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November 6, 2018

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

RE: Case No. 18-2660-INV, Investigation into promoting the ownership and use of electric vehicles (EV) in the State of Vermont; Agency of Agriculture, Food and Markets Response to Commission Question No. 13

Dear Ms. Whitney:

The Department of Public Service recently contacted the Agency of Agriculture, Food and Markets (AAFM) to make AAFM aware of the above-referenced proceeding and to flag that questions regarding AAFM's regulatory authority have been raised in the proceeding. The Department asked AAFM to respond directly to question number 13 in the Public Utility Commission's *Order Commencing Next Step of Investigation* dated October 24, 2018, which asks:

> 13. Does any State of Vermont entity currently have the authority to verify the accuracy of the electricity meters in EV charging stations? If yes, which agency? Please describe an appropriate regulatory oversight structure for that role. If no, what agency is best positioned to take on that oversight role and why?

In sum, AAFM has authority over weights and measures under which it could potentially verify the accuracy of electricity meters in EV charging stations moving forward. However, at present Vermont's statutory definition of weights and measures expressly excludes electricity meters and associated appliances that are "operated in a public utility system." See 9 V.S.A. § 2651. A change to this statutory provision could place EV charging stations (or a subset thereof) squarely within AAFM's regulatory authority. Moreover, the National Institute of Standards and Technology publishes handbooks that have been adopted in whole or in part in Vermont, including a to-be-finalized code relating to EV charging stations which could set a framework for AAFM's oversight. However, AAFM would need additional funding, capacity, training, and equipment in order to take on regulatory oversight with respect to EV charging stations.

AAFM Weights and Measures Authority

Title 9, Chapter 73 of the Vermont Statutes Annotated provides that "All weights and measures and weighing and measuring devices used in this State shall be regulated by the Secretary of Agriculture, Food and Markets." 9 V.S.A. § 2631.[1] Pursuant to this Chapter 73, AAFM's Weights and Measures Program coordinates inspection and testing of devices and products in commerce, including gas pumps, heating oil and propane delivery truck meters, scales, and scanners used in retail stores. Generally speaking, the program seeks to promote accuracy and minimize the perpetration of fraud – to ensure that consumers are informed and get the quantities they are expecting in commercial transactions. A violation of Chapter 73 or a rule adopted thereunder constitutes an unfair or deceptive act or practice in commerce subject to the penalty provisions established in Title 9, Chapter 63 (Consumer Protection) to protect the public and to encourage fair and honest competition. See 9 V.S.A. §§ 2771, 2451.

AAFM oversight of electric vehicle charging stations with respect to the accuracy of weights and measures makes sense conceptually, particularly given similarities between gas pumps (which as noted above are currently subject to AAFM oversight[2]) and EV charging stations. However, at present the definition of weights and measures in Vermont law expressly excludes "meters for the measurement of electricity… when they are operated in a public utility system" and any associated appliances or accessories. See 9 V.S.A. § 2651, which reads in its entirety:

> (14) "Weights and measures" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices but not including meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. Such electricity, gas, and water meters are specifically excluded from the purview of this chapter, and this chapter shall not apply to such meters or to any appliances or accessories associated therewith.

Accordingly, AAFM's weights and measures authority would currently only extend to EV charging stations that are not considered to be "operated in a public utility system." This

[1] 9 V.S.A. § 2651(2) reads: "'Commercial weighing and measuring device' shall be construed to include any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when that accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device."

[2] AAFM's Weights and Measures program conducts inspections and tests of motor fuel dispensers (gas pumps) on an annual basis. The inspection consists of ensuring the fuel meters are correct regarding octane, biodiesel content, and pricing labeling as well inspecting for leaks and proper sealing of calibrators. The meters are also tested to ensure they are in within prescribed tolerances for accuracy.

language could be interpreted narrowly to mean that AAFM cannot regulate utility-owned EV charging stations, or more broadly to exclude AAFM regulation of any grid-connected EV charging stations. Further expansion of AAFM's regulatory authority would require a statutory change. At this time, AAFM has not developed a position on whether any such expansion is appropriate.

National Institute of Standards and Technology Handbooks

In addition to granting AAFM statutory authority over weights and measures, and authorizing AAFM's Secretary to promulgate weights and measures regulations, the Vermont Legislature has adopted by reference provisions of two National Institute of Standards and Technology (NIST) handbooks – Handbook 44 and Handbook 130. See 9 V.S.A. § 2633.

NIST's handbooks contain uniform laws, regulations, and technical specifications recommended by the National Conference on Weights and Measures for use by the states in regulating weights and measures. The NIST handbooks are intended to promote uniformity across states, in order to facilitate interstate trade, permit fair competition among businesses, and provide uniform and sufficient protection to all consumers in commercial weights and measures practices. *See* NIST Handbook 130 at page 1, *available at* https://www.nist.gov/pml/weights-and-measures/publications/nist-handbooks/handbook-130.

It is worth noting that NIST Handbook 44 (2018), "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices," *available at* https://www.nist.gov/pml/weights-and-measures/nist-handbook-44-2018-current-edition, contains a Section 3.40 entitled "Electric Vehicle Fueling Systems – Tentative Code." Section 3.40 expressly applies to "devices, accessories, and systems used for the measurement of electricity dispensed in vehicle fuel applications wherein a quantity determination or statement of measure is used wholly or partially as a basis for sale or upon which a charge for service is based." See Section 3.40 at 3-155. It contains several exemptions, including "[t]he use of any measure or measuring device owned, maintained, and used by a public utility or municipality only in connection with measuring electricity subject to the authority having jurisdiction such as the Public Utilities Commission." *Id*. Section 3.40 is 20 pages and covers technical specifications for electric vehicle charging stations (under the term "electric vehicle supply equipment[3]); 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.

Section 3.40 is currently only a "Tentative Code," meaning it has a trial or experimental status and is not intended to be enforced. The Section 3.40 requirements are designed for study prior to the development and adoption of a final code. However, NIST handbooks are updated annually,

[3] "Electric vehicle supply equipment" (EVSE) is defined as "a device or system designed and used specifically to transfer electrical energy to an electric vehicle, either as a charge transferred via physical or wireless connection, by loading a fully charged battery, or by other means." NIST Handbook 44 at page 3-166.

and so Section 3.40 could potentially be finalized as early as next year. In the meantime, NIST's General Code has a catch-all provision for "Special and Unclassified Equipment" that reads "Insofar as they are clearly appropriate, the requirements and provisions of the General Code and of specific codes apply to equipment failing, by reason of special design or otherwise, to fall clearly within one of the particular equipment classes for which separate codes have been established." G-A.3. The General Code contains broad requirements relating to, inter alia, labelling of equipment, installation in accordance with manufacturer's instructions, position of the equipment so that its indications may be accurately read by the consumer, and maintenance.

Additionally, NIST Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality," contains (within the uniform regulation for the method of sale of commodities) a Section 2.34 entitled "Retail Sales of Electricity Sold as a Vehicle Fuel." This two-page section covers topics including method of sale, labeling, and street sign prices and other advertisements. Because the uniform regulation for the method of sale of commodities has been adopted by the Vermont Legislature as part of Chapter 72 (see 9 V.S.A. § 2633(c)), AAFM has the authority to enforce the provisions of Section 2.34.

Conclusion

In closing, while AAFM is open to a conversation about taking on some oversight of EV charging stations under its weights and measures authority, AAFM does not currently have the funding, capacity, equipment or requisite training to implement a regulatory program for EV charging stations. These gaps will need to be addressed if the State of Vermont determines it is appropriate and a priority for AAFM to oversee a new/expanded regulatory regime.

AAFM appreciates the opportunity to submit these comments and requests that the Public Utility Commission include the Agency in any discussions and deliberations on this matter moving forward.

Respectfully submitted,

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