

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO THE
IMPLEMENTATION OF THE FEDERAL
INFRASTRUCTURE INVESTMENT AND
JOBS ACT'S DEMAND RESPONSE PURPA
STANDARD.

CASE NO. 22-1024-AU-COI

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO THE
IMPLEMENTATION OF THE FEDERAL
INFRASTRUCTURE INVESTMENT AND
JOBS ACT'S ELECTRIC VEHICLE
CHARGING PURPA STANDARD.

CASE NO. 22-1025-AU-COI

FINDING AND ORDER

Entered in the Journal on November 1, 2023

I. SUMMARY

{¶ 1} The Commission considers Demand Response and Electric Vehicle Charging standards as provided for in the Infrastructure Investment and Jobs Act's amendments to the Public Utility Regulatory Policies Act.

II. PROCEDURAL HISTORY

{¶ 2} On August 10, 2022, the Commission opened a proceeding in Case No. 22-755-AU-COI to review the implementation of the Infrastructure Investment and Jobs Act (IIJA).

{¶ 3} In the Entry opening that proceeding, the Commission noted that the IIJA amended the Public Utility Regulatory Policies Act (PURPA) by adding to the list of standards that require state regulatory authorities to determine for implementation. There were two PURPA standards added by the IIJA, one relating to demand-response practices and one relating to electric vehicle charging programs.

{¶ 4} On November 2, 2022, the Commission opened dockets in Case Nos. 22-1024-AU-COI and 22-1025-AU-COI to address the demand-response and electric vehicle charging programs, respectively.

{¶ 5} On February 13, 2023, the Commission held a hearing to solicit testimony concerning the demand-response standard, during which time one witness testified. Similarly, on February 22, 2023, the Commission held a hearing to solicit testimony concerning the electric vehicle charging, during which time no witnesses testified.

{¶ 6} The Commission accepted comments on the demand-response PURPA standard from November 15, 2022, to January 10, 2023, and reply comments until January 24, 2023. Similarly, the Commission accepted comments on the electric vehicle charging standard from November 14, 2022, to February 1, 2023, and reply comments until February 16, 2023.

{¶ 7} On June 7, 2023, a group of interested stakeholders, including ChargePoint, Inc. (ChargePoint), Electrify America, LLC (Electrify America), Tesla, Inc., Ohio Energy Leadership Council (OELC), city of Dayton, Ohio Environmental Council (OEC), and Ohio Hospital Association (collectively, Stakeholders), filed a request for the Commission to include as part of its consideration of the PURPA standards, a review of Ohio Adm.Code Chapter 4901:1-9. Ohio Adm.Code 4901:1-9-07 contains the Commission's rules regarding Contributions in Aid of Construction (CIAC) for public electric vehicle charging infrastructure. Stakeholders argue that the Commission should, as part of its consideration of the demand-response and electric vehicle charging PURPA standards, open a review of the CIAC rule in Chapter 4901:1-9 of the Ohio Adm Code. Specifically, Stakeholders submit that a critical question has arisen where, they opine, Ohio Adm.Code 4901:1-9-07 suggests that any changes to electric utility tariffs addressing line extension and CIAC must be uniformly addressed and thus not done in individual dockets, such as in a respective utility's Electric Security Plan (ESP) case. Stakeholders cite a condition of the Stipulation

and Recommendation filed in a recent Electric Security Plan case as the rationale for their having filed a request in the docket of Case No. 22-1025-AU-COI.¹ *See In re the Application of Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan, 22-900-EL-SSO, Stipulation and Recommendation (April 10, 2023), at 25-26.*

{¶ 8} Unopposed motions to intervene were filed in both case dockets by the Office of the Ohio Consumers' Counsel (OCC) and Ohio Manufacturers' Association Energy Group (OMAEG). Unopposed motions to intervene were filed in the docket of Case No. 22-1024-AU-COI by Ohio Energy Group (OEG) and OELC. Finally, an unopposed motion to intervene was filed in the docket of Case No. 22-1025-AU-COI by Ohio Chamber of Commerce (Ohio Chamber).

III. APPLICABLE LAW

{¶ 9} 16 U.S.C. § 2621(a) requires the Commission to consider the standards found in 16 U.S.C. § 2621(d)(20) and (21) and make a determination concerning whether or not it is appropriate to implement such standards to carry out the purpose of 16 U.S.C. § 2621.

{¶ 10} 16 U.S.C. § 2621(b)(1) requires the Commission to make its consideration of the PURPA standards after public notice and hearing. The determinations must be in writing, based upon findings included in the determination and upon the evidence presented at a hearing, and available to the public.

¹ While the Commission acknowledges Stakeholders' concerns, the purpose of these proceedings is specifically to make a determination as to the potential adoption of the demand-response and electric vehicle charging PURPA standards, which must be completed by November 15, 2023. As such, the Commission declines to extend its consideration in these dockets to include an ad hoc rulemaking procedure of Chapter 4901:1-9 of the Ohio Adm Code which is up for its five-year review in 2026. The Commission will separately open for review Ohio Adm Code Chapter 4901:1-9 at either the five-year review date, or another time the Commission deems appropriate.

{¶ 11} 16 U.S.C. § 2622(b)(7) requires the Commission, with respect to each electric utility for which the state has ratemaking authority, commence consideration, or set aside a hearing date for consideration, of the demand-response standard not later than November 15, 2022. Further, the consideration must be completed not later than November 15, 2023.

{¶ 12} 16 U.S.C. § 2621(d)(20) sets out the demand-response standards which, generally, require electric utilities to promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial customers. The demand-response standards also address rate recovery mechanisms to recover the costs of promoting demand-response both generally and for nonregulated electric utilities.

{¶ 13} 16 U.S.C. § 2621(d)(21) sets out standards for electric vehicle charging programs:

- a. 16 U.S.C. § 2621(d)(21)(A) provides that the Commission shall consider establishment of rates that promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure.
- b. 16 U.S.C. § 2621(d)(21)(B) provides that the Commission shall consider establishment of rates that improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles.
- c. 16 U.S.C. § 2621(d)(21)(C) provides that the Commission shall consider establishment of rates that accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles.
- d. 16 U.S.C. § 2621(d)(21)(D) provides that the Commission shall consider establishment of rates that appropriately recover the marginal costs of

delivering electricity to electric vehicles and electric vehicle charging infrastructure.

IV. DISCUSSION

{¶ 14} The Commission received initial comments concerning the demand-response PURPA standard from Ohio Power Company, d/b/a AEP Ohio Inc., (AEP Ohio), the Citizens Utility Board of Ohio (CUBO), Duke Energy Ohio, Inc., (Duke), Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (FirstEnergy), Interstate Gas Supply, Inc. (IGS), the Office of the OCC, OEC, and Ohio Partners for Affordable Energy (OPAЕ).. Further, the Commission received reply comments concerning the demand-response standard from AEP Ohio, The Dayton Power and Light Company, d/b/a AES Ohio (AES), Duke, OELC, KOREnergy, Inc. (KOREnergy), OCC, OEC, and OMAEG.

{¶ 15} The Commission received initial comments concerning the electric vehicle charging standard from AEP Ohio, AES, ChargePoint, Charge Ahead Partnership (Charge Ahead), Duke, Electrify America. LLC, EVgo Service LLC (EVgo), FirstEnergy, IGS, OCC, OEC, and Sheetz, Inc. (Sheetz).

A. *The PURPA Demand-Response Standard*

{¶ 16} The commentary is divided with respect to the Commission's possible adoption of the PURPA Demand Response (DR) standards.

{¶ 17} Duke supports adoption of the standards, citing its own historical DR programs, following the termination of which, Duke argues new technologies have emerged that could promote greater use of DR and demand flexibility practices by commercial, residential, and industrial consumers. OPAЕ agrees that the Commission should adopt standards for DR, but they need not necessarily be the PURPA standards. OPAЕ opines

that DR programs would be especially prudent in light of summertime outages in recent years.

{¶ 18} IGS recommends the Commission decline to adopt the PURPA standards for DR where HB6 significantly affected Ohio's energy efficiency standard and its associated cost recovery mechanisms. IGS opines that energy efficiency and DR programs are best supported by the competitive market, not by regulation. FirstEnergy agrees that the Commission should implement new DR program standards where those programs can be cost effective options that help consumers. FirstEnergy avers that such DR programs can also benefit the public via economic development and job creation. OCC does not advocate for or against the DR standards but does recommend that if the Commission adopts the PURPA standards, it should mandate that the electric utilities' investment in energy infrastructure and ongoing initiatives are not charged to customers, among other suggestions. OEC recommends the Commission adopt the PURPA standards, as Ohio must rise to the challenge presented by climate change.

{¶ 19} AEP Ohio encourages the Commission to adopt the standards, stating that the electric utilities are the logical entities to provide DR at scale for all customer classes. Both OMAEG and CUBO encourage the Commission to adopt the standards. Further, AES and OELC generally agree with other parties supporting adoption of the PURPA standards. Finally, KOREnergy opines that while DR programs are important, it is concerned that certain electric distribution utilities (EDUs) commenting are more focused on their own programs, which will compete in the competitive market. KOREnergy agrees with IGS that DR services should not be treated as a non-competitive service in Ohio provided by monopoly utilities with ratepayer recovery of those services.

B. *The PURPA Electric Vehicle Charging Standard*

{¶ 20} The commentary is largely united in that the commenters recommend the Commission adopt the electric vehicle PURPA standards. The commenters differ primarily in the area of rate design and recovery mechanisms, and which parties should be responsible for that recovery.

{¶ 21} Commenters who operate in the electric vehicle charging space, such as EVgo, Sheetz, Electrify America, Charge Ahead, and ChargePoint urge the Commission to consider such options as make-ready and rebate programs to promote readiness for an expanded charging network, and measures and programs that incentivize and encourage third-party or outside investment in expanding the network of electric vehicle charging stations. Additionally, these commenters are united in the proposition that demand-based charges are not appropriate for electric vehicle charging and therefore represent a large, if not the largest barrier to expansion of the network of current public-direct, fast-charging stations. The charging industry commenters largely agree that there is a need for regulatory clarity with respect to the involvement of EDUs in the infrastructure of electric vehicle charging. Sheetz and Charge Ahead submit that demand-based charges make the cost of charging too expensive to pass on to end users and presents only a competitive advantage for utilities that choose to operate fast-charging stations under different rates or terms. Sheetz suggests a uniform rate for the sale of electricity to all fast-charging station owners. Charge Ahead, EVgo, Electrify America, and ChargePoint make similar suggestions with respect to rate design and demand-based charges as Sheetz does.

{¶ 22} The Commission also received comments from several utilities, including AES, AEP Ohio, Duke, IGS, and FirstEnergy. Duke comments that it does not currently have rate mechanisms in place that directly target electric vehicle charging, but that it would welcome a discussion of programs and rate structures for this purpose. Further, Duke opines that all customers in its service territory would benefit from increased electric vehicle

infrastructure. Duke suggests various measures to promote the electrification of transportation, including rates to support installation of make-ready infrastructure, vehicle-to-grid technology, and local programs to help manage incremental load from electric vehicles. AEP Ohio supports adoption of the standards, like the other commenters, but suggests that specific measures related to infrastructure and other electric vehicle specific decisions should be left to a case-by-case process. IGS largely disagrees with the industry commenters with respect to make-ready programs and holding a separate ratemaking proceeding to address this issue.

{¶ 23} Lastly, the Commission received comments from OCC, OMAEG, and OEC, who agree that the standards should be adopted, but that electric vehicle charging services should be treated as fully competitive, which ensures that consumers benefit from cost-minimal supply and maximal innovation and infrastructure. OMAEG disagrees with the notion that make-ready programs should be implemented as they would not encourage third-party investment and will not address project needs. OMAEG agrees that the standard should be adopted in a fully competitive manner. OMAEG also suggests a standard that requires EDUs to publish hosting capacity maps to allow for greater transparency with respect to which circuits can support electric vehicle charging infrastructure. Finally, OEC emphasizes the principles of affordability, customer experience, and market adoption to maximize benefits for both utilities and consumers. OEC suggests the Commission implement the standard to serve as guidance for current proposals before the Commission and that a working group on electric vehicle charging could be formed to address issues related to Ohio's market.

V. CONCLUSION

{¶ 24} Under 16 U.S.C. § 2621(a), the Commission is directed to make a determination as to whether or not it should adopt the demand-response and electric vehicle charging standards found in the IIJA's amendments to PURPA. The Commission must make its determination in writing, based upon findings included in the determination and

upon evidence presented at the hearing, and make said determination available to the public. In accordance with 16 U.S.C. § 2621(b), the Commission accepted public commentary on both the demand-response and electric vehicle charging standards, and held public hearings in both matters and, in this Finding and Order, renders its determination in writing that is available to the public.

{¶ 25} Initially, we note that the November 2, 2022 Entries in these case dockets specifically provided that the scope of these proceedings would be limited to addressing whether or not the Commission would adopt the demand-response and electric vehicle charging standards as set out by the IIJA’s amendments to PURPA. Consistent with those Entries, we generally decline to address issues falling outside of that permitted scope.

{¶ 26} As a preliminary matter, we note that motions to intervene were filed by several interested persons in this case. Unopposed motions to intervene were filed in both case dockets by the OCC and OMAEG. Unopposed motions to intervene were filed in the docket of Case No. 22-1024-AU-COI by OEG, and OELC. Finally, an unopposed motion to intervene was filed in the docket of Case No. 22-1025-AU-COI by Ohio Chamber. Where each of these motions is unopposed, and the Commission’s intervention standard is to be construed liberally, we find the motions to intervene reasonable and that they should be granted.

A. The PURPA Demand-Response Standard

{¶ 27} 16 U.S.C. § 2621(d)(20)(A)-(B) set out the demand-response standards, which generally require electric utilities to promote demand-response practices and for the Commission to consider establishing rate mechanisms that allow electric utilities to timely recover costs of promoting demand-response practices. Notably, the comments submitted concerning the demand-response standard were mixed, as described above. OCC proposes a framework for the competitive provision of demand-response services to benefit

customers and does not take a side as to whether the Commission should adopt or decline the standard, but does state that if such standards are implemented, they should mandate that the utilities' investment in infrastructure and initiatives to promote demand-response should not be charged to customers. Conversely, the EDUs, including Duke, AES, AEP Ohio, and FirstEnergy all encourage the Commission to either adopt the PURPA demand-response standards, or to adopt similar demand-response standards, sometimes including in that discussion energy efficiency, which is not the subject of this docket. Lastly, IGS, OMAEG, and KOREnergy urge the Commission to decline to adopt the standard, broadly arguing that the EDUs are more than anything arguing that their own specific programs should be adopted, which would compete in the competitive market.

{¶ 28} The Commission emphasizes that Ohio is a retail choice state with a competitive market, and it should therefore be the market, not the Commission, that drives these innovations. R.C. 4928.02 codifies many of the policies recommended within both of the PURPA standards. With respect to demand-response, R.C. 4928.02 guides the Commission and addresses promoting cost-effective and efficient access to electric service. R.C. 4928.02(D) is particularly instructive where it provides that the policy of this state is to encourage innovation in areas of demand-side management, time-differentiated pricing, smart grid programs, and other innovations. Further, as we discussed in Case No. 18-1595-EL-GRD, the current state of grid modernization for each individual EDU in this state is substantially different from the other EDUs; therefore, although recommendations contained in each report of investigation issued by Staff in individual dockets will be a starting point, such recommendations will need to be adapted to each EDU on a case-by-case basis, which should be addressed in discrete, individual proceedings. In that same case, we stated that we believe that timely and efficient access to and sharing of customer usage data with customers and competitive suppliers is necessary to promote customer choice and grid modernization, subject to appropriate consumer privacy protections. Thus, we anticipate that the pursuit of this goal will continue through the issuance of staff recommendations in appropriate dockets, along with staff recommendations on

implementation of other specific measures that are directed at broadening the opportunity for customers to act on their supply side and demand side preferences regarding the delivered price, mix, and availability of innovative competitive and non-competitive products and services. *See In re PowerForward*, Case No. 18-1595-EL-GRD, et al., Entry (April 22, 2020), at 3-4. Further, we have already applied this case-by-case approach in proceedings before us, most recently in AES's Electric Security Plan (ESP) case. *See generally In re Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan*, Case No. 22-900-EL-SSO, et al., Opinion and Order (August 9, 2023). We maintain that in this state, the market should drive innovation and determine how such concepts as demand-response will ultimately surface and be implemented, consistent with prior decisions, guided by R.C. 4928.02. Therefore, we decline to adopt the demand-response PURPA standard.

B. The PURPA Electric Vehicle Charging Standard

{¶ 29} 16 U.S.C. § 2621(d)(21)(A)-(D) set out the electric vehicle charging standards. The electric vehicle charging standards encourage the Commission to consider measures to promote greater electrification of the transportation sector, including establishment of rates that promote affordable and equitable electric vehicle charging options, improve customer experience, accelerate third party investment in electric vehicle charging, and recover appropriately the marginal costs of delivering electricity to vehicles and the associated charging infrastructure.

{¶ 30} The commentary concerning the electric vehicle charging standards, unlike that of the demand-response standard, was united in that all commenters supported adoption of either the PURPA standards or something similar. Primarily, the commenters differ on the area of rate design, with industry commenters such as Sheetz, ChargePoint, and EVgo offering that demand-charge based rate structure would not appropriately serve electric vehicle charging station operators as customers. Those commenters representing certain customer groups, including OCC, OMAEG, and OEC, comment that the standards

should be adopted, but that rate mechanisms should be in place to protect consumers and end users from absorbing the costs that, they opine, should be borne by the utilities. Finally, the EDUs, including Duke, AEP Ohio, and AES also agree that the standards should be adopted, but that there is a need for safeguards for the costs to them that will not leave those costs as a sunk expense as the EDUs labor to build networks in their respective territories for electric vehicle charging stations.

{¶ 31} 16 U.S.C. § 2621(d)(21)(A) describes rate standards that promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure. We find that R.C. 4928.02 provides for this portion of the electric vehicle PURPA standard where R.C. 4928.02 describes the policy of this state as recognizing the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment. As we discussed previously, electric vehicle charging is an emerging market for electric service, and that, while our jurisdiction does not extend to operators solely providing electric vehicle charging service, our approach within our jurisdiction is that of a case-by-case basis as each service provider and EDU is different. *See In re the Commission's Investigation into Electric Vehicle Charging Service in the State*, Case No. 20-434-EL-COI, Finding and Order (July 1, 2020) at 2, 13-15, 17.

{¶ 32} 16 U.S.C. § 2621(d)(21)(B) describes rate standards that improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium and heavy-duty vehicles. Once more, we find R.C. 4928.02 instructive where the policy of this state is to provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates while also facilitating the state's effectiveness in the global economy. This policy would be advanced by allowing Ohio's retail choice market to best determine and help emerge means and systems by which charging would be improved for end users.

{¶ 33} 16 U.S.C. § 2621(d)(21)(C) requires that rates accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles. Previously, we have stated that, where Ohio is a state with a robust, retail choice-based market, we find the market should drive innovation, and the presence of third-party investment is no different from other facets of the electric vehicle charging standards in this regard. The policy of this state is to encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization. Third-party investment should be driven and attracted by the actions of the market, not regulatory action by the Commission. *See In re the Commission's Investigation into Electric Vehicle Charging Service in the State*, Case No. 20-434-EL-COI, Finding and Order (July 1, 2020). Lastly, 16 U.S.C. § 2621(d)(21)(D) requires establishment of rates that appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure. As we have stated previously, this is a question for the market, not the Commission, but where there is need for Commission involvement, we will handle such items on a case-by-case basis. *See In re the Application of Dayton Power and Light Company d/b/a AES Ohio for Approval of its Electric Security Plan*, Case No. 22-900-EL-SSO, et al., Opinion and Order (Aug. 9, 2023) at 33, 36, 53, 67, 98; *In re Ohio Power Co.*, Case No. 20-585-EL-AIR, Opinion and Order (Nov. 17, 2021) at 63; *In re Columbia Gas of Ohio Inc.*, Case No. 21-637-GA-AIR, et al, Opinion and Order (Jan. 26, 2023) at 19. Accordingly, we decline to adopt the electric vehicle charging PURPA standard.

{¶ 34} We reiterate that where Ohio is a retail choice state with a retail market, it should be that market, not the Commission, that innovates and drives these services. We wish to thank all of the commenters who provided the Commission with their commentary on the PURPA standards.

VI. ORDER

{¶ 35} It is, therefore,

{¶ 36} ORDERED, That the demand-response PURPA standard not be adopted. It is, further,

{¶ 37} ORDERED, That the electric vehicle charging PURPA standard not be adopted. It is, further,

{¶ 38} ORDERED, That OCC, OMAEG, OEG, OELC, and Ohio Chamber's motions to intervene be granted. It is, further,

{¶ 39} ORDERED, That a copy of this Entry be served upon all electric distribution utilities, the electric industry service list, all parties of record, and the list of entities attached to the August 10, 2022 Entry in Case No. 22-755-AU-COI.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

JMD/mef

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Case No(s). 22-1024-AU-COI, 22-1025-AU-COI

Summary: Finding & Order considering Demand Response and Electric Vehicle Charging standards as provided for in the Infrastructure Investment and Jobs Act's amendments to the Public Utility Regulatory Policies Act. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.