

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2017-2604382]

Third Party Electric Vehicle Charging; Resale/ Redistribution of Utility Service Tariff Provisions

The Pennsylvania Public Utility Commission (Commission), on March 15, 2018, adopted a proposed policy statement that is intended to encourage the development of electric vehicle (EV) charging infrastructure by clarifying that it is the policy of the Commission that an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale to a residential customer, and requiring that electric distribution companies expressly address EV charging stations in their tariffs.

Public Meeting held
March 15, 2018

Commissioners Present: Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; Norman J. Kennard; David W. Sweet; John F. Coleman, Jr.

Policy Statement on Third Party Electric Vehicle Charging—Resale/Redistribution of Utility Service Tariff Provisions; M-2017-2604382

Proposed Policy Statement

By the Commission:

As the number of electric vehicles (EVs) registered in Pennsylvania and throughout the nation continues to grow, so too does the need for EV charging stations available to the public for recharging EV batteries. The resale/redistribution of electricity by third party EV charging stations in the Commonwealth is governed primarily by electric distribution company (EDC) tariff provisions; however, most EDCs' tariffs do not expressly address EV charging stations.

To support increased investment in EV charging infrastructure, the Commission finds it necessary to eliminate the regulatory uncertainty surrounding the operation of EV charging stations. Accordingly, the Commission issues this Proposed Policy Statement on third party EV charging and the resale/redistribution provisions of the EDCs' tariffs. This Policy Statement is designed to provide regulatory clarity to potential third party EV charging station operators by (1) making clear that it is the policy of the Commission that an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale to a residential consumer and (2) requiring that EDCs expressly address EV charging stations in their tariffs. With this Order the Commission issues the Proposed Policy Statement for comment.

Procedural History

Recognizing that questions exist regarding the impact of Section 1313 of the Public Utility Code, 66 Pa.C.S. § 1313 (hereafter "Section 1313"), and the EDC resale/redistribution tariff provisions on third party EV charging stations and given the increasing need for those stations, the Commission was concerned that regulatory uncertainty would limit the number of operators willing to

enter the Pennsylvania market. As such, on June 15, 2017, the Commission issued a Secretarial Letter seeking Comments on EDC resale/redistribution tariff provisions and how they may affect the operation of third party EV charging stations. Specifically, the Commission sought Comments on the following topics:

- What restrictions, if any, each EDC's existing tariff places on the resale/redistribution of electric power by third party EV charging.
- 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.
- Whether it is appropriate to encourage EDCs across the state to move toward a tariff design, such as that of Duquesne Light Company, which includes provisions permitting the resale/redistribution of electric power for third party EV charging.
- What other resale/redistribution tariff provision designs may aid in establishing clear rules for third party EV charging stations.
- What other regulatory options may aid in establishing clear resale/redistribution rules for third party EV charging stations.

Comments on the Secretarial Letter were received from Advanced Energy Economy (AEE); ChargePoint, Inc.; Citizens Electric Company of Lewisburg, PA and Wellsboro Electric Company (Citizens & Wellsboro); the Pennsylvania Department of Environmental Protection (DEP); Duquesne Light Company (Duquesne); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, FirstEnergy); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); PPL Electric Utilities Corporation (PPL); and the Sierra Club.

Most Commenters agree on three main points: (1) that EV charging stations should not be subject to Section 1313 because they are providing a service, not reselling/redistributing electricity;¹ (2) that the various EDC resale/redistribution tariff provisions create uncertainty and inconsistency throughout the state;² and (3) that eliminating such regulatory uncertainty is a necessary step to encourage the development of EV charging station infrastructure.³ Commenters generally agree that as part of the effort to alleviate regulatory uncertainty, EDCs should be encouraged to adopt tariff provisions expressly addressing third party EV charging stations.⁴ ChargePoint, however, believes that Pennsylvania should move away from tariff-based restrictions because they stifle innovation and competition.⁵ Commenters disagree as to whether those tariff provisions should be uniform.⁶

¹ ChargePoint Comments at 4-5, 9; Citizens & Wellsboro Comments at 4; Duquesne Comments at 2-3; FirstEnergy Comments at 3; the OCA Comments at 2-8, 14, 17; PPL Comments at 4-5; Sierra Club Comments at 1-3.

² AEE Comments at 4-5; Citizens & Wellsboro Comments at 3; Duquesne Comments at 2, 5; FirstEnergy Comments at 4, 5; the OCA Comments at 13-16; PECO Comments at 1-3; PPL Comments at 3-5; Sierra Club Comments at 2-3.

³ AEE Comments at 3-5; Citizens & Wellsboro Comments at 3; Duquesne Comments at 2, 5; FirstEnergy Comments at 4, 5; the OCA Comments at 13-16; PECO Comments at 1-3; PPL Comments at 3-5; Sierra Club Comments at 3-4.

⁴ AEE Comments at 4; the DEP Comments at 2; OCA Comments at 14; PECO Comments at 2-3; PPL Comments at 3-5; Sierra Club Comments at 3-4.

⁵ ChargePoint Comments at 7-9.

⁶ AEE (Comments at 4-5) and the OCA (Comments at 14-16) believe that tariff provisions should be uniform to eliminate uncertainty and promote a competitive marketplace for EV charging service. Duquesne (Comments at 5) takes no position but notes that each EDC has unique characteristics and circumstances to consider.

Further, AEE, Citizens & Wellsboro; Duquesne; FirstEnergy, and PPL assert that it is vitally important that before third party EV charging stations construct facilities, they notify the appropriate EDC to allow the EDC an opportunity to assess the impact of the additional load and take any necessary remedial action.⁷

Other comments addressed the allocation of EDC costs for upgrading its lines to prepare for the installation of charging facilities; the rates third party EV charging stations pay for electricity; and the prices they charge customers.⁸ ChargePoint recommends that the Commission expand the scope of the docket into a formal rulemaking to consider multiple regulatory options and the role of the EDC in relation to EV charging.⁹ Duquesne suggests that the Commission consider drafting regulations to establish clear rules for third party EV charging stations.¹⁰ AEE recommends that the Commission explore the development of a comprehensive rule to express a clear position on both third party and utility owned and operated EV charging stations.¹¹ And the OCA submits that the Commission should consider issuing a policy statement to provide guidance on issues related to third party EV charging stations.¹²

The OCA highlights the distinction between electricity for use as a transportation fuel and electricity as an essential public utility service.¹³ AEE further elaborates on this distinction, stating that third party EV charging station businesses are unique and should be permitted to resell electricity to drivers as needed.¹⁴ In this vein of discussion, Sierra Club submits that an EV driver receiving charging service from a commercial operation is not a residential customer and therefore the provisions of Section 1313 of the Public Utility Code should not apply.¹⁵ The Commission concurs with this position and believes it would be prudent to foster further transparency of this distinction to reduce any uncertainty related to EDC tariff restrictions for resale/redistribution and/or statutory restrictions pursuant to Section 1313. Such transparency can be accomplished, as stated by PPL, through the development of tariff provisions for EV charging stations that establish clear terms and conditions for service.¹⁶ The Commission has already approved at least one tariff provision which helps to reduce regulatory uncertainty in this arena—that provision being Rule 18.1 of Duquesne's tariff.

Based on a review of these comments, the Commission makes the following conclusions:

- The number of EVs as well as the corresponding infrastructure for charging continues to grow throughout the Commonwealth.
- Notification of third party EV charging station locations is vital to EDCs' distribution planning.

Citizens & Wellsboro (Comments at 4-5) are willing to consider uniform provisions. And PPL (Comments at 5) does not believe that uniform EV charging tariff provisions are appropriate given the unique characteristics and circumstances of the EDCs.

⁷ AEE Comments at 3; Citizens & Wellsboro Comments at 3; Duquesne Comments at 4; FirstEnergy Comments at 4-5; PPL Comments at 4-5.

⁸ Citizens & Wellsboro (Comments at 3-4) and FirstEnergy (Comments at 5) address the costs of upgrading EDC infrastructure to accommodate third party EV charging stations. AEE (Comments at 3-5); ChargePoint (Comments at 8-10); Citizens & Wellsboro (Comments at 4); the DEP (Comments at 2-3); FirstEnergy (Comments at 4); the OCA (Comments at 15, 17-18); and PECO (Comments at 2) address the rates third party EV charging stations pay for electricity and the prices they charge consumers.

⁹ ChargePoint Comments at 10-13.

¹⁰ Duquesne Comments at 6.

¹¹ AEE Comments at 2-3.

¹² The OCA Comments at 16-17.

¹³ The OCA Comments at 6-8.

¹⁴ AEE Comments at 3.

¹⁵ Sierra Club Comments at 2-3.

¹⁶ PPL Comments at 4-5.

- Elimination of any regulatory uncertainty is an important step in supporting, and potentially accelerating, the continued build-out of EV infrastructure.

- There is a lack of clarity as to the resale/redistribution restrictions applicable to third party EV charging stations pursuant to EDC tariffs and pursuant to Section 1313 of the Public Utility Code, 66 Pa.C.S. § 1313 (relating to price upon resale of public utility service).

- There is a lack of uniformity among EDC tariffs relating to the application of resale/redistribution restrictions on third party EV charging stations.

- It should be the Commission's policy to remedy this lack of clarity across the Commonwealth for the betterment of the EV marketplace in the Commonwealth.

Discussion

The Commission believes that the question of Section 1313's applicability to third party EV charging stations and the lack of consistency regarding EDC tariff provisions addressing EV charging stations create regulatory uncertainty that may serve as a barrier to their entry into Pennsylvania's EV marketplace. Given the increasing need for EV charging stations, the Commission intends to promote investment in EV charging infrastructure by eliminating this regulatory uncertainty. Accordingly, the Commission is issuing for comment the following Proposed Policy Statement.

A. 52 Pa. Code § 69.3501 (Section 1313 of the Public Utility Code)

(a) Section 1313 of the Public Utility Code, 66 Pa.C.S. § 1313 (relating to price upon resale of public utility services), applies restrictions on the resale of utility service to residential customers.

(b) 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 electric vehicle charging facility that is open to the public for the sole purpose of recharging an electric vehicle battery should not be construed to be a sale to a residential consumer and should therefore not fall under the pricing requirements of 66 Pa.C.S. § 1313 (relating to price upon resale of public utility services).

B. 52 Pa. Code § 69.3502 (Electric vehicle charging tariff provisions)

It is the policy of the Commission that all jurisdictional electric distribution companies should have tariff language providing clarity as to its rules regarding third party owned and operated electric vehicle charging stations that should address at least the following issues:

(1) Reflect the statement of law in 66 Pa.C.S. § 1313, along with this Commission's policy statement that excludes third party electric vehicle charging stations, as described in § 69.3501(b), from the pricing requirements of 66 Pa.C.S. § 1313.

(2) When and how owners and operators of such third party electric vehicle charging services are to notify the electric distribution company of a planned installation of the electric vehicle charging facilities and the information the electric distribution company needs in advance.

Conclusion

With this Order, the Commission is proposing guidance to eliminate regulatory uncertainty faced by third party

EV charging station operators, thereby promoting the construction of EV charging infrastructure in Pennsylvania. This Proposed Policy Statement is intended (1) to clarify that it is the policy of the Commission that an EV charging facility open to the public for the sole purpose of recharging an EV battery should not be construed as a sale to a residential consumer and (2) to require that EDCs expressly address EV charging stations in their tariffs. With this Order the Commission issues the Proposed Policy Statement for comment. *Therefore,*

It Is Ordered That:

1. The Proposed Policy Statement set forth in Annex A is issued for comment.

2. The Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review of its fiscal impact.

3. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Interested parties shall have 45 days from the date of publication of this Proposed Policy Statement in the *Pennsylvania Bulletin* to file written comments referencing Docket No. M-2017-2604382 to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, Second Floor, 400 North Street, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission's e-File System.

5. A copy of this Order, together with Annex A, be served on all jurisdictional electric distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the Office of Attorney General—Bureau of Consumer Protection, and all parties that filed comments at this docket in reply to the Secretarial Letter issued June 15, 2017.

6. The contact persons for this matter are Scott Thomas, (717) 783-2812 or sjthomas@pa.gov, and Joseph Cardinale, (717) 787-5558 or jcardinale@pa.gov, Assistant Counsel in the Law Bureau, and Darren Gill, (717) 783-5244 or dgill@pa.gov, Deputy Director, Bureau of Technical Utility Services.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-321. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

THIRD PARTY ELECTRIC VEHICLE CHARGING; RESALE/REDISTRIBUTION OF UTILITY SERVICE TARIFF PROVISIONS—STATEMENT OF POLICY

§ 69.3501. Section 1313 of the Public Utility Code (66 Pa.C.S. § 1313).

(a) Section 1313 of 66 Pa.C.S. (relating to price upon resale of public utility services) applies restrictions on the resale of utility service to residential customers.

(b) It is 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 electric vehicle charging facility that is open to the public for the sole purpose of recharging an electric vehicle battery should not be construed to be a sale to a residential consumer and should therefore not fall under the pricing requirements of 66 Pa.C.S. § 1313.

§ 69.3502. Electric vehicle charging tariff provisions.

It is the policy of the Commission that all jurisdictional electric distribution companies should have tariff language providing clarity as to its rules regarding third-party owned and operated electric vehicle charging stations that should address at least the following issues:

(1) Reflect the statement of law in 66 Pa.C.S. § 1313 (relating to price upon resale of public utility services), along with this statement of policy that excludes third-party electric vehicle charging stations, as described in § 69.3501(b) (relating to section 1313 of the Public Utility Code (66 Pa.C.S. § 1313)), from the pricing requirements of 66 Pa.C.S. § 1313.

(2) When and how owners and operators of third-party electric vehicle charging services are to notify the electric distribution company of a planned installation of the electric vehicle charging facilities and the information the electric distribution company needs in advance.

[Pa.B. Doc. No. 18-922. Filed for public inspection June 15, 2018, 9:00 a.m.]