

LOUISIANA PUBLIC SERVICE COMMISSION
LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

DOCKET NO. R-36131

In Re: Determination of Commission Jurisdiction Over the Various Methods of Providing Electricity to Electric Vehicles, and the Infrastructure Associated Therewith.

STAFF'S FINAL PHASE II RECOMMENDATIONS

Background & Procedural History

The Louisiana Public Service Commission ("LPSC" or "Commission") Staff filed a *Notice of Proceeding* to open this rulemaking pursuant to an unopposed directive issued at the Commission's July 14, 2021 Business and Executive Session, which directed Staff to:

... open a rulemaking proceeding to determine the Commission's jurisdiction over electric vehicle charging stations or any other method of providing electricity to electric vehicles and whether a non-jurisdictional entity that owns and/or operates a charging station is subject to the Commission's jurisdiction.

Notice of this docket was published in the Commission's Official Bulletin #1252 dated August 20, 2021. Interventions, timely or otherwise, were received from the following: the Alliance for Affordable Energy (the "Alliance"), the Alliance for Transportation Electrification ("ATE"), Americans for Affordable Clean Energy ("AACE"), the Association of Louisiana Electric Cooperatives, Inc. ("ALEC"), ChargePoint, Inc. ("ChargePoint"), Cleco Power LLC ("Cleco Power"), Entergy Louisiana, LLC ("ELL"), the Gulf States Renewable Energy Industries Association ("GSREIA"), the Louisiana Energy Users Group ("LEUG"), Lafayette Utilities System ("LUS"), Pointe Coupee Electric Membership Corporation ("PC Electric"), Southwestern Electric Power Company ("SWEPCO"), Tesla, Inc. ("Tesla"), the Louisiana Automobile Dealers Association ("LADA"), and Walmart Inc. ("Walmart") (hereinafter collectively "Intervenors").

Interested Party status was requested by Brandea Averett, an Attorney with the Policy Service Division of the Louisiana Department of Revenue.

Phase I-jurisdictional determination

After stakeholder engagement, Staff filed its *Proposed Recommendation* on February 23, 2023 recommending that the Commission adopt a definition of an EV charging station and based upon that definition, decline to exert its jurisdiction over EV charging stations. In this filing, Staff also recommended that this docket remain open and a Phase II review occur to consider and potentially issue additional rules on other topics associated with EV charging stations raised by the Intervenor, or discovered by Commission Staff as part of its research, during Phase I. Staff received comments from several intervenors on the proposed recommendation, which included general approval of the proposed recommendation,¹ disagreement with Staff's use of certain terminology within the proposed recommendation,² and some requests for clarification.³

On April 21, 2023, Staff filed its *Final Recommendation*, which considered some of the comments submitted in response to the proposed recommendation. Staff's final recommendation was that the Commission adopt the definition of EV Charging Station as defined therein, and decline, at this time, to exert jurisdiction over EV charging stations based upon the Commission's adopted definition of EV charging stations. Staff's recommendation included the following definition for an EV Charging Station:

¹ See Comments of Entergy Louisiana, LLC in Response to Staff's Proposed Recommendation, at 1-2; Americans for Affordable Clean Energy Comments on Proposed Recommendation, at 4; Louisiana Automobile Dealers Association's Comments on Staff's Proposed Recommendation, at 3; and Comments on Staff's Proposed Recommendation of ChargePoint, Inc. and Tesla, Inc., at 3.

² See Comments on Staff's Proposed Recommendation of ChargePoint, Inc. and Tesla, Inc., at 3-6.

³ See Comments of Entergy Louisiana, LLC in Response to Staff's Proposed Recommendation, at 2-3; Louisiana Automobile Dealers Association's Comments on Staff's Proposed Recommendation, at 1-2; and Comments of Cleco Power LLC, at 2.

An Electric Vehicle Charging Station is a person or entity that:

- (i) Purchases electricity from its electric public utility or municipal electric utility;
- (ii) Furnishes that electricity to the public for compensation exclusively to charge battery electric vehicles and plug-in hybrid electric vehicles; and
- (iii) Is not otherwise a public utility or electric public utility as defined by the Commission and Louisiana statutes.

Staff's final recommendation also required jurisdictional electric utilities to file a proposed rate schedule pursuant to Section 501 of the Commission's General Order dated July 1, 2019 for Commission consideration, as well as to initiate a Phase II review of other issues surrounding EV Charging Stations that were raised during the jurisdictional determination phase, or Phase I.

At the April 26, 2023 Business and Executive Session, Staff's Final Recommendation was adopted by the Commission with a modification to require Staff to:

“[E]stablish a procedural schedule in this docket for determination on Phase 2, including a best efforts deadline of July 31, 2023 for Staff to provide a report and proposed rules on Phase 2, as addressed by Staff in Docket No. R-35462,⁴ including on the ‘circumstances under which a regulated electric utility can own, lease, operate, or control an EV charging station.’ This best efforts deadline is consistent with Staff’s estimated provided in the Notice of Intent filed in Docket No. R-35462 regarding electric service to electric vehicles. Any changes made to the estimate deadline in that docket will apply to the deadline in this docket, with and update of the changes provided to Commissioners.”⁵

General Order dated May 24, 2023 was issued memorializing the Commission’s adoption of a definition of an EV charging station, declining to exert jurisdiction over EV charging stations based on said definition, and agreeing that additional issues should be addressed in a Phase II.

Pursuant to the above, Staff allowed the process in Docket No. R-35462 to proceed, and on August 29, 2023, *Staff's Phase I Report* was filed into said record. Included within that report was

⁴ Louisiana Public Service Commission, ex parte. In re: Rulemaking to Research and Evaluate Customer-Centered Options for all Electric Customer Classes as well as Other Regulatory Environments.

⁵ Commission General Order dated May 24, 2023 (Docket No. R-36131).

a section on “Electric Service for Electric Vehicles,”⁶ which provided an overview of electric charging as it stands in Louisiana, as well as proposed recommendations that the Commission may need to address as EVs become more prevalent in Louisiana. Staff’s report specifically recommended that “any additional discussion or action regarding EV and EV charging station regulation in Louisiana, to the extent such issues may be subject to the regulatory authority of the LPSC, occur in the EV Docket [Docket No. R-36131].”⁷

Phase II - Background

While recommending additional discussion on EV charging stations be had within this Docket, Staff’s Phase I Report did provide recommendations associated with identified key issues from the Commission’s determination on jurisdiction within this docket. Those key issues were: whether residential customers installing EV charges should be required to have a separately installed meter; do incentives exist for customers to install EV charging equipment; should, and to what extent, should an electric utility be able to recover the costs of installing and maintaining EV charging stations; and whether EV charging pricing to the end user should be based on volumetric or time-based pricing. Also during Phase I of this docket, other issues were raised by Intervenors related to EV charging stations. Those issues were potential cybersecurity issues arising from the proliferation of EV charging stations, and how certain EV charging station on-site generating units should be treated for regulatory purposes.

On February 23, 2024, Staff filed the *Notice of Staff Proposed Phase II Recommendation, Request for Comment and Notice of Procedural Schedule*, which included recommendations relative to the following: whether residential customers should be required to have a separately installed meter when installing EV charges; should incentives by the electric utilities exist for

⁶ See Staff’s Phase 1 Report, page 15.

⁷ See Staff’s Phase 1 Report, page 28.

customers to install EV charging equipment; should, and to what extent, should an electric utility be able to recover the costs of installing and maintaining EV charging stations; whether EV charging pricing to the end user should be based on volumetric or time-based pricing; potential cybersecurity issues arising from the proliferation of EV charging stations; and, how certain EV charging station on-site generating units should be treated for regulatory purposes. In response to the February 23, 2024 filing, Staff received comments from the following Intervenors: ATE, Cleco Power, LADA, SWEPCO, the Alliance, ELL, AACE, and Walmart.

On May 3, 2024, Staff filed the *Request for Additional Comments and Notice of Amended Procedural Schedule*, which sought additional, limited comments from Intervenors on a substantial change in Staff's proposed recommendation regarding on-site generating units for EV charging stations. In response to the May 3, 2024 filing, Staff received comments from the following Intervenors: LADA, Cleco Power, AACE, ELL, and SWEPCO.

Phase II-Recommendations

Having considered the comments filed to date in this docket, as well as Staff's independent research, Staff recommends that the Commission adopt the following:

1. Separate meters for EV charging stations - Whether or not utility customers installing EV charging equipment at their homes, workplaces, or other properties will be required to have such EV charging equipment separately metered, submetered, or incorporated into the existing meter.

Staff maintains its proposed recommendation that the choice be left to the customer on whether they decide to separately meter the EV charging equipment. This is not dissimilar to a customer of a water utility requesting a separate meter that does not include a sewerage charge for purposes of watering plants or filling a swimming pool. Customers generally have the option, and it is Staff's opinion that utilities should establish processes to provide that option for customers who install, for personal use, EV charging stations.

2. Incentives to customers to install EV charging equipment - What incentives, if any, might be available to customers to install EV charging equipment.

Staff is not opposed to the type of incentive offered through Entergy Corporation's eTech program, which "promotes the adoption of electric-powered alternatives to many applications that traditionally require fossil fuels."⁸ The eTech program covers ELL's service territory and provides customer support to those customers who purchase select electric equipment, as well as offers cash incentives to those customers who purchase, on their own, at their own expense, select electric equipment. An example of such incentive is a \$250 cash incentive for those customers who install a "residential level 2 EV charger."⁹ While Staff is not opposed, Staff cautions the use of incentives that could be considered a violation of the Commission's General Order dated April 7, 2004 (Promotional Practices Rules).¹⁰ Plainly stated, the Commission's Promotional Practices Rules prohibit a utility from permitting any payment, rebate, or preference for the purpose of enticing, persuading or causing a subscriber or potential subscriber to take service of one utility in preference of another utility.

Should a utility offer an incentive, such incentives shall be clearly stated, including any terms and conditions, and shall be included within the utility's tariff on file with the Commission. Further, Staff recommends that each utility provide a rate schedule that provides customers an option to pay EV charging equipment installation costs over a period of time, similar to an Additional Facilities Charge ("AFC") rate schedule.

⁸ See <https://entergyetech.com/>

⁹ See <https://entergyetech.com/electric-vehicles/>

¹⁰ LPSC, ex parte. In re: *Commission consideration of whether or not the Commission's General Order of March 12, 1974 (Re: Promotional Practices) needs to be amended to exclude practices with respect to franchise agreements.*

The majority of comments received in response to this recommendation were supportive of allowing some sort of incentive,¹¹ with certain caveats and concerns noted, namely: that the caveat regarding promotional practices is an unnecessary addition;¹² that requiring incentives to be included within the tariff on file may limit the ability of a company to implement or modify existing programs;¹³ and that the rules should clarify that any existing incentive programs be grandfathered in should this recommendation be adopted.¹⁴ Staff notes that, while arguably superfluous, the caveat regarding the promotional practices is warranted, as it is intended to ensure compliance with an existing Commission order. Further, while allowing electric utilities to implement or modify incentive programs without changing a tariff on file with the Commission would eliminate delays in such implementation or modification, such risks are outweighed by the Commission's regulatory interest in reviewing and approving incentives offered by regulated utilities. The Commission issued General Order dated July 1, 2019, which requires electric utilities to either provide notice or file requests with the Commission when the company modifies or changes its terms and conditions or rates.¹⁵ There is no reason, and no justification was provided in comments, for an electric utility's incentive program(s) to not go through the Commission's processes. Further, Commission Staff notes that the recommendations set forth herein are not intended to limit existing incentive programs that have been approved by the Commission.

Comments were also received requesting further clarification of this recommendation, specifically as to whether Staff's recommendation would allow incentives for EV charging facilities on both the 'utility side' of the meter and on the 'customer side' of the meter, and further

¹¹ See Responses and Comments of Cleco Power LLC to Staff's Phase II Recommendation at 3, and Louisiana Automobile Dealers Association's Comments on Staff's Proposed Phase II Recommendation at 2.

¹² See Comments of the Alliance for Transportation Electrification (ATE) at 3.

¹³ See Comments of Entergy Louisiana, LLC on Response to Staff's Phase II Proposed Recommendation at 3.

¹⁴ See Comments on behalf of SWEPCO at 2.

¹⁵ See LPSC, ex parte. Docket No. R-34738, In re: Proceeding to Establish Rules Regarding Electric Utility Tariff Filings and Related Review, Including Site Specific Rate Filings.

noting objection to incentive programs on the ‘customer side’ of the meter.¹⁶ Traditionally, the Commission does not regulate activities on the ‘customer side’ of the meter; however, that is due to the jurisdictional utility not involving itself with activities on the ‘customer side.’ As proposed, any incentive provided by a jurisdictional utility must be included in the utility’s tariff, and subject to review and approval by the Commission.

Therefore, should a jurisdictional utility decide to offer incentives on the ‘customer side’ of the meter, the Commission must review and approve such incentive. Further, Staff is unaware of any ‘customer side’ program currently being proposed by a regulated utility. Staff believes that any determination as to whether such a program should be permitted is more appropriately determined in a future docketed proceeding on a case by case basis. Notwithstanding the foregoing, Staff recommends that the Commission prohibit regulated utilities from implementing incentive programs that would include the installation of an EV charging device by the regulated utility. This prohibition is consistent with both Staff’s position in Docket No. R-35462, and its recommendation *infra*, which limits LPSC-jurisdictional utilities from owning, leasing, operating, or controlling EV charging stations.

3. Electric Utility’s ability to recover costs - To what extent an electric utility might be able to recover the costs of installing and maintaining EV charging stations, assuming the LPSC allows electric utilities to participate in providing EV charging stations to retail customers.

To date, through its General Order dated May 24, 2023, the Commission has declined to exert jurisdiction over electric vehicle charging stations. Consistent with that direction, Staff recommends that LPSC-jurisdictional utilities not be allowed to own, lease, operate, or control EV charging stations. Nevertheless, such prohibition would not limit a utility’s unregulated affiliate from owning, leasing, operating, or controlling an EV charging station within Louisiana, provided

¹⁶ See Americans for Affordable Clean Energy Comments on LPSC Staff Proposed Phase II Recommendation at 7-9.

that the utility's affiliate is subject to the same rules as any other entity installing an EV charging station. An affiliate of an LPSC-jurisdictional utility could own, lease, operate, or control an EV charging station provided that none of the costs of those operations are included in regulated retail rates.¹⁷

Should an LPSC-jurisdictional utility decide to have an affiliate own, lease, operate, or control an EV charging station, Staff recommends that the Commission require the jurisdictional utility to file an annual report showing all allocations of costs and expenses associated with or otherwise subsidizing the affiliate's owning, leasing, operating, or controlling of the EV charging station to ensure that jurisdictional retail customers are not being allocated any costs associated with the affiliate's owning, leasing, operating, or controlling of the EV charging station(s).

Comments received in response to this recommendation ranged from agreement with this approach,¹⁸ to disagreement,¹⁹ with various arguments offered against the proposed prohibition, including the unique ability of regulated utilities to deploy EV charging stations in underserved areas,²⁰ to policy positions based on regulatory treatment in other jurisdictions.²¹ Commission Staff, having considered these concerns, nevertheless believes that the policy position presented in its proposed recommendation, is appropriate. This recommendation is consistent with Staff's

¹⁷ In *Staff's Phase I Report* filed in Docket No. R-35462, Staff identified several key issues that should be considered in the current rulemaking docket, and also provided initial recommendations on those issues. Specifically, Staff recommended that regulated utilities not be allowed to "maintain and operate" EV charging stations, and recommended circumstances under which an affiliate could "maintain and operate" an EV charging station. Staff notes that the phrase "maintain and operate" does not mirror the language utilized in the current EV rulemaking, both in the Phase I portion of this docket, as well as in the proposed recommendations contained herein, and that this variable language was result of an omission, and by design. As such, Staff utilizes the terms "own, lease, operate, or control" herein.

¹⁸ See Louisiana Automobile Dealers Association's Comments on Staff's Proposed Phase II Recommendation at 2, Americans for Affordable Clean Energy Comments on LPSC Staff Proposed Phase II Recommendation at 4.

¹⁹ See Comments of the Alliance of the Alliance for Transportation Electrification (ATE) at 5-6, Responses and Comments of Cleco Power LLC to Staff's Phase II Recommendation at 4, Comments on behalf of SWEPCO at 3, and Comments of Entergy Louisiana, LLC on Response to Staff's Phase II Proposed Recommendation at 4-9.

²⁰ *Id.*

²¹ See Comments of the Alliance of the Alliance for Transportation Electrification (ATE) at 5-6, and Comments of Entergy Louisiana, LLC on Response to Staff's Phase II Proposed Recommendation at 7-9.

position in a separate docket,²² and is in the public interest by ensuring a balance between the interests of ratepayers -by ensuring costs of operating EV charging stations are not included in regulated retail rates - with the interests of regulated utilities - by not limiting affiliated companies from owning, leasing, operating, or controlling EV charging stations. Notwithstanding the foregoing, should a utility believe the public interest is served by its owning, leasing, operating or controlling EV charging stations, the Commission retains its authority to review and make such a determination in future dockets.

4. Volumetric vs. time-based pricing - Whether or not electric vehicle charging pricing to the end user should be based on volumetric or time-based pricing.

The Commission has, to date, declined to exert jurisdiction over electric vehicle charging stations, and Act No. 293 of the 2023 Regular Session of the Louisiana Legislature placed the measuring devices at the point of sale under the jurisdiction of the Louisiana Department of Agriculture, Division of Weights and Measures. Accordingly, Staff's opinion is that pricing determinations are best handled by the Louisiana Department of Agriculture & Forestry.

5. Cybersecurity issues

Issues regarding cybersecurity as it relates to EVs are well documented, with EV technology creating cybersecurity risks for EV owners and operators, EV charging stations, and the electric grid in general. With these concerns in mind, Staff recommends adopting the following reporting requirement should a regulated utility, or its affiliate be the subject of a cyberattack relating to its EV charging technology. Should a regulated utility or an affiliate of a regulated utility be the subject of a cyberattack relating to its EV charging technology, the utility shall notify the Commission of such cyberattack within thirty days of being made aware of the event. Such

²² See Staff's Phase I Report in Docket No. R-35462, at 29.

notification may be made confidentially pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure. The Commission shall review such notices and determine what action, if any, the Commission may take under its jurisdiction to protect ratepayers and the utility.

In addition, in consideration of the recognized danger and concern of supply chain issues with respect to the purchase of EV charging stations or their component parts manufactured in sovereign nations recognized to be the source of cybersecurity risks, parties are asked to comment upon and identify the programs and procedures by which they comply or intend to comply with applicable statutory and/or regulatory prohibitions against the purchase or utilization of such equipment with respect to EV charging stations and /or their component parts, and the means by which they intend to minimize the risk, if any, resulting from the inter-connectivity and inter-communication by and between EVs, EV charging stations, EV charging stations host sites, the electric grid, and other critical infrastructure.

Comments received in response to this recommendation were varied, with Cleco Power noting no objection to the proposed reporting requirements,²³ and SWEPCO requesting clarification on the type of event that would require such a notification, as well as requesting that the reporting deadline be extended to 60 days to provide more accurate reporting.²⁴ Staff notes that the reporting requirement recommended herein would be triggered when a utility or affiliate is made aware of a cyberattack on the utility, or affiliate's, EV charging technology. Further, while providing a 60-day time frame could arguably provide more accurate information, the need for the Commission to quickly be made aware of any cyberattack outweighs the risk of the reported information being less accurate. This concern is further mitigated by that fact the Commission should be provided of more accurate information as it is available. For these reasons, Staff continues to recommend that

²³ Responses and Comments of Cleco Power LLC to Staff's Phase II Recommendation at 6.

²⁴ Comments on behalf of SWEPCO at 4.

its 30-day reporting requirement remain in place. Finally, in response to concerns raised by LADA,²⁵ Staff notes that the proposed recommendation herein applies to regulated utilities and affiliates.

6. On-site generating units for EV charging stations

In its February 23, 2024 Proposed Phase II Recommendation, regarding on-site generating units for EV charging stations, Staff recommended the following:

It is likely that certain EV charging stations will have different approaches to not only providing accessibility to EV charging stations, but also to the use of on-site generation. As such, Staff cannot provide rules or parameters to on-site generating units without knowing the specifics of any charging station and its anticipated use of on-site generation at this time. However, Staff does believe that significant jurisdictional concerns would be implicated should any on-site generation be utilized as a primary source of generation, as opposed to back-up generation, or when power provided by such on-site generation is attempted to be sold back into the electric grid. Should a particular company believe it may be violation of the Commission's rules if it begins on-site generation, it can seek Commission clarification or seek a jurisdictional determination in a separate docket on a case by case basis.

Comments received in response to the initial proposed recommendation included support,²⁶ disagreement with Staff's proposal to handle on-site generating questions on a case by case basis at a future date,²⁷ as well as alternate proposals for how on-site generation should be treated.²⁸ In response to these comments, Staff issued the May 3, 2024 *Request for Additional Comments and Notice of Amended Procedural Schedule*, which included an updated proposed recommendation solely on this provision. This amended provision recommended the following:

Recognizing the varied opinions related to this issue, the need to provide additional guidance, and the general concerns with on-site generation being the

²⁵ See Louisiana Automobile Dealers Association's Comments on Staff's Proposed Phase II Recommendation at 3.

²⁶ See Americans for Affordable Clean Energy Comments on LPSC Staff Proposed Phase II Recommendation at 9-10.

²⁷ See Comments of the Alliance of the Alliance for Transportation Electrification (ATE) at 7, and Comments of Entergy Louisiana, LLC on Response to Staff's Phase II Proposed Recommendation at 11.

²⁸ See Responses and Comments of Cleco Power LLC to Staff's Phase II Recommendation at 6-7, Louisiana Automobile Dealers Association's Comments on Staff's Proposed Phase II Recommendation at 4, Comments on behalf of SWEPCO at 4.

primary source of generation, Staff recommends the Commission prohibit customer owned, grid-connected, on-site generation as the primary source for generation of EV Charging Stations. In other words, an owner of an EV Charging Station is prohibited from generating its own power in order to serve EV Charging Stations when it also has the ability to sell excess back to the incumbent utility or market, *i.e.*, being connected to the grid. It is Staff's opinion, in that scenario, the owner could be considered a public utility subject to the Commission's jurisdiction. Staff further recommends the Commission allow owners of EV Charging Stations to maintain customer owned back-up storage generation in order to have the ability to provide EV charging when power is not available from the grid. In Staff's opinion, allowing back-up generation is in the public interest to ensure resilience and reliability in times of greater need.

Should a particular company want clarification whether its particular circumstance would be in violation of the Commission's rules, it can seek Commission clarification or seek a jurisdictional determination in a separate docket.

Comments received in response to the updated proposed recommendation included support with certain revisions and/or clarifications,²⁹ as well as opposition.³⁰ Having reviewed the comments submitted, the AACE pointed to the Commission's General Order 09-19-2019 (R-33929) Corrected (the "Net Metering Rules") as existing Commission rules for solar generation that EV charging stations must follow. Staff agrees. Therefore, Staff recommends that the Commission recognize that, for the purposes of regulation of on-site solar generating units for EV charging stations, the Commission's Net Metering Rules shall apply to any person or entity that owns and/or operates EV charging stations. Should an EV charging station wish to pursue on-site generation from another energy source, such will be decided on a case-by-case basis by the Commission.

Conclusion

²⁹ See Louisiana Automobile Dealer's Association's Response to LPSC Staff's Request for Additional Comments on Proposed Phase II Recommendation at 1-2, Comments of Cleco Power LLC to Staff Request for Additional Comments at 2-3, Comments of Entergy Louisiana, LLC in Response to Staff's Request for Additional Comments at 2, and Comments on Behalf of SWEPCO at 2-4.

³⁰ See Americans for Affordable Clean Energy Response to Staff Request for Additional Comments at 3-8.

Based on the information provided to date in this Docket, as well as Staff's own independent research, Commission Staff recommends that the Commission adopt the recommendations listed herein.

Respectfully Submitted,
LPSC STAFF



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CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of July 2024, served copies of the foregoing pleading upon all known parties of this proceedings by electronic mail.



Justin Bello