**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Investigation into Electric Vehicle Charging Service in this State. | ))) | Case No. 20-434-EL-COI |

**REPLY COMMENTS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

In initial comments, the vast majority of parties, including the Office of the Ohio Consumers’ Counsel (“OCC”) agreed that entities do not become utilities under Ohio law solely by virtue of owning or operating an electric vehicle charging station. The electric distribution utilities (AEP Ohio, FirstEnergy, and Duke) generally agreed with this. But utilities argued that they should also be allowed to own charging stations.[[1]](#footnote-2) The utilities are wrong both by law and reason. Electric vehicle charging is not a utility service under Ohio law.[[2]](#footnote-3)

Utilities should not own and charge their monopoly customers money for electric vehicle charging stations. Utility ownership of charging stations is bad for customers because it increases their distribution utility bills and turns them into investors (which customers are not). It is also bad for the market because it allows utilities to subsidize such operations with the monopoly utility customers’ money that they take while competing against other businesses that don’t have the benefit of such subsidies. It is also unlawful because the service is not a utility service. Further, a transfer of business risk and the ability to subsidize costs from monopoly customers is unreasonable and contrary to Ohio law (4928.02(H)).

The Public Utilities Commission of Ohio (PUCO) should conclude that utility ownership of charging stations would be unlawful. And it should conclude that consumers’ demand for electric vehicle charging stations must be exclusively met through the competitive market (subject to the potential for very light-touch oversight for any essential consumer protections that are needed to prevent any abuses of consumers).

# I. REPLY COMMENTS

## A. To protect consumers and comply with law, distribution utilities regulated by the PUCO should not own electric vehicle charging stations.

A recurring theme in the electric utilities’ initial comments (among other parties) is that distribution utilities regulated by the PUCO should be allowed to own electric vehicle charging stations. FirstEnergy, for example, stated that “the Commission must recognize EDUs’ right to own and operate EV charging stations.”[[3]](#footnote-4) AEP Ohio similarly stated that the “outcome of this proceeding, and any further action by the Commission regarding this topic, should expressly recognize and authorize ownership of EV charging infrastructure by Ohio EDUs.”[[4]](#footnote-5) Duke Energy recommended that “the Commission remain open to the development of a marketplace for [electric vehicle charging stations] that may be owned and maintained by the utility.”[[5]](#footnote-6) (Dayton Power and Light did not file initial comments.)

But allowing distribution utility ownership of electric vehicle charging stations is misguided because it could harm customers and would negatively impact the competitive market for such services. It is also inconsistent with the law, including R.C. 4928.02(H), which provides that it is state policy to avoid anticompetitive subsidies. The PUCO should reject any attempt by regulated utilities to own charging stations, which could unfairly transfer business risk and increase costs to their distribution customers. Moreover, customers that cannot afford an electric vehicle should not pay subsidies to benefit those who can.

**1. Allowing distribution utilities regulated by the PUCO to own charging stations and charge monopoly customers for them is bad for consumers and competitive markets.**

Ohio’s 1999 energy law (Senate Bill 3) deregulated Ohio’s energy markets. The law recognized that customers are best served by competitive markets, where businesses competing with each other will provide the best prices and the greatest innovation for consumers. This policy is reflected in R.C. 4928.02(H), which provides that it is state policy to “avoid[] anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.” Regulated monopolies, unlike business operating in the competitive market, are suited only to those limited situations where the competitive market fails.

Under Ohio law, the distribution of electricity is provided by regulated distribution utilities because the logistics of providing that service (an elaborate distribution system of poles and wires covering vast geographic areas) does not allow for effective competition. In contrast, the 1999 law recognized that the generation of electricity can be provided through markets (instead of monopoly utilities) where power plants compete with each other to provide the lowest prices and greater innovation to consumers. Electric vehicle charging stations are no different.

There is nothing about the market for electric vehicle charging stations that requires regulated monopolies to be involved. Businesses that want to enter the market for electric vehicle charging stations can do so and compete with each other. They can compete freely by choosing the best locations, developing the best technology, marketing their products to customers demanding their product, and competing on price. In short, there is no evidence of a market failure and no reason for the government to step in and interfere with the development of a competitive market by introducing customer-funded monopoly subsidies.

When monopolies are allowed to use their captive customers’ funds to enter otherwise competitive markets, the competitive market is harmed, and the captive customers are harmed. The competitive market is harmed because non-monopolies now have a competitor whose investment in electric vehicle charging stations is being subsidized. The monopoly can undercut the competition because it is virtually guaranteed a return on its investment through rate of return regulation, whereas market actors have no such guarantee. Ultimately, the monopoly utilities could drive non-monopoly competitors out of business. Under that scenario, the monopoly utilities could then exert market power to artificially increase the price for electric vehicle charging. Or even worse, if competitors know that monopoly utilities have entered the market for electric vehicle charging stations, those competitors won’t enter the market in the first place. This means fewer options for customers, less competition, reduced innovation, and higher prices. No one wins, other than the monopoly utility that profits on its investment (with the profit set at the latest PUCO-authorized rate of return).

Allowing monopoly utility ownership of electric vehicle charging stations also unfairly shifts the risk of economic success to captive customers. In a competitive market, businesses invest and assume the risk and the reward of that investment. If the business is successful, they profit from their investment. If the business fails, profits are not earned. When monopolies have access to captive customer funds, the risks are largely borne by customers, who pay the utility for a return on and of the utility investment. In other words, customers take on the risk, but the utility profits. It’s a lose-lose situation for captive customers.

Markets will serve customers well and are preferred over monopolies for competitive electric vehicle charging stations. Monopoly distribution utilities should not be allowed to own them.

**2. The transportation industry, and not utilities, should bear the foremost responsibility for developing the market for electric vehicle charging stations.**

A common refrain among those advocating for utility ownership of electric vehicle charging stations is the “chicken and egg” argument. The argument goes like this: the electric vehicle market won’t take off until there are enough charging stations, but no one will build charging stations until there are enough electric vehicles on the road to use them. So, according to this argument, we need the government to step in and allow distribution utilities regulated by the PUCO to be the ones developing a network of charging stations that will ultimately drive electric vehicle sales.

Various parties made some form of this argument in their initial comments. Duke Energy, for example, commented that electric utilities must be involved because “the electric vehicle market will have difficulty developing to its full potential until there is a solid foundation of charging infrastructure.”[[6]](#footnote-7) The environmental parties, citing the PUCO’s PowerForward report, noted that “lack of charging infrastructure is a critical barrier to EV adoption.”[[7]](#footnote-8)

This argument does not withstand scrutiny. If there is a chicken and egg problem, customer-funded monopoly utility ownership of charging stations is not the solution. To the contrary, the solution lies in the private market, including automobile manufacturers.

There is little doubt that automobile manufacturers will be one of the primary beneficiaries of the growing market for electric vehicles. It is in their interest to sell more vehicles, so it is also in their interest to see that electric vehicle charging stations are built and placed in locations that will maximize electric vehicle sales. To be sure, some manufacturers are proactive in building out a network of charging stations. As Tesla explained in its comments in this case, it has “made significant investments in charging stations to support the transition to electric transportation” and it “owns and operates an extensive Supercharger network of direct current fast chargers.”[[8]](#footnote-9) If there is a perceived or actual dearth of well-placed charging stations, then it is up to the market to fill that gap. Electric vehicle automobile owners and other manufacturers looking to sell more vehicles should be the ones stepping up. Monopoly utility customers should not subsidize the development of the transportation industry.

If the utilities want to be in the electric vehicle charging business, they should be required do so through a separate shareholder-funded unregulated company that would compete on a level playing field against other providers. The separate unregulated entity would not receive monopoly customer funding and would be subject to corporate separation law and rules in Ohio.

**3. Utilities have an incentive to build charging stations in suboptimal locations that require distribution upgrades so that they can increase their rate base and the amount they charge their customers. This unwelcome result would be a form of utility “gold-plating” that improperly saddles consumers with higher charges related to projects that are not “used and useful” for them under R.C. 4909.15(A)(4).**

In its initial comments, AEP Ohio states that utilities are “uniquely positioned to choose appropriate charging locations.”[[9]](#footnote-10) It may be true that utilities are uniquely positioned to choose charging locations that best serve the *utility’s* interests, but they are not best positioned to choose charging locations that best serve the public interest.

As AEP itself notes, an electric vehicle charging station might “require significant distribution system planning and upgrades depending on the location and the availability of delivery facilities that are already at that location.”[[10]](#footnote-11) This shows precisely why utilities should *not* be in charge of deciding on the location of charging stations. Utilities have an incentive to place charging stations in locations that require the most distribution system upgrades. That is a form of utility gold-plating, which costs Ohioans money for projects that are not “used and useful” to them under R.C. 4909.15(A)(4). After all, when the utility upgrades its distribution system to accommodate a charging station (even if not warranted by the competitive market), the utility is making a capital investment and then charging customers for a return on and of that investment. In contrast, it is in customers’ interests to build charging stations in locations that would not require substantial distribution upgrades (for example, locations where there is already excess local capacity).

# II. CONCLUSION

Competitive markets will best serve customers for electric vehicle charging stations. Competitive businesses should be allowed to use their own money (not consumers’ money) to invest in the market for electric vehicle charging stations without PUCO regulation (other than very light touch oversight to protect against any abuse of consumers). Electric vehicle charging is not a utility service under Ohio law.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of these Reply Comments was served on the persons stated below via electronic transmission, this 7th day of April 2020.

 */s/ Christopher Healey*

 Christopher Healey

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Comments of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (Mar. 23, 2020) (the “FirstEnergy Comments”); Comments of Duke Energy Ohio, Inc. (Mar. 23, 2020) (the “Duke Comments”); Initial Comments of Ohio Power Company at 2 (Mar. 23, 2020) (the “AEP Comments”). Dayton Power and Light did not file initial comments. [↑](#footnote-ref-2)
2. R.C. 4905.02, 4905.03. [↑](#footnote-ref-3)
3. FirstEnergy Comments at 2. [↑](#footnote-ref-4)
4. AEP Comments at 2. [↑](#footnote-ref-5)
5. Duke Comments at 2. [↑](#footnote-ref-6)
6. Duke Energy Comments at 3. [↑](#footnote-ref-7)
7. Environmental Comments at 12 (quoting the PUCO as saying “[C]orridor route charging stations present a chicken and egg conundrum. The private market will not invest in corridor charging until EV traffic merits the investment, yet the development of EV traffic may be suppressed until investment in corridor charging stations occurs.”). [↑](#footnote-ref-8)
8. Initial Written Comments of Tesla, Inc. at 2 (Mar. 24, 2020) (the “Tesla Comments”). [↑](#footnote-ref-9)
9. AEP Comments at 4. [↑](#footnote-ref-10)
10. AEP Comments at 4. [↑](#footnote-ref-11)