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October 15, 2018

Ms. Judith C. Whitney, Clerk  
Vermont Public Utility Commission  
112 State Street  
Montpelier, Vermont 05620-2701

RE: Case No. 18-2660-INV: Department's Post-Workshop Recommendations

Dear Ms. Whitney:

In its *Post-Workshop Memorandum* dated October 4, 2018, the Public Utility Commission ("PUC") requested that participants file comments addressing: (1) how to proceed with the investigation given what was learned at the October 1 workshop; (2) specific next steps for the investigation, including proposals for future workshops; and (3) the appropriate scope of jurisdiction, if any, over EV charging stations and whether legislative changes are necessary to effectuate participants' recommendations.

**1) How to proceed with the investigation given what was learned at the October 1 workshop**

In the Public Service Department's ("Department") *Supplemental Recommendations* filed with the PUC on July 25, 2018, the Department included a proposed grouping of the issues identified in Section 25 of Act 158. The information presented at the October 1, 2018 workshop did not persuade the Department that those issue sets should be amended. The Department reiterates the recommendation it made in that filing that the foundational issues should be addressed first during this investigation. The PUC should address these issues between now and the upcoming 2019 legislative session.

**2) Specific next steps for the investigation, including proposals for future workshops**

The Department recommends that the PUC convene a series of workshops surrounding the second and third set of issues once the first set has been dealt with.

**3) The appropriate scope of jurisdiction, if any, over EV charging stations and whether legislative changes are necessary to effectuate participants' recommendations**

The Department believes that the PUC and the Department have jurisdiction to regulate the owners and operators of electric vehicle charging stations. However, the PUC should limit the scope and reach of its regulatory oversight. We recommend that the PUC forebear from price regulation and institute a registration process. A registration would enable the PUC, the Department, distribution utilities, and other State Agencies to know where these stations are and the appropriate entity to contact when or if consumer protection issues arise. For the reasons



articulated below, the Department believes that the PUC should recommend a statutory clarification that these stations be subject to light regulation rather than regulation as a utility.

Section 203(1) of Title 30 grants the Department and PUC jurisdiction over companies “...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.” The owners and operators of electric vehicle charging stations are engaged in the sale of electricity directly to the public, especially when those station owners and operators use kilowatt hours as the billing determinant. Section 231 of Title 30 requires that, “A person, partnership, unincorporated association, or previously incorporated association that desires to own or operate a business over which the Public Utility Commission has jurisdiction under the provisions of this chapter shall first petition the Commission to determine whether the operation of such business will promote the general good of the State...” Section 203 of Title 30 which states, “Such jurisdiction shall be exercised by the Commission and the Department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law” gives the PUC and the Department discretion to exercise their jurisdiction pursuant to 30 V.S.A. § 203(1).

Traditionally, the PUC has exercised its jurisdiction over companies that present physical monopoly characteristics, e.g. a permanent physical connection between the company and its customers and construction and operation of those facilities with ratepayer funds.<sup>1</sup> The owners and operators of electric vehicle charging stations do not exhibit these characteristics and thus do not warrant the same type of regulation as public utilities. Additionally, the potential for competition exists in this market. Currently, there are 179 publicly available charging stations in Vermont owned or operated by a variety of entities including: Tesla, municipalities, EVgo, SemaCharge, VTrans, etc... and many consumers also have the option of charging their vehicle directly at home.<sup>2</sup> As such, the PUC should exercise the discretion granted to it in Section 203 to waive the requirement for a Section 231 certificate of public good. However, backstop authority and a form of light regulation is necessary to ensure that the PUC, the Department, distribution utilities, and other State Agencies know where these stations are and the appropriate entity to contact when or if consumer protection issues arise. This proposed form of regulation will also ensure an appropriate level of coordination between these entities, if necessary.

The Department believes that the PUC currently has sufficient discretion to implement a light regulatory scheme, such as a registration process. However, explicit statutory language clarifying the scope of limited jurisdiction would reduce uncertainty in the marketplace and present the best long-term solution. Given these considerations, the Department suggests that the

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<sup>1</sup> *Petition of NG Advantage LLC for a declaratory ruling that the installation and operation of its proposed compressed natural gas facility in the Town of Milton, Vermont, and the delivery of compressed natural gas to retail customers, is not subject to Public Service Board jurisdiction under 30 V.S.A. Sections 203, 231, and 248, Docket 7866, Order of 10/10/2012 at 7.*

<sup>2</sup> Drive Electric Vermont, *Public Charging Map*, Available at: <https://www.driveelectricvt.com/charging-stations/public-charging-map>

PUC recommend a statutory change to Title 30 that clarifies the regulatory treatment of owners and operators of charging stations. To ensure that regulation does not present a barrier to the further development of this nascent industry, the registration process should be structured such that it is simple and fast. To that end, the Department recommends that the process be modeled after net-metered solar facilities that are under 15kW in nameplate capacity. Under this scheme, a form would be filled out by the applicant (which could include multiple charging locations), that would be deemed approved by the PUC within 10 days unless the Department requests a hearing. However, there are several issues that may also warrant consideration at a later date, such as interoperability, potential grid impacts and benefits, and consistent customer experience across several networks. The Department expects that these issues may resolve themselves as the market matures, but that a possible role for regulation may be appropriate in the future, for example through a rulemaking associated with the registration process.

Finally, the Department believes that other state agencies may already be authorized by existing statute to provide for consumer protection in this market. The Vermont Attorney General's office provides protection against fraud and other false claims. They are charged with enforcement of the Vermont Consumer Protection Act and have existing authority to take action against entities engaged in unfair or misleading practices in this space. The Department recommends that the Vermont Agency of Agriculture, Food, and Markets ("AAFM") regulate price transparency, uptime/downtime, and accuracy of charging stations similar to its regulation of gasoline stations. The Department recommends that the PUC convene a workshop or request filings between now and the start of the legislative session to engage with AAFM regarding whether legislative changes are needed to ensure or clarify its jurisdiction and to identify any potential barriers to implementation.

Sincerely,



Sheila Grace  
Special Counsel