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**State of Vermont
Public Utility Commission**

January 23, 2019

Senate Committee on Finance
Senate Committee on Natural Resources and Energy
Senate Committee on Transportation
House Committee on Energy and Technology
House Committee on Transportation
Vermont State House
115 State Street
Montpelier, VT 05633

Dear Chairs Cummings, Bray, Mazza, Briglin, and McCormack,

By this letter, the Public Utility Commission (“Commission” or “PUC”) proposes legislative amendments that would make clear that the jurisdiction conferred on the Commission and the Department of Public Service does not extend to the regulation of electric vehicle charging stations.

On May 21, 2018, Act 158 (H.917) of the 2017-2018 Vermont legislative session took effect upon its signing by Governor Scott. Section 25 of Act 158 directed the Commission to conduct an evaluation and submit a report by July 1, 2019, concerning issues related to the charging of electric vehicles (“EVs”). Among many other topics, Section 25 requires the Commission’s report to address the “recommended scope of the jurisdiction of the Commission, the Department of Public Service, and other State agencies” over EV charging stations. Section 25 also directs the Commission to identify in its report any issues that might require enabling legislation.

The document accompanying this letter addresses these two directives of Section 25 and should be considered to be part of the report required by that section, the balance of which will be filed by July 1, 2019. Because the accompanying document addresses jurisdiction over EV charging stations, both utility- and non-utility-owned, it also addresses, at least in part, the following other issues identified by Section 25 for inclusion in the Commission’s report: (1) removal or mitigation, as appropriate, of barriers to EV charging, including strategies, such as time-of-use rates, to reduce operating costs for current and future EV users without shifting costs to ratepayers who do not own or operate EVs, (2) the appropriate role of electric distribution utilities with respect to the deployment and operation of EV charging stations, (3) what safety standards should apply to the charging of EVs, (4) whether such stations will be free to set the rates or prices at which they provide electric energy to EVs, and any other issues relevant to the appropriate oversight of the rates and prices charged by such stations, including the transparency to the consumer of those rates and prices, (5) the recommended billing and complaint procedures for such charging stations, and (6) the accuracy of electric metering and submetering technology for charging EVs.

On July 9, 2018, in response to the legislative directive of Section 25, the Commission initiated Case Number 18-2660-INV, an investigation into promoting the ownership and use of electric vehicles in the State of Vermont.

The Commission has convened several workshops and solicited multiple rounds of comments in this proceeding. Apparent from the comments submitted was the need for the Commission to address jurisdictional issues regarding EV charging stations as the first step of the investigation. Most commenters favored no jurisdiction or jurisdiction with a limited exercise of regulatory authority. The comments varied on whether the jurisdiction granted to the Commission and Department by 30 V.S.A. § 203 applies to EV charging stations and the steps that the Commission should take to clarify the scope of any jurisdiction created under Section 203. However, almost all commenters agreed that reaching clarity on the extent of jurisdiction over EV charging stations is a necessary precursor for the growth of electric vehicle infrastructure investment in Vermont in general, and for charging stations in particular. The Commission agrees that jurisdictional issues need to be addressed early in its investigation to provide certainty and stability to potential charging infrastructure investors, whether they be regulated Vermont utilities or non-utility investors (including unregulated affiliates of Vermont's electric utilities).

After consideration of all the comments received in writing and those made at the workshops, the Commission has determined that the optimal approach to promoting the deployment of public EV charging stations, and thus the use of EVs, is to largely exclude charging stations from Commission and Department of Public Service jurisdiction. The exception would be where a regulated utility seeks to invest in and deploy public EV charging infrastructure and include the costs of that infrastructure in its rate base. In such an event, the Commission and Department would retain full jurisdiction over that infrastructure just as if it were any other infrastructure being deployed by a utility.

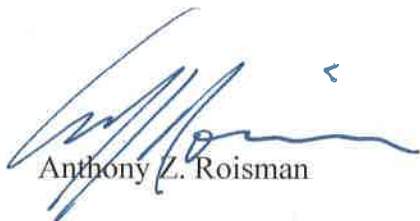
This approach is consistent with the approach taken in approximately 23 states and the District of Columbia, at least with respect to third-party, non-utility operators of charging stations. The question of utility participation in the electric vehicle charging market on a regulated basis is still being examined in a number of states, though a small number have determined to allow it with the investments recoverable as part of rates when those investments meet a variety of public interest tests.

Some states have implemented the decision not to regulate EV charging stations as utilities through a utility commission order interpreting its statutory grant of jurisdiction to exclude charging stations or by legislation expressly exempting charging stations from utility commission jurisdiction.

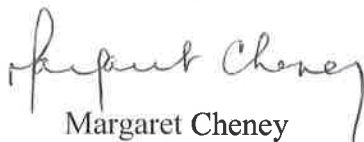
In Vermont, the Commission has encountered differing views on whether the jurisdiction conferred on the Commission and Department by 30 V.S.A. § 203 extends to EV charging stations. Given the good-faith arguments advanced on both sides of the question and given Vermont's greenhouse gas reduction goals, the Commission recommends that the Legislature clarify the extent of jurisdiction over EV charging stations through statute rather than through a Commission order interpreting the extent of that jurisdiction. A legislative change clarifying the extent of Commission and Department jurisdiction would remove any uncertainty and provide longer-term stability than a Commission order could provide because an order would be subject to legal challenge and possibly subsequent amendment depending on the opinions of future Commissioners.

The accompanying document contains specific proposed statutory changes intended to implement the Commission's recommendation regarding Commission and Department jurisdiction over EV charging stations. The proposed changes are supported by a detailed analysis explaining the intended outcome, the rationale, and the protections that would remain in place for consumers using public EV charging stations.

The Commission thanks you for your consideration of this recommendation and will be available to answer any questions you may have at your convenience.



Anthony Z. Roisman



Margaret Cheney



Sarah Hofmann

Cc: June Tierney, Commissioner, Vermont Department of Public Service

Section 203 shall be amended as follows:

(1) Subject to the exception set forth in subsection (7) below, A company engaged in the manufacture, transmission, distribution, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

(2) Subject to the exception set forth in subsection (7) below, That part of the business of a company which consists of the manufacture, transmission, distribution, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

(7) The jurisdiction conferred by this section shall not extend to a company otherwise not regulated by the Commission that is engaged in the siting, construction, ownership, operation, or control of a facility that sells or supplies electricity to the public exclusively for charging plug-in electric vehicles or plug-in hybrid electric vehicles. Retail electric distribution companies that are regulated by the Commission may provide electric vehicle charging services to the public on an unregulated basis through a separate unregulated affiliate. By rule, order, or procedure, the Commission may set standards under which regulated retail electric distribution utilities can offer such charging services to the public on a regulated basis and recover in part the costs thereof from ratepayers. However, the meter used to measure the amount of electricity sold or to calculate charges at the point of charging, whether on a regulated or unregulated basis, shall not be considered a meter operated in a public utility system for the purposes of 9 V.S.A. § 2651(14).

Rationale: On May 21, 2018, Act 158 (H.917) of the 2017-2018 Vermont legislative session took effect upon its signing by the Governor. Section 25 of Act 158 directed the Public Utility Commission ("Commission" or "PUC") to conduct an evaluation and submit a report by July 1, 2019, concerning issues related to the charging of electric vehicles ("EVs"). Among others, the Legislature directed the Commission to evaluate the following topics: (1) removal or mitigation, as appropriate, of barriers to EV charging, including strategies, such as time-of-use rates, to reduce operating costs for current and future EV users without shifting costs to ratepayers who

do not own or operate EVs, (2) the appropriate role of electric distribution utilities with respect to the deployment and operation of EV charging stations, (3) what safety standards should apply to the charging of EVs, (4) the recommended scope of the jurisdiction of the Commission, the Department of Public Service, and other State agencies over such stations, (5) whether such stations will be free to set the rates or prices at which they provide electric energy to EVs, and any other issues relevant to the appropriate oversight of the rates and prices charged by such stations, including the transparency to the consumer of those rates and prices, (6) the recommended billing and complaint procedures for such charging stations, and (7) the accuracy of electric metering and submetering technology for charging EVs.

In response to this legislative directive, the Commission initiated an investigation and has to date conducted two workshops and solicited written comments from participants on a variety of EV-related issues. What became apparent during the initial stages of this process was the need to clarify the scope of the Commission's jurisdiction over the deployment and operation of EV charging stations. The participants in the investigation recommended with near unanimity that the Commission either issue an order or recommend that the Legislature promulgate statutory language that clarifies that non-utility operators of EV charging stations are not subject to regulation or oversight by the Commission or the Department of Public Service. Such clarification was deemed to be needed to encourage robust investment in EV charging facilities in Vermont.

The proposed language is intended to make clear that non-utility owners and operators of EV charging stations are not subject to the jurisdiction of the Commission or Department. It also allows regulated distribution utilities the option of providing electric vehicle charging services through an unregulated affiliate, thereby leveling the regulatory playing field between non-utility and utility providers of such services.

The proposed language also authorizes the Commission to develop standards under which regulated electric utilities can apply to offer EV charging services on a regulated basis, which would allow the utility to recover some of the costs of providing the services from its ratepayers generally, and not just from those customers using the charging station. This approach attempts to strike a balance between (1) the Legislature's directive that strategies promoting the increased use of EVs not shift costs to utility customers who are not also EV owners, and (2) the Legislature's goal of reducing greenhouse gas emissions in Vermont. Allowing regulated utilities to recover in part the costs of EV charging stations from ratepayers may be warranted in limited circumstances where the competitive market does not provide an incentive for deployment of purely market-based infrastructure, such as in more remote or less densely populated areas. While the Commission has not yet developed such standards, it has received several comments on this idea from participants in its investigation and intends to explore the concept in more detail as the investigation progresses. In the interim, it is important to consider that most EV charging occurs at home, so taking a measure of time to develop the requirements that utilities must meet to in part recover costs from ratepayers who do not own or operate EVs will allow the Commission to become better informed on the need for such charging stations and the patterns of use that would be associated with them.

Lastly, the proposed language makes clear that the charging stations themselves are not considered part of the utility grid for the purposes of the Agency of Agriculture, Farms, and

Markets' ("AAFM") weights and measures authority. This would place the authority for inspecting charging stations for accuracy under the authority of AAFM's weights and measures program, which regulates all weights and measures and weighing and measuring devices in the State, including gasoline and diesel pumps at service stations. Chapter 73 of Title 9 of the Vermont Statutes Annotated already establishes a comprehensive system of weights and measures requirements for the sale of commodities in Vermont and authorizes AAFM to enforce them. AAFM also relies on standards issued by the National Institute of Standards and Technology (NIST) in its weights and measures oversight and enforcement. These regulations were adopted by the Legislature at 9 V.S.A. § 2633(b)&(c) (NIST Handbook 44 for weighing and measuring devices and NIST Handbook 130 for the regulation of packaging and labeling, unit pricing, and sale of commodities, except for bread). Additionally, according to information received from AAFM, the 2018 version of NIST Handbook 44 contains a tentative code section for EV charging stations that covers technical specifications for electric vehicle charging stations, operating requirements (including provisions for power loss, indication of unit price and equipment capacity and type of voltage, and temperature range for system components); installation requirements; and accuracy testing, among other topics. While this code section is still tentative and not intended for enforcement at this time, AAFM informs the Commission that NIST updates its handbooks on an annual basis so it is possible the new section could be finalized sometime next year. In the interim, NIST Handbook 130 contains a two-page section that addresses the sale of electricity to be used for motor vehicle fuel that covers topics such as methods of sale, labeling, and street sign prices and other advertisements.

Given the existing statutory and regulatory framework, the Commission believes it is appropriate for AAFM's weights and measures authority to include the oversight and enforcement of laws and regulations related to the retail sale of electricity to EV users at charging stations. It is possible that additional statutory changes will be necessary to grant this authority, or that AAFM may need to promulgate regulations to carry it out. However, the language proposed above is intended as the first necessary step in that direction. AAFM has indicated that it will require additional resources to train personnel and to perform these duties.

The proposed language is not intended to diminish or amend the jurisdiction of the Commission or Department over the sale of electric service from Vermont's regulated distribution utilities to the owners or operators of EV charging stations. Such stations, whether they be owned or operated by a non-utility or a non-regulated affiliate of a utility, would receive service from the local distribution utility under a tariff that would require review and approval by the Commission, just as any other customer of that utility would receive service.

With respect to consumer complaints regarding transactions between the operator and a user of an EV charging station, the Commission notes that the Consumer Protection Unit of the Attorney General's Office investigates and prosecutes violations of Vermont's consumer protection laws, which prohibit businesses from engaging in unfair or deceptive acts or practices. Between the oversight and enforcement authority of AAFM and the authority of the Attorney General's Office, the Commission does not believe there is a necessary role for either the Department of Public Service or the Commission in resolving complaints from end-users of EV charging stations. Complaints between the owner or operator of a charging station and the serving electric distribution utility would still remain within the authority of the Commission and

Department. Disputes over services rendered pursuant to such tariffs would typically be brought to the attention of the Consumer Affairs and Public Information Division of the Department for resolution and would be subject to potential escalation to the Commission in the event of continued disagreement between the serving utility and the customer.

The Commission intends to explore all topics set forth in Section 25 of Act 158 for inclusion in its final report as directed by the Legislature. Some of these topics may lead to additional recommendations needing legislative action. Such topics may include open access to publicly located charging stations and interoperability of both charging hardware and software, including easy payment options, and access to information on the location, type, and pricing of charging stations in Vermont. The Commission has already begun receiving comments on these particular topics and notes that they have been addressed in several states through legislation or specifically authorized rulemaking. If standards addressing these considerations require additional legislation, a discussion of and recommendations related to these topics will be included in the Commission's final report to the Legislature due on July 1, 2019.