

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA**

**Generic Proceeding to Determine the
Commission’s Jurisdiction Over
Electric Vehicle Charging Stations**

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Docket No. 32694

REPLY COMMENTS

I. INTRODUCTION

The Southern Environmental Law Center, Energy Alabama and Gasp reiterate our appreciation for the opportunity to respond to the Alabama Public Service Commission’s (“Commission”) order seeking comments on jurisdictional and deployment scenarios associated with electric vehicle charging stations (EVCS). We also thank the other commenters, all of whom expressed strong support for the state’s transition to an electrified transportation sector. We join with these groups to respectfully encourage the Commission to do what it can to reduce barriers to electric vehicle adoption and ownership in the state.

II. ALL COMMENTERS AGREE THAT EVCS SHOULD NOT BE SUBJECT TO TITLE 37.

All of the commenting parties in this proceeding – the Alabama Office of the Attorney General, Alabama Power Company, the Business Council of Alabama, ChargePoint, Greenlots, Honda Manufacturing of Alabama, Manufacture Alabama, the National Federation of Independent Business, Plug In America and the Southern Alliance for Clean Energy – are in

consensus with our position that an entity owning and/or operating an electric vehicle charging station should not, by virtue of this act alone, be subject to Title 37.¹

As discussed at length in our initial comments, we and other commenters find that EV charging stations do not constitute a plant, property or facility for the generation, transmission or distribution, sale or furnishing of electricity; rather, these companies are offering a discrete and limited charging service. Nor do EV charging companies provide electricity “to or for the public” – on the contrary, they serve a very limited set of customers. For these reasons, we encourage the Commission to follow the sixteen states that have proactively adopted policies to clarify that EV charging activities do not subject independent, non-utility companies providing these services to the jurisdiction of state utility regulators.

III. INVESTMENTS BY ALABAMA POWER SHOULD MAXIMIZE PUBLIC BENEFITS.

We also reiterate the importance of thoughtful investments in the electric vehicle charging space. We believe that the Commission has a role to play in ensuring that this transition occurs in a way that maximizes benefits to the electric system and to the people of Alabama.

In our initial comments, we discussed the myriad benefits that could accrue to electric utilities and their customers as a result of the transition to electric transportation. According to

¹ While we are in general agreement with the other commenters on the central questions posed by this Commission, we do take issue with Alabama Power’s assertion that an EVCS owner/operator who entered into a supply contract or lease with a third party for on-site generation would violate Alabama Code §§ 37-14-30 *et seq.* See Alabama Power’s Initial Comments at page 17, note 39. Nothing in Alabama law supports this assertion. The stated purpose of Alabama’s Service Territories for Electric Suppliers Acts is to avoid unnecessary duplication of power lines across service territories. See Ala. Code §§ 37-14-1 *et seq.*, 37-1-30 *et seq.* (1975). On-site generation does not involve the construction of power lines or any transmission of power off-site. On-site generation operates in the same manner whether it is purchased outright (which Alabama Power takes no issue with) or privately financed. Hence, there is no basis under the law to interfere with customers’ rights to enter private contracts concerning the use and enjoyment of their private properties. Just as the mere operation of EVCS does not transform the operator into an electric utility under Title 37, neither does the decision by a private citizen to power an EVCS on his or her property through diesel, solar or some other form of on-site generation become unlawful simply because the form of generation is financed by someone other than the incumbent monopoly utility.

EPRI, “[t]ransportation electrification **represents the single most significant opportunity to address the utility need for growth and long-term sustainability.**”² However, these benefits will only accrue to consumers if electric charging is properly managed, which will allow a utility’s revenues to be increased without a commensurate increase in grid costs, thereby putting downward pressure on customers’ rates.³ To harness these savings, utilities must incentivize EV charging during times when there is spare grid capacity, such as through time of use rates, which avoids the need for new capital investments and expensive peak power costs.^{4,5}

A. Maximizing the Benefits of Utility Investments

A central inquiry in determining whether investments are appropriate for utilities to include in rates is whether those investments are “devoted to the public service.” *See, e.g., Ala. Gas Corp. v. Ala. Pub. Serv. Comm’n*, 425 So.2d 430 (Ala. 1982); *Birmingham Elec. Co. v. Ala. Pub. Serv. Comm’n*, 254 Ala. 140, 47 So.2d 455 (Ala.1949); *Continental Telephone Co. of the South v. Ala. Pub. Serv. Comm’n*, 427 So.2d 981 (Ala.1982). The Commission can ensure this by requiring that utility investments in EV infrastructure provide net benefits to customers and promote EV adoption while still allowing a competitive market to develop.

² ELECTRIC POWER RESEARCH INSTITUTE, THE VALUE OF TRANSPORTATION ELECTRIFICATION: THREE PRELIMINARY CASE STUDIES OF IMPACTS ON UTILITY STAKEHOLDERS (May 2016), <http://www.chargevc.org/wp-content/uploads/2016/10/6-EPRI%20-%20The%20Value%20of%20Transportation%20Electrification.pdf> (emphasis added).

³ Kintner-Meyer, M., K. Schneider, & R. Pratt, *Impacts Assessment of Plug-In Hybrid Vehicles on Electric Utilities and Regional U.S. Power Grids*, PACIFIC NORTHWEST NATIONAL LABORATORY (Nov. 2007), www.energyenvironment.pnl.gov/ei/pdf/PHEV_Feasibility_Analysis_Part1.pdf.

⁴ *See* Baumhefner, M., R. Hwang & P. Bull, *Driving Out Pollution: How Utilities Can Accelerate the Market for Electric Vehicles*, NATURAL RESOURCES DEFENSE COUNCIL (June 2016), at 6.

⁵ Allison, A. & M. Whited, *Electric Vehicles Are Not Crashing the Grid: Lessons from California*, SYNAPSE ENERGY ECONOMICS, INC. (Nov. 2017), at 1.

The emerging nature of this marketplace makes it even more important for the Commission to give utilities clear guideposts for these investments, such as through the adoption of a standard of review for weighing proposed utility investments in EV charging services.⁶ While we welcome the Commission offering general guidance to regulated utilities as part of this proceeding, we also encourage it to independently evaluate any specific proposals due to the variety of approaches that a utility could take. This can be done in a way that ensures utility investments will be accessible for third party companies, such as through a competitive RFP process.

B. Maximizing the Benefits of Rate Design

Without a price signal, EV drivers are most likely to charge their cars right when they arrive home from work, exacerbating evening peak demand needs and increasing in the need for expensive peak capacity resources. We strongly encourage the adoption of time-of-use rates for EV charging, which have been proven to affect customers' charging times.⁷ There is also a need for further improvements to commercial rates to ensure efficient charging in public places.

We recommend that the Commission propose a technical conference or other forum where these rate design questions can be explored further, which would allow for input from other entities across the state that are working on EV adoption, to ensure that resources are being maximized.

⁶ For a review of other states' balancing tests, *see, e.g.*, Commonwealth of Massachusetts, Department of Public Utilities, D.P.U. 13-182-A, Order on Department Jurisdiction over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging and other Matters (Aug. 4, 2014), at 13; California PUC, Phase 1 Decision Establishing Policy to Expand the Utilities' Role in Development of Electric Vehicle Infrastructure, D. 14-12-079 (filed July 29, 2010); Washington Utilities and Transportation Commission, In the Matter of Amending and Adopting Rules in Docket UE-160799, Policy and Interpretive Statement Concerning Commission Regulation of Electric Vehicle Charging Services (June 14, 2017), at 9.

⁷ *Supra* note at 10.

IV. CONCLUSION

We appreciate the opportunity to weigh in on these important policy questions, and thank the Commission for its consideration of our comments.

Respectfully submitted,



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