

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's |) | |
| Investigation into the Implementation of |) | |
| the Federal Infrastructure Investment and |) | Case No. 22-1025-AU-COI |
| Jobs Act's Electric Vehicle PURPA |) | |
| Standard |) | |

COMMENTS OF INTERSTATE GAS SUPPLY, LLC.

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February 1, 2023

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COMMENTS OF INTERSTATE GAS SUPPLY, LLC.

I. Introduction

In this proceeding, the question for the Public Utilities Commission of Ohio ("Commission") to determine is whether it is appropriate to implement a new standard in the Public Utility Regulatory Act ("PURPA") that recommends the use of ratemaking measures designed to promote greater electrification of the transportation sector. Under federal law governing this proceeding, the Commission may either adopt or reject the standard or elect its own standard. Even if the Commission determines that it is reasonable to implement the new PURPA standard, that determination would not and cannot alter the limited scope of the Commission's authority. Therefore, if the Commission determines to implement the standard, it should clarify that nothing in its determination is intended to expand the Commission's jurisdiction or the limited role that electric distribution utilities have in the support of electric vehicle ("EV") adoption.

II. In this proceeding, federal law permits the Commission to adopt or reject the proposed standard or adopt its own standard

PURPA contains standards respecting ratemaking that the Commission may elect to implement. 16 U.S.C. § 2621(d). Section 2621(a) of Title 16 directs the Commission to consider a standard and “make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter.”¹ This division further provides, “Nothing ... prohibits any State regulatory authority ... from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.” The Commission may decline to implement a standard if it provides the reasons for doing so in writing. 16 U.S.C. § 2621(c)(1)(B) and (2).² Further, nothing prohibits the Commission, under state law, from adopting a different standard from a recommendation found in federal law. 16 U.S.C. § 2627(b).

III. The measures set out in Section 2621(d)(21) are not a predicate for electric distribution utilities or the Commission to expand their roles in the electrification of the transportation sector

The new PURPA standard provides:

Each State shall consider measures to promote greater electrification of the transportation sector, including the establishment of rates that—

- (A) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;
- (B) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles;
- (C) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and
- (D) appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure.

¹ Federal law also directs the Commission to provide public notice and conduct a hearing as part of the process of making a determination and then to make the determination whether to implement the standard in writing through findings based on the evidence presented at hearing. 16 U.S.C. § 2621(b).

² The Commission is to complete its consideration and determination whether to implement the standard contained in section 2621(d)(21) not later than November 15, 2023. 16 U.S.C. § 2622(b)(8).

16 U.S.C. § 2621(d)(21). As is evident from the consideration process set out in PURPA and the lack of any directive in the standard, the implementation of the new standard would not create any new Commission authority or expand the activities in which electric distribution utilities may lawfully engage under Ohio law.

As the Ohio Supreme Court has often held, the Commission is a creature of statute and has only the authority that is provided by law. See, e.g., *Office of Consumers' Counsel v. Pub. Utils. Comm'n of Ohio*, 67 Ohio St. 2d 153, 166 (1981). In regard to the provision of retail electric service, the Commission's authority extends only to electric light companies. R.C. 4905.02 and 4905.03. Because Ohio has adopted a competitive model for the provision of generation service, Ohio law further limits the ratemaking authority of the Commission over retail electric rates. R.C. 4928.03 and 4928.05(A) and (B). Ohio law also limits the lines of business an electric distribution utility may lawfully engage in. It does not permit an electric distribution utility to offer competitive electric services except through a separate subsidiary or as permitted as part of a standard service offer. R.C. 4928.17.

The Commission has already considered the limited role that it might play in the development of the EV market. In the PowerForward review, the Commission noted that it would need to address the effects of EV charging on electric distribution and rate design. Public Utilities Comm'n of Ohio, PowerForward, A Roadmap to Ohio's Electricity Future at 21 (Aug. 29, 2018).³ See, also, *In the Matter of the PowerForward Collaborative*, Case No. 18-1595-EL-GRD, Entry at 2 (Oct. 24, 2018) ("*PowerForward Collaborative Case*").

³https://puco.ohio.gov/wps/wcm/connect/gov/38550a6d-78f5-4a9d-96e4-d2693f0920de/PUCO+Roadmap.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-38550a6d-78f5-4a9d-96e4-d2693f0920de-

Following the release of the PowerForward report, the Commission also concluded that it did not have authority to regulate businesses engaged in the supply of charging services for electric vehicles. *In the Matter of the Commission's Investigation into Electric Vehicle Charging Service in the State*, Case No. 20-424-EL-COI, Finding and Order (July 1, 2020) ("EV Charging Service Case"). In reaching this conclusion, the Commission noted that these businesses were not providing a service component involved in supplying and arranging for the supply of electricity to ultimate consumers from the point of generation to the point of consumption. Id. ¶ 27. Additionally, the Commission concluded that, on balance, the resale of public utility service by businesses engaged in vehicle recharging did not render those businesses subject to Commission jurisdiction because the operators do not avail themselves of special benefits available to public utilities and the service is limited to EV owners and operators. Id. ¶ 29. Underlying this decision was also the recognition that EV charging is a nascent competitive business that would be subject to sufficient consumer protection outside the sphere of Commission regulation. Id. ¶¶ 27, 31, & 32.

As previewed by the Commission in the PowerForward Report and the *EV Charging Service Case*,⁴ the Commission has begun to address rates and other terms and conditions of service for EV charging services. A current example is the proposed tariff revision sought by Ohio Power Company as part of its next electric security plan. *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard*

nLBoZhy#:~:text=PowerForward%20is%20the%20PUCO's%20grid,the%20wonderment%20of%20new%20things.

⁴ In the EV Charging Service Case, the Commission declined to address the level of involvement of electric distribution utilities in the development of the EV charging market. Id. ¶ 34.

Service Offer Pursuant to § 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan, Case Nos. 23-0023-EL-SSO, et al., Application at 18-19 (Jan. 6, 2023) (“AEP ESP V Case”).⁵ These kinds of proceedings will call on the Commission to address affordability, rate equity, and cost recovery of rates for the provision of service for electric vehicles. Id., Direct Testimony of Curtis Heitkamp on Behalf of Ohio Power Company at 10-14 (Jan. 6, 2023) and Direct Testimony of Adriane E. Jaynes in Support of AEP Ohio’s Electric Security Plan (Jan. 6, 2023).⁶ The Commission is also more broadly addressing the role that improved access to customer information may have on emerging markets in several proceedings. See, e.g., *In the Matter of the Application of the Dayton Power and Light Company for Approval of its Plan to Modernize its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Initial Brief of Interstate Gas Supply, Inc. and IGS Solar, LLC at 6-7 (Feb. 21, 2021).

Thus, Ohio law limits the role that the Commission and electric distribution utilities can play in the electrification of the transportation sector. Nonetheless, the Commission can advance policies of competition and prevent use of undue market power by electric distribution utilities that might frustrate electrification by enforcing the existing line of business restrictions.⁷ R.C. 4928.17. In its decisions in distribution rate cases and grid modification cases, the Commission also can support efforts to secure customer specific

⁵ In rate setting proceedings, the standard is of negligible value because measures such as affordability and cost recovery.

⁶ See, also, *In the Matter of the Application of Ohio Power Company to Amend its Tariffs*, Case No. 23-84-EL-ATA (Jan. 26, 2023). In this application, Ohio Power proposes changes to the GS rate schedule to accommodate the unusual demand patterns of EV charging stations.

⁷ The corporate separation requirements contained in R.C. 4928.17 permit an electric distribution utility to include enumerated competitive activities such as the provision of default service in a lawful standard service offer under R.C. 4928.142 or 4928.143. It has been heavily debated and unresolved whether the distribution utilities are permitted to engage directly in the provision of electric charging services such as station ownership.

information that will make the provision of various products such as time- and demand-differentiated competitive generation rates more viable. In these practical ways, the Commission can advance the adoption of transportation electrification.

IV. Conclusion

The standard contained in section 2621(d)(21) advances some unremarkable measures that the Commission has already begun to consider in its proceedings. A determination to implement those measures, however, cannot enlarge the scope of the Commission's authority or the lines of business in which an electric distribution utility may lawfully engage. Thus, if the Commission determines that it should implement the standard, it should clarify in its written findings that nothing in that determination is intended to change either the limited role that electric distribution utilities have in the electrification of the transportation sector or the Commission's authority to assist in the implementation of that standard.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the Comments of Interstate Gas Supply, LLC. was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on Feb. 1, 2023. The Commission's efilings system will electronically serve notice of the filing on the parties. A copy of the comments was emailed to the individuals listed below.

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**This foregoing document was electronically filed with the Public Utilities
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Summary: Comments Initial Comments of Interstate Gas Supply, LLC electronically
filed by Stacie Cathcart on behalf of Interstate Gas Supply