

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER 09-10-2024 (R-36131)

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.

(Decided at the August 14, 2024 Business and Executive Session.)

ORDER

Background

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 (“AAACE”), 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.

After stakeholder engagement, Staff filed its *Proposed Recommendation* (“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 the Proposed Recommendation, 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 Intervenors, or discovered by Commission Staff as part of its research, during Phase I. Staff received comments from several intervenors on the proposed recommendation.

On April 21, 2023, Staff filed its *Final Recommendation* (“Final Recommendation”), which considered some of the comments submitted in response to the Proposed Recommendation. Staff’s Final Recommendation recommended that the Commission adopt the definition of EV Charging Station as defined therein, and decline, at the present time, to exert jurisdiction over EV charging stations based upon the Commission’s adopted definition of EV charging stations. The 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, 2019¹ 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, the Final Recommendation was adopted by the Commission with certain modifications. Subsequently, General Order dated May 24, 2023 was issued memorializing the Commission’s adoption of the recommendations in the Final Recommendation, and agreeing that additional issues should be addressed in a Phase II.

Pursuant to the above, Staff allowed the process in Docket No. R-35462² to proceed, and on August 29, 2023, *Staff’s Phase I Report* (“Phase I Report”) was filed into said record. Included within the Phase I Report was a section on “Electric Service for Electric Vehicles,” 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].”

While recommending additional discussion on EV charging stations be had within this Docket, 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,

¹ R-34738, In re: Proceeding to Establish Rules Regarding Electric Utility Tariff Filings and Related Review, Including Site Specific Rate Filings.

² R-35462, In re: Rulemaking to Research and Evaluate Customer-Centered Options for all Electric Customer Classes as well as Other Regulatory Environments.

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 aforementioned Phase II issues. 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.

Jurisdiction

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Section 21 of the Louisiana Constitution and La. R.S. 45:1163(A)(1).

Article IV, Section 21 of the Louisiana Constitution provides in pertinent part:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

La. R.S. 45:1163 provides in pertinent part:

A.(1) The Commission shall exercise all necessary power and authority over any street railway, gas electric light, heat, power waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by and service furnished by such public utilities.

Discussion

Having considered the comments filed to date in this docket, as well as Staff's independent research, Staff recommended 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 maintained its proposed recommendation that the choice be left to the customer on whether they decide to separately meter the EV charging equipment.

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

Staff recommended that the Commission not oppose the offering of certain incentives by utilities for the installation of EV charging facilities and equipment, while noting that the use of incentives that could be considered a violation of the Commission's General Order dated April 7, 2004 (Promotional Practices Rules) would be prohibited.

Staff also recommended that, 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 recommended 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.

Staff also recommend that, should a jurisdictional utility decide to offer incentives on the 'customer side' of the meter for the installation of EV charging equipment, the Commission must review and approve such incentive. Notwithstanding the foregoing, Staff recommended that the Commission prohibit regulated utilities from implementing incentive programs that would include the installation of an EV charging device by the regulated utility.

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 recommended 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 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.

Should an LPSC-jurisdictional utility decide to have an affiliate own, lease, operate, or control an EV charging station, Staff recommended 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). 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 & Forestry, Division of Weights and Measures. Accordingly, Staff recommended that the Commission recognize that these pricing determinations shall be handled by the Louisiana Department of Agriculture & Forestry.

5. Cybersecurity issues

Staff recommended 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 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.

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.

In response to Intervenor 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 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.

After reviewing the comments submitted in response to the May 3, 2024 filing, 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 agreed and therefore recommended 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.

Commission Action

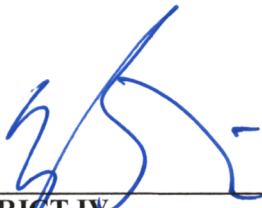
Staff's Final Phase II Recommendation was considered at the Commission's August 14, 2024 Business and Executive Session. After discussion, on motion of Vice Chairman Lewis, seconded by Commissioner Greene, with Chairman Francis and Commissioner Skrmetta concurring, and Commissioner Campbell temporarily absent, the Commission voted to adopt the Final Phase II Recommendation filed into the record on July 26, 2024.

IT IS THEREFORE ORDERED THAT:


- 1) Staff's Final Phase II Recommendation filed on July 26, 2024 is adopted, as reflected in Attachment A hereto; and,
- 2) This order is effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**
September 10, 2024





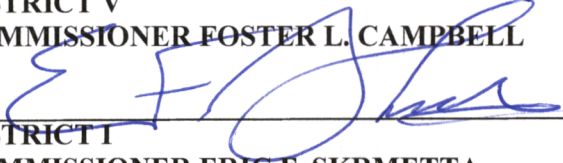
DISTRICT IV
CHAIRMAN MIKE FRANCIS



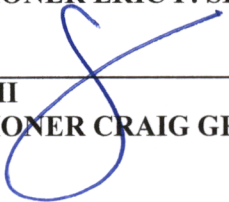
DISTRICT III
VICE CHAIRMAN DAVANTE LEWIS

ABSENT


DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL



DISTRICT I
COMMISSIONER ERIC F. SKRMETTA



DISTRICT II
COMMISSIONER CRAIG GREENE


BRANDON M. FREY
SECRETARY

ATTACHMENT A

RULES REGARDING ELECTRIC VEHICLE CHARGING STATIONS

**LOUISIANA PUBLIC SERVICE COMMISSION
RULES REGARDING ELECTRIC VEHICLE CHARGING STATIONS**

PURPOSE

The Louisiana Public Service Commission (“Commission” or “LPSC”) hereby promulgates the following rules (the “Rules”) regarding its jurisdiction over electric vehicle charging stations, as defined herein. Further, these Rules also provide the regulatory requirements for ancillary issues arising from the interaction of regulated electric utilities and electric vehicle charging stations or electric vehicle charging equipment.

AUTHORITY

Article IV, Section 21 of the Louisiana Constitution of 1974 provides the Commission with the following authority:

B. **Powers and Duties.** The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by Law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by Law.

Consistent with the above authority, the Commission has adopted rules and regulations that apply to utilities in general, and in some instances Electric Utilities specifically. These rules and regulations are contained in individual Commission Orders memorializing the rules and regulations. The blanket authority to regulate public utilities granted above, however, is not absolute, as it is subject to the following limitations regarding utilities owned, operated or regulated by a political subdivision:

C. **Limitation.** The Commission shall have no power to regulate any common carrier or public utility owned, operated, or regulated on the effective date of this constitution by the governing authority of one or more political subdivisions, except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This paragraph shall not apply to safety regulations pertaining to the operation of such utilities.

SECTION 101. Definition

Electric Vehicle (“EV”) Charging Station- 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.

SECTION 201. Commission Jurisdiction Over EV Charging Stations

Based on the unique business model of EV Charging Stations, most notably that they furnish a sale for resale of electricity, and are not primarily engaged in the generation, transmission, distribution, and/or sale of electricity, the Commission declines to exert, at this time, jurisdiction over EV Charging Stations based upon that definition.¹ This finding in no way modifies the Commission’s regulation over any other form of furnishing electric services.

SECTION 301. Electric Public Utility Rate Schedule Filing Requirement

All jurisdictional electric utilities are required to submit a proposed rate schedule pursuant to Section 501 of General Order dated July 1, 2019 for Commission consideration. Such filing shall be analyzed in a manner consistent with the aforementioned general order.

SECTION 401. Customer metering for EV charging equipment

Customers of an Electric Public Utility installing EV charging equipment at their homes, workplaces, or other properties may decide whether such EV charging equipment will separately metered, submetered, or incorporated into the existing meter.

SECTION 501. Incentives to customers to install EV charging equipment

A. Electric Public Utilities may make incentives available to customers to install EV charging equipment. 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.

¹ Act No. 293 of the 2023 Regular Session of the Louisiana Legislature placed the volumetric measuring devices at the point of sale under the jurisdiction of the Louisiana Department of Agriculture & Forestry, Division of Weights and Measures. Accordingly, such pricing determinations shall be determined by the Louisiana Department of Agriculture & Forestry.

- B. Incentive programs that would include the installation of an EV charging device by an Electric Public Utility are prohibited.
- C. Incentives made available by an Electric Public Utility for the installation of EV charging equipment must comply with, or not be in violation of, the Commission’s General Order dated April 7, 2004 (Promotional Practices Rules).

SECTION 601. Electric Public Utility’s ability to participate in providing EV charging stations to retail customers

- A. LPSC-jurisdictional Electric Public Utilities shall not be allowed to own, lease, operate, or control EV charging stations. Nevertheless, this prohibition does not limit a Utility’s unregulated affiliate from owning, leasing, operating, or controlling an EV charging station within Louisiana, provided 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 may own, lease, operate, or control an EV charging station provided that none of the costs of those operations are included in regulated retail rates.
- B. Should an LPSC-jurisdictional Electric Public Utility decide to have an affiliate own, lease, operate, or control an EV charging station, such Utility shall 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).

SECTION 701. Cybersecurity reporting requirements

Should a Regulated Public Utility or its affiliate 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 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.

SECTION 801. On-site generating units for EV charging stations

For the purposes of regulation of on-site solar generating units for EV charging stations, the Commission’s General Order dated 09-19-2019 (R-33929) Corrected (the “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 shall be decided on a case-by-case basis by the Commission.