



TO: EVSTAKEHOLDER.GROUP@BPU.NJ.GOV, New Jersey Board of Public Utilities

FROM: Noah Garcia, Natural Resources Defense Council

RE: Response to Task 1 Questions

DATE: October 16, 2017

The following comments are respectfully submitted on behalf of the Natural Resources Defense Council (NRDC), an international nonprofit environmental organization with more than three million members and online activists, including over 65,000 in New Jersey. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment. NRDC appreciates the Board of Public Utilities' initiative in addressing electric vehicle infrastructure topics.

On September 15, 2017, the Board of Public Utilities (BPU) held its first New Jersey Electric Vehicle Infrastructure Stakeholder Group meeting. BPU staff explained their interest in addressing regulatory topics surrounding electric vehicles (EVs) and participants discussed the current state of the electric vehicle (EV) market in New Jersey. At the end of the meeting, staff presented a series of questions to the group for stakeholder feedback that we address below.

- 1. Do EVs fall under the definition of demand side management and energy efficiency as set forth at N.J.S.A. 48:3-51 and/or N.J.S.A. 48:3-98.1.d.?*

NRDC is supportive of BPU and utility engagement to accelerate the electrification of the transportation sector and achieve the state's climate and Zero Emissions Vehicle (ZEV) goals. While utility programs designed to further progress toward those goals could reasonably fall under the definition of demand side management (DSM) and energy efficiency (EE) as set forth at N.J.S.A. 48:3-51 and/or N.J.S.A. 48:3-98.1.d, the BPU should consider the potential unintended consequences of doing so and may wish to rely upon other sources of authority to encourage and to review utility programs designed to accelerate the efficient electrification of the transportation sector. We address the EE definition first.

a. Energy Efficiency

EE and conservation program are defined in N.J.S.A. 48:3-98.1.d. as:

Any regulated program, including customer and community education and outreach, approved by the board, pursuant to this section for the purpose of conserving energy or making the use of electricity or natural gas more efficient by New Jersey customers, whether residential, commercial, industrial, or government agencies.

EVs require less energy per mile than internal combustion engine (ICE) vehicles by virtue of the efficiency advantage of electric motors. In this sense, EVs conserve energy. Utility transportation electrification (TE) programs can be designed to accelerate EV adoption, conserving energy in the process, and to foster EV charging that improves the efficiency of the electrical grid by taking advantage of spare system capacity.¹

However, additional questions arise when determining if TE programs should be classified as traditional energy efficiency programs as defined above, including but not limited to:

- Would TE programs displace traditional utility EE programs or diminish EE program funding; and
- Are the cost-effectiveness tests and evaluation criteria designed for traditional EE programs appropriate for potential TE programs?

Traditional EE programs are a critical component of safe, reliable, and affordable utility service. They save customers money on their utility bills, reduce emissions from fossil fuels, and help safeguard the reliability of the grid. Potential TE programs should be additional to EE programs. Both are needed to meet the state's climate goals. The BPU should also consider the fact that traditional EE cost-effectiveness tests may not be an appropriate fit for TE programs that provide a different set of potential benefits and that have the effect of increasing electricity consumption, while still reducing overall energy consumption. More discussion is needed to assess the appropriate evaluation criteria for TE programs.

If the BPU declines to hold that EVs fall under the definition of EE, the BPU still has regulatory authority to encourage and to consider potential TE programs. Under N.J.S.A. 48:2-13d, the BPU is required to oversee and ensure the safety and reliability of electric service for all utility customers. The BPU can address program proposals that affect the safety and reliability of electric service, including ones that deal with EVs and associated charging infrastructure.

NRDC encourages BPU and utility engagement to efficiently accelerate the electrification of the transportation sector. If the BPU finds that EVs do fall under the definition of EE, measures must

¹ The term "utility transportation electrification programs" used above is meant to describe programs that increase education and access to electric transportation options for utility customers to accelerate the electrification of the transportation sector, including light-duty vehicles. These programs may include, but are not limited to, the following elements: education and outreach, deployment or support for charging infrastructure, load management, R&D, reporting and evaluation.

be taken to ensure that traditional efficiency programs are not displaced by TE programs and that appropriate criteria are established to evaluate TE programs.

b. Demand Side Management

DSM is defined in N.J.S.A. 48:3-51 as:

The management of customer demand for energy service through the implementation of cost-effective efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State.

EVs are a uniquely flexible load and power storage resource that can be used to benefit utilities, their customers, and the grid. However, if left unmanaged or managed poorly, EV load could pose challenges for the distribution system, undermine the goals of DSM, and fail to make use of EV storage capability. Consequentially, EVs can be viewed as DSM to the extent that EV load is managed to occur at times that do not stress the grid. The BPU should consider EV load management strategies, such as time-varying rates and demand response, to encourage charging to occur in a manner that reliably and cost-effectively integrates EV load. The potential for grid services provided by EV load is significant and grows with every customer purchase of an EV. However, the BPU should not necessarily restrict utility programs to accelerate the electrification of the transportation sector to only instances in which load can be served during off-peak hours. For example, the electrification of diesel-powered industrial equipment or transit buses may contribute to system peak demand, depending upon duty-cycles, but it could still provide substantial local air quality benefits that would make it well worth the investment.

2. *Should owners and operators of EVSE that provide electric vehicle charging service be regulated as electric utilities? Are operators of EVSE reselling electricity or providing a charging service?*

Non-utility owners and operators of EVSE that provide EV charging service should not be regulated as electric utilities, regardless of whether the stations are publicly available and payment is required for service. There is no public policy need for the BPU to grant such entities exclusive service territories or to regulate such entities as public utilities.

New Jersey defines the term “public utility” in N.J.S.A. 48:2-13a, which includes any entity that owns, operates, manages, or controls “electricity distribution in the state.” While it is possible to interpret this statute so as to confer jurisdiction over independent entities offering public EV charging services for a fee, there is little public policy rationale for doing so and there is little evidence of a “natural monopoly” that could warrant the grant of an exclusive service territory and corresponding regulation.

Public utilities commissions and legislatures in several states, including Maryland, Massachusetts, New York, Oregon, Washington, and California have already clarified that EV charging service providers should not be regulated as electric utilities. As an example, after the California Public Utilities Commission held that independent EV charging service providers should not be regulated as utilities, the state legislature adopting the following exemption from the definition of a public utility:²

The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management. For purposes of this subdivision, “light duty plug-in electric vehicles” includes light duty battery electric and plug-in hybrid electric vehicles. This subdivision does not affect the commission’s authority under Section 454 or 740.2 or any other applicable statute.

Moreover, a nascent market for charging services already exists. EV charging service providers and any relevant counterparties should be free to offer and receive charging services on an unregulated basis outside of the context of utility EVSE programs.

However, if regulated public utilities propose to deploy or support EV charging infrastructure and receive approval for cost recovery, the proposals should be subject to BPU review and approval to ensure they maximize benefits to utility customers, the grid, and the environment. Likewise, independent EVSE service providers and customers who voluntarily participate in such utility programs will be subject to the terms and conditions of those programs.

NRDC appreciates the opportunity to provide comments on the questions posed by the BPU on policies related to the electrification of the transportation sector. We look forward to continued participation in the New Jersey Electric Vehicle Infrastructure Stakeholder Group.

Respectfully Submitted,

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² California Public Utilities Code 216(i).