BEFORE THE PUBLIC UTILITIES COMMISSION OF TEXAS

PUBLIC NOTICE OF REQUEST FOR COMMENTS	**)**	
REVIEW OF ISSUES RELATING TO ELECTRIC	**)**	**PUC PROJECT NO. 49125**
VEHICLES	**)**	

COMMENTS OF THE ALLIANCE FOR TRANSPORTATION ELECTRIFICATION

The Alliance for Transportation Electrification (ATE or Alliance) is pleased to provide comments to the Texas Public Utilities Commission in response to questions posed by the Commission in Project No. 49125 in the public notice issued on July 24, 2020.

Background

The Alliance for Transportation Electrification, a 501(c)(6) non-profit corporation, is led by utilities, electric vehicles (EV) infrastructure firms and service providers, automobile manufacturers, and EV charging industry stakeholders and affiliated trade associations. We started with 20 organizations at the launch about three years ago at a NARUC meeting in Baltimore MD. By taking a "big tent" approach to advance the industry, we have grown rapidly to include about 45 national members today and are actively engaged in regulatory proceedings such as this across the country.

Our goals are to engage with Public Utility Commissions and other state agencies to remove barriers to EV adoption by encouraging a collaborative and open approach to accelerate the deployment of EV charging infrastructure in states like Texas. We do this by advocating for a strong and robust utility role while recognizing the importance of non-utility service providers in market development, by developing effective outreach and education measures, and by promoting interoperability and open standards in all parts of the EV charging ecosystem.

Answers to Questions

1. As a matter of policy, which entity or entities should be permitted to own or operate an electric vehicle charging station in the Texas competitive electric market? Is a different ownership structure appropriate for service areas not open to retail competition?

There are both policy issues inherent in this question and legal issues which arise if regulated transmission and distribution utilities are to be permitted to participate in owning and operating EV charging stations. These are addressed separately in answer to this question.

Policy Issues

As a threshold issue, the Alliance is pleased that the Commission's questions in both Question 1 and Question 3 start with the predicate phrase "as a matter of policy." We are engaged in workshops, proceedings, and Notice of Inquiry (NOI) dockets on EVs and EV infrastructure in over 20 state Commissions today. We believe that there are always policy issues intertwined with the normal regulatory and ratemaking issues involved in the regulated utilities developing and seeking approval of EV related programs. Some issues are new and nascent, and some may require a new administrative interpretation by the Commission of previous Orders or rules. But our fundamental thesis, as explained below, is that the Commission under both its statute (the PURA, or Public Utility Regulatory Act) and multiple precedents has a broad and fairly expansive "regulatory toolbox" from which it can act proactively in addressing utility filings and stakeholder concerns today without additional legislation.

Accordingly, the Alliance strongly believes that **as a matter of policy**, all entities with the technical and investment capabilities to do so should be permitted and encouraged to own and operate electric vehicle charging stations in the Texas competitive electric market. This includes the regulated transmission and distribution utilities or TDUs (or the "wires" companies, which we will use interchangeably in these comments). In addition to ownership and operation including leasing options, there are other investment models such as "make ready," which are also appropriate for the wires companies, as are hybrid or partnership models where regulated utilities may partner with third parties on various aspects of charging infrastructure. And we believe that the same ownership and operation market development models should be allowed regardless of whether or not an area is open to retail competition.

And regardless of whether the transmission and distribution utility owns and/or operates the charging station itself, it must be involved in make-ready investments where the utility installs or upgrades equipment up to the point where a charging station would connect. At that point, either the utility or a third party might install the charging station. But a competitive market for charging stations cannot exist unless the wires utility is allowed to carry out make-ready investments, which mainly benefit the third party service providers and the overall "EV ecosystem" in market transformation, and is also allowed to recover the costs for those investments in a timely manner as discussed in the answer to Question 3.

Several of the respondents in this Docket will likely argue that the market for charging stations is already competitive and that either utility ownership and operation is unnecessary or worse yet, would crowd out competitors. While we agree that the market for public charging stations for some use cases is somewhat competitive, it is not nearly to the point where the competitive market acting alone will install a sufficient number of chargers to meet expected future demand. We would point out that one of the non-utility electric charging station providers that will file comments in this Docket opposed to utility ownership already has substantial power in the charging market. And there are certainly some market segments, such as for multi-family properties and underserved and under-resourced communities in both urban and rural areas where there is little to no competitive activity. In urban areas, we will use the term BIPOC, or Black Indigenous and People of Color, to describe such communities which has become an urgent topic across the country recently.

Also, DC fast chargers may not be profitable at this nascent stage of market development so a competitive market will likely not materialize in the near term. The market for DC fast charging services needs to be considered on a longer-term time horizon since the market in Texas fundamentally needs many more thousands (and tens of thousands) of vehicles to support higher utilization rates to make the business case more economical. Moreover, the utilities generally have a comparative strength in taking a longer-term view of distribution level assets for the TDUs. But the Alliance believes that utility infrastructure investment, including ownership and operation, should not be dependent on the competitiveness of the market nor be limited to specific geographic markets. Utilities can ably and effectively complement the private or non-utility market and ensure successful EVSP deployment throughout their service territories – both in the near- and long-terms.

One fact is clear. There are an insufficient number of public charging stations and ports in Texas, both AC Level 2 and DC fast charging ports, to meet the forecasted and likely demand in the near future. If experience in other states is any indicator, Texas will continue to experience a deficit of charging due to longstanding reluctance by the private market to step in and deploy infrastructure, as evidenced by the very small number of developers (particularly for DCFC) and the overall inadequate number of plugs. Instead, the Commission should consider a more robust utility role, perhaps an ownership model with a turnkey approach with qualified vendors, as being an important accelerator of EV charging infrastructure in the state.

Moreover, if ratepayer funds are invested, logic dictates that the utility retain the opportunity to be involved with the resulting infrastructure to ensure continuous and reliable utilization. In other words, the uptime of charging stations is a key issue for the consumer experience, and there is nothing worse for a new EV owner to arrive at a charging station and discover that it is under repair or not working properly. The Alliance believes that this is a consumer protection issue as the scale of infrastructure and EV adoption increases rapidly over the next several years, and therefore the Commission, or another state agency, needs to address and take seriously. Other jurisdictions have discovered that EV charging stations that were built in the last decade, often with government grants and incentives, are not well maintained and experience poor uptime and availability. Obviously, there can be reliability issues with all the various business models and charging infrastructure. But especially with ratepayer funding for these investments, the utility would retain the primary responsibility for maintaining this distribution infrastructure, subject to the oversight and accountability of the Commission.

A robust role for the wires company, including utility ownership and operation of charging stations as an option (with the burden of proof to demonstrate cost-effective investments with prudency,) will provide numerous benefits including:

- Going to scale quickly
- Strong capital base (equity and debt)
- Ability to take the long-term view
- Obligation to serve all customers and classes, rich and poor, urban and rural
- Ability to address some of the market gaps today- like rural, multi-unit dwellings, and stations in underserved communities of low and moderate income

- Flexibility in rate design and ratemaking, and the ability to spread costs in a portfolio of approaches
- Avoiding vendor lock-in – some EVSPs do not use open standard or interoperable software and thus the consumer is locked into their service unless they buy new hardware
- Allowing the utility to demonstrate new approaches perhaps with vendors on a turnkey basis

Some of the commenters in this Docket will also assert that the utility role should be limited, either temporally (that is only until the market "matures") or constrained to certain use cases such as making investments only in rural areas, multi-family properties, or BIPOC communities. We disagree strongly. The level of market maturity or exhaustion of alternatives is not and should not be a factor in deciding whether utility ownership should be permitted. There is nothing that fundamentally makes utility investment, ownership or operation of charging stations more costly, or more likely to exhibit any anti-competitive effects. What the utility charges for use of its service will be subject to Texas PUC jurisdiction, and the utility can eliminate any anti-competitive concerns by charging a market average for its services. And while the maturity of a market may be an indicator of the degree of ratepayer support that is required, it has no bearing whatsoever on program design or ownership structures. In fact, we believe a policy that eliminates or reduces utility involvement, either through legislation or regulation, removes an important competitive alternative and reduces customer choice in the overall EV ecosystem.

It's also important to note that utility ownership cannot and will not overwhelm the competitive market or "crowd out private capital," as some commenters may claim. The Commission will dictate how many charging stations utilities can add, and the substantial number of charging stations needed suggest an all-hands-on-deck approach.

This leaves the electric TDUs as the only viable option for vast swaths of infrastructure, particularly make-ready but also charging hardware in cases where the private sector will not invest, including but not limited to underserved or disadvantaged communities.

The Alliance also emphasizes that there are a variety of ownership, or joint venture or leasing of equipment, possibilities that are currently being explored in EV infrastructure. In a turnkey type solution with a preferred vendor, the utility will contract out the back-end management (including customer billing and information) as well as the network management system that connects the charging station to the cloud, with co-branding by both the vendor and the utility. Another approach might be for the utility to contract with third party vendors for charging stations to be installed through RFPs or other means. Joint ventures are also possible where a private EVSP firm can bring technology, software and network management experience (such as vehicle to grid know-how) to the table, while the utility can bring its scale, engineering experience and detailed knowledge of the grid. Also, as stated elsewhere in our comments, the utility can offer a monthly subscription rate to its customer based on projected load curves and daily demand in an all-you-can-eat type rate structure that removes the customer's need to understand complicated time-of-use or dynamic tariffs and rates, possibly with the utility leasing the EVSE to the customer.

And besides direct investment, utilities might also have rebate programs for the installation of either home chargers or public charging stations. The point is that a variety of business structures are possible in order to develop the EVSE market, and the particular solution will differ from state to state, utility to utility, and case to case.

The Alliance thus believes that "hybrid" market development models at this nascent stage is both possible and likely, allowing various market models to develop. In fact, the Alliance believes that a "portfolio approach" is the best way for regulated utilities to proceed with respect to improving charging infrastructure to prepare for future demands from EV growth. The idea behind the portfolio approach is that the utility will own and operate a limited number of chargers in certain market segments and for certain use cases, and not "crowd out" potential non-utility service providers. And the utility will support third-party development of infrastructure through make-ready programs, possible rebates, and technical assistance.

In other words, the Commission need not worry that utility-owned and operated programs in TE, which is properly scoped and overseen by the Commission with a viable stakeholder process, result in a zero-sum outcome. Regulated utilities necessarily take a long-term view of both planning and deploying infrastructure in the distribution grid, and adequate access to the capital markets to ensure that these investments can be made to catalyze the overall market. The results should be complementary and benefit all ratepayers, and participants in the EV ecosystem.

Experience over the past few years has shown that involvement by expert and trusted utilities as a complement to the private sector is important because the electric vehicle charging landscape is complex and challenging to the vast majority of the population, and especially for a new EV owner as the market moves in to an "early majority" phase. While certain residential consumers and commercial landlords invest the time and resources to learn and execute on the options, unfortunately a more common outcome is the "do nothing" approach. One way to jump-start the market is for the utility to offer to shoulder the burden in this early phase of market development by providing, installing, operating, and maintaining infrastructure, both public and private. Utility involvement may not be as critical further down the road as the market reaches maturity, but still may be needed where the private sector does not venture, such as in multifamily communities, underserved communities, and for publicly accessible DC fast charging.

Most states that have addressed the issue have concluded that a utility role in ownership and operation is both vital and beneficial. We encourage the Commission to look at the following as examples of States that have approved utility infrastructure investment and can be considered best practices.

Arizona

The Arizona Corporation Commission (ACC) issued two documents recently: general policy guidance on TE and a draft implementation plan for utility filings in July and December 2019. The regulated utilities in Arizona are now in the process of stakeholder process and preparing plans to file with the Commission by the end of 2020. The plan demonstrates a best practice for States tasked with providing direction and guidance for regulated utilities to file a plan and providing greater certainty in Arizona

about what infrastructure can be developed and advanced by regulated utilities, along with the private EVSE providers (which were "deregulated" or not subject to specific cost-based regulation as the other utilities in a separate Arizona Order).

Maryland

The Maryland PSC approved a portfolio of programs, including Education & Outreach, a sub-metering pilot, and others, in January of this year for the operating utilities of Exelon. The Commission approved utility investment in customer-funded public charging stations: 500 for BGE, 100 for Delmarva, 250 for Pepco, and the 59 proposed by Potomac Edison. It is being implemented and the early results are positive. Since the Maryland Legislature did not provide explicit statutory authority, the Commission conducted its workshops (called PC44) within a grid modernization stakeholder process that produced constructive and tangible results, with a multi-party settlement for a portfolio of programs which the Commission approved. (see Maryland PSC Order at https://www.psc.state.md.us/wp-content/uploads/Order-No.-88997-Case-No.-9478-EV-Portfolio-Order.pdf)

Michigan

As in Maryland, the Commission did not have explicit legislative authority for EV infrastructure, and therefore acted under its own authority to set J&R rates and oversee grid modernization. Several workshops were held, with the Commission issuing Orders for further reviews. In parallel, the utilities (CMS Energy and DTE Energy) developed proposals taking in to account the concerns of the stakeholders. The proposals were considered in the context of larger GRCs for both utilities. But earlier this year, the Commission approved a significant portion of each proposal (they were modified and changed, of course, during the litigation process) and a good series of pilots were approved. They include E&O activities, residential charging, workplace charging, public infrastructure, and others. Cost recovery was done through deferred accounting, and the Commission approved the capitalization of rebates.

Minnesota

Another case where the Commission did not have explicit statutory authority (beyond a broadly worded bill from 2012 that encouraged the utilities to file programs and allowed the Commission to approve residential charging programs from the regulated utilities, if submitted, but without any further mandate for the utilities to develop, for example, comprehensive TE plans). The Commission identified one Commissioner, former Commissioner Dan Lipschultz, to organize the workshops and notice and comments from the stakeholders. The Commission focused on the "filing guidelines" or what the Commission expected regulated utilities to file. At the same time, Xcel Energy/NSP was developing a series of 7 pilot programs, using the portfolio approach that were filed in parallel with the Commission's filing guidance. Since the normal regulatory process takes significant time (9-11 months for a GRC, perhaps 18 months for a rulemaking), it is a best practice to allow utilities to do their own work in parallel with other Commission-led work, so that the ultimate deployment of charging infrastructure is not unduly delayed. (See MN Order at

https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={D017016C-0000-CD10-8791-F2FF6B5C1546}&documentTitle=20197-154444-01)

Oregon

Oregon has been proceeding with both specific programs (by Portland General Electric (PGE) especially) in TE, as well as planning requirements and the submittal of comprehensive TE plans by the three regulated utilities (PGE submitted in October, Idaho Power submitted in November, and the Commission allowed Pacific Power additional months to file until January 2020). Oregon has specific legislation on this topic passed in 2016 in a section of a clean energy bill, HB 1547.

In summary, as a matter of policy, the TDUs can and should play a strong role, either owning and operating, or facilitating the deployment of EV charging infrastructure with host sites and vendors that is ready for the coming generation of EVs and position Texas as a national leader. Regarding deployment facilitation, utilities could play many roles as discussed above, and also including providing reliability and situational awareness, leveraging the use of data from electric vehicle supply equipment (EVSE) to ease EV-grid integration, and aligning EVSE with other utility functions like demand response. The potential benefits to all ratepayers of this transition can be more easily realized through a robust role for utilities.

Legal Issues

Texas does have a set of legal issues that are different than most states brought on by its retail competition statute that will need to be addressed as part of this Docket. In particular, Sec. 39.105 of the Public Utility Regulatory Act (PURA) provides:

> (LIMITATION ON SALE OF ELECTRICITY. (a) After January 1, 2002, a transmission and distribution utility may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs

Furthermore, Paragraph 25.5 of the PUC rules provides that "…except as specifically authorized by statute, a transmission and distribution business unit shall not provide competitive energy-related activities." There is an exception provided that allows an electric utility "to provide on an unbundled-tariffed basis a competitive energy service that is not widely available to customers in an area." (16 TAC § 25.343(d)(1)) Under that exception, an electric utility presumably could petition the Commission for authority to own and/or operate charging stations in areas within its service territory not being served by the competitive market for charging stations. This exception may be helpful in ensuring service in multi-use properties, rural areas, and BIPOC communities.

But before addressing whether the exception might be used as a means to foster utility ownership, at least in certain areas, the first question to address is whether utility ownership and operation is a competitive energy service that would otherwise be prohibited. We believe the argument can be made that because, as noted in the answer to Question 2, the charging of a vehicle is not a retail sale of electricity, and because the electricity used at a charging station would not be provided by the

transmission and distribution utility, the ownership of charging stations for the sole purpose of charging EVs cannot be considered a competitive energy service. The charging station is providing a service to the customer, but the competitive energy service is only for the sale of electricity to the station or vehicle owner, which would not be done by the transmission and distribution utility. The facts are different than utility owning storage facilities where it may be buying and selling electricity, which we understand is being considered in Texas in a separate Docket or in the Legislature.

This interpretation is undoubtedly subject to interpretation, and if the Commission agrees that as a matter of policy, utilities should be allowed to own and operate charging stations at least in certain use cases, it may wish to seek legislative action to explicitly allow ownership and operation. In any event, the Commission should allow for applications under the statutory exemption.

We also note that the provision of make-ready infrastructure or hybrid models where the utility might partner with a non-utility are in no way prohibited by Texas statute. The only legal question is whether the wires utility might legally own and operate the charger itself, or lease it over its depreciable life to a customer with a subscription-type rate (as utilities in states like Minnesota and California have recently started to do with Commission approval).

Also, the answer to the second part of the question (Is a different ownership structure appropriate for service areas not open to retail competition?) may change if the Commission determines that as a matter of law, utilities can't own and operate stations in competitive retail service areas. If that is the determination, the legal answer may very well be different in non-competitive retail service areas and utilities should be allowed to own and operate charging stations in those areas. But we believe that the Commission can and should determine that in the interest of encouraging the maximum level of investment in new charging stations, competition should include all parties, including the wires utilities. Such a finding is in the public interest, as it will encourage increased transportation electrification and benefit all customers within Texas.

2. Is the operation of an electric vehicle charging station a retail sale of electricity?

As a general matter, we do not think that the operation of an electric vehicle charging station is a retail sale in Texas. This is especially true where, as will mostly be the case, the station owner or EV customer is buying electricity from the competitive market or from the local franchised utility (in areas without retail competition) and using that electricity for the sole purpose of charging batteries within an EV.

There may be instances which are more complicated, where for example there are storage batteries permanently located at the charging site where the station is buying and selling electricity, or where, for example, there are non-EV loads beyond the charging station meter being supplied by the charging station. In this regard, the charging station is either making a retail sale or reselling power and would likely be classified either as a retail provider or an electric utility under Texas law. In these cases, regulation by the PUCT is likely appropriate, and the Alliance believes that the Commission has ample authority under statute, rule, and precedent to make such rulings, or exceptions, through Commission

Order or rulemaking Alternatively, the Commission may wish to seek legislative clarification as to what types of sales may be exempted either from regulation as a retail sale or regulation as a public utility.

But where service by the charging station is limited to charging batteries within an EV, we do not believe a retail sale results. The Commission, in its determination, should be careful to limit any exemptions to cases that involve only the use of charging stations to recharge EVs.

3. As a matter of policy, how should the cost of the distribution system infrastructure associated with an electric vehicle charging station be recovered in the Texas competitive electric market?

The development of electric vehicle infrastructure in Texas provides many benefits to Texas citizens, including cleaner air, increased mobility options, and specific to utility customers, can if properly managed lower rates to all consumers. Where electricity use for EV charging is managed to occur during off-peak periods, as will usually be the case, then utilities receive extra revenues without a commensurate cost increase, allowing those revenues to be credited against the utility's fixed costs. Thus, better utilization of the electric system resulting from transportation electrification has beneficial rate impacts. Investing in make-ready infrastructure for charging stations, or charging stations themselves, will provide these benefits by reducing range anxiety – one of the major barriers to EV purchases – and thus result in more EVs on the road.

Thus, we believe it can and has been demonstrated that investments in charging infrastructure by the regulated transmission and distribution utilities and the integrated utilities in non-competitive areas benefit all customers and thus should be included considered used and useful in rate base of those utilities. As an alternative, many State Commissions are allowing the creation of some type of regulatory asset in accordance with normal FASB or ASC accounting rules (a tracker, a balancing account, or similar mechanism), which will be later trued up and included a future base rate case proceeding in accordance with normal prudency and other cost tests in the future. The infrastructure will be used to serve customers in much the same way as any other infrastructure investment. The investments might be accounted for as regulatory assets between cases and then considered as part of a general rate case. Not allowing recovery of EV infrastructure investment costs will make it almost impossible for an EV market to develop in Texas.

Some utilities may also propose rebate programs for chargers to encourage their installation. The costs of such programs, where found by the PUCT to be beneficial, should be capitalized and also included in rate base or regulatory asset, as Commissions in Michigan, Minnesota, and elsewhere have done.

Line extension allowances and policies represent another area of possible interest for the Commission, as costs could be prohibitive under some current policies. The Commission may want to consider policies regarding CIAC (Contribution in Advance of Construction), or a waiver of CIAC for certain use cases, in order to stimulate market development. Since situations are different, we suggest the Commission ask utilities under its jurisdiction to review their line extension allowances and policies as they relate to charging stations and apply for revisions where needed.

As stated above, we believe that the Commission has a number of significant regulatory "tools in the toolbox" which it could use to help address the unique needs of this rapidly developing and transforming market. Indeed, the needs of the rapidly growing medium and heavy-duty use cases for electric vehicles may require such tools and mechanisms. The Alliance believes that the Commission has adequate authority under its authorities delegated to it by the Legislature to set just and reasonable rates, and maintain a reliable, efficient and affordable grid. However, we also note that the Commission must keep the principles of rate-making in mind as it addresses the programs of utilities and in designing rates, such as: (1) rates should be cost-based; (2) the beneficiary should primarily pay for the "burden" of increased investments; (3) while social equity and transfers of benefits from one class of customers to another are allowed and permissible, they should be balanced with other rate considerations; and, (4) the regulated utility should receive timely and adequate recovery of investments in these investments similar to other grid investments.

Many of the proposed programs by the regulated utilities in this early stage of EV development will likely be pilot programs to test concepts, gather data, and guide development. We encourage the Commission to use its existing authority to approve programs that advance transportation electrification in Texas which could be one of the leading states in the country for a dynamic and rapidly developing EV industry and ecosystem.

4. Is the answer to Question 3 different for an electric vehicle charging station located in a remote area, primarily for use by long-distance rather than local motorists?

We will leave this question to be answered by those local utilities most affected, although we do not believe that cost recovery for stations should be governed by whether the station is intended for local or long-distance use.

Respectfully submitted this 28th day of August, 2020

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