of Advanced Energy United at pp. 6 – 9. Such requirements or “enhancements” as identified by Advanced Energy United are better addressed, if at all, in utility-specific proceedings to approve a proposed EV charging rate.

Apart from the concern that most of the above suggestions are ancillary to the primary purpose and scope of the proposed policy statement⁷, EAP asserts that they are in the form of mandates, requirements, and directives, none of which are appropriate in a policy statement⁸.

B. The policy statement should encourage EDCs to request approval of an EV charging rate design via existing procedures and neither mandate the filing of a request nor dictate the proceeding in which an EDC must seek approval.

⁷ Section 69.3551. (Purpose and scope) states, in part, that due to federal and state policy initiatives to encourage ownership of EVs, the Commission is encouraging the development of a rate structure for EV charging customers.

⁸ A policy statement provides guidance to regulated entities, indicating the factors an agency will generally consider in deciding matters over which it has jurisdiction. Unlike statutes and regulation, policy statements do not constitute a binding norm nor do they create compliance obligations. *See, e.g., Borough of Bedford v. Dept. of Environmental Protection*, 972 A.2d 53 (Pa. Commw. Ct. 2009) and *Dept. of Environmental Resources v. Rushton Mining Co.*, 591 A.2d 1168, 1173 (Pa. Commw. Ct. 1991).

EAP does not support the establishment of timeframes in which EDCs must propose EV charging rates or the establishment of a particular process or proceeding which EDCs must use in seeking approval of an EV charging rate in the context of a policy statement. There is no ascertainable benefit or immediate need to develop a special procedural process for the consideration of a proposed EV charging rate. An EDC might file such a proposal in a petition seeking to amend its tariff or may seek approval of an EV charging rate in a base rate proceeding or pursuant to its periodic default service case.

Nor does EAP agree that the instant policy statement should detail the “explicit elements” that an EDC must address in its request seeking approval of an EV charging rate design as suggested in the comments of CAUSE-PA.⁹ At this time, EAP supports a flexible approach which enables EDCs to seek approval of an EV charging rate based on the current procedures and practices in place for establishment of a new rate. Flexibility is key for both the regulator and the regulated community under the current utility landscape where electrification of transportation is promoted by both federal and state policy initiatives while penetration of distributed energy resources on the distribution grid is rapidly increasing in Pennsylvania.

III. CONCLUSION

EAP welcomes the opportunity to provide reply comments to the Commission’s Proposed Policy Statement Order Re: Electric Utility Rate Design for Electric Vehicle Charging. Guidance offered by a finalized policy statement should provide flexibility, outlining and identifying possible issues for consideration without limiting or dictating possible rate designs that might be proposed by an EDC seeking approval of an EV charging rate. EAP maintains that

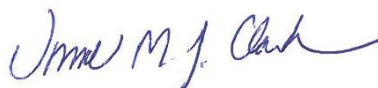
⁹ See, Comments of CAUSE-PA at pp. 2 – 3.

the proposed policy statement set forth in Annex A to the Proposed Policy Statement Order together with the language clarification edits offered in EAP's initial comments achieves that objective and requests that the Commission refrain from adopting the various prescriptive standards and requirements offered by non-utility stakeholders in the instant proceeding.

Respectfully submitted,



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