



December 14, 2018

Mrs. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05602

Filed electronically on e-PUC

Re: **Case No. 18-2660-INV** Investigation into promoting the ownership and use of electric vehicles in the State of Vermont

Dear Mrs. Whitney,

Please accept the following comments filed on behalf of the Sierra Club in the above-referenced docket. These comments respond to the Commission's request, made during the November 30, 2018 workshop, for additional information from the Sierra Club proposing statutory language to help ensure (1) open access at electric vehicle ("EV") charging stations, and (2) that utility investments in EV charging infrastructure support an innovative, sustainable market for providers of EV charging in Vermont.

1. Open Access at EV Charging Stations

In Sierra Club's November 5, 2018 comments in this proceeding, we addressed the concept of "open access" with regard to publicly-located EV charging stations, explaining:

The concept of "open access" is the ability to get a charge at any public charger, including Level 1, Level 2, and DC Fast Charging. This means that the public charging station is not locked behind a gate or wall – essentially open for access by the public – and does not require a membership card to access the charging services. Open access also means that there is one or more methods of payment available to enable the charge to begin, for example via a credit card swipe or via a mobile app.¹

Our comments further noted that states including California, Massachusetts, and New Hampshire have established open access requirements in those states.² In response to those comments, during the November 30, 2018 Workshop in this proceeding, the Commission invited Sierra Club to submit follow

¹ Sierra Club, Comments at 6, Investigation into promoting the ownership and use of electric vehicles in the State of Vermont, Vermont Public Utilities Commission Case No. 18-2660-INV (Nov. 5, 2018).

² *Id.* at 6-7.

up comments proposing specific open access language that could be enacted by the Vermont General Assembly.

We believe that language of New Hampshire SB 575 provides a useful model that the Commission should follow in recommending language to the Vermont General Assembly mandating open access at public EV charging stations throughout Vermont. Our November 5, 2018 comments provide the key language mandating open access, and the full text of NH SB 575 is available for review at <https://legiscan.com/NH/text/SB575/id/1685285> (last visited December 11, 2018).

Based on the language of New Hampshire SB 575, Sierra Club proposes that the following language be added to Title 30 of the Vermont Statutes, 30 V.S.A. §§ 201 – 271:

“Owners or operators of public electric vehicle charging stations that require payment of a fee shall not require persons desiring to use such public electric vehicle charging station to pay a subscription fee or otherwise obtain a membership in any club, association, or organization as a condition of using such public electric vehicle charging station, but may have different price schedules that are conditioned on a subscription or membership in a club, association, or organization.”

In order to clarify the reach of the EV public charging station open access requirement in Vermont, Sierra Club recommends that the Vermont General Assembly also adopt language defining “public electric vehicle charging station” and “publicly available parking space.” New Hampshire SB 575 defines each term as follows:

"Public electric vehicle charging station" means a charging station, electric recharging point, charging point, or electric vehicle supply equipment, which is an element in an infrastructure that supplies electricity for the recharging of plug-in electric vehicles, including all-electric cars, neighborhood electric vehicles, and plug-in hybrids, and which allows any electric vehicle owner or operator to access and use the charging station, located at a publicly available parking space.

"Publicly available parking space" means a parking space that has been designated by a property owner or lessee to be available to, and accessibly by, the public and may include on-street parking spaces and parking spaces in surface lots or parking garages, but shall not include: (a) a parking space that is part of, or associated with, a private residence; (b) a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, or residents of a common interest development, or residents of an adjacent building; or (c) a parking space reserved for persons who are blind and persons with walking disabilities as defined in state law or regulation.

2. Public Interest Test for Utility Investments to Support Transportation Electrification.

In Sierra Club’s November 5, 2018 comments in this proceeding, we noted that utility regulators and legislators in multiple states, including Oregon and Massachusetts, have taken steps to ensure that utility participation does not hinder private investment in the EV charging marketplace.³ These states do so by explicitly considering, as one part of a public interest inquiry, whether proposed utility investments to support transportation electrification will support the competitive market. During the November 30, 2018 workshop, the Commission invited Sierra Club to submit comments proposing

³ *Id.* at 11.

public interest language that could be enacted by the Vermont General Assembly regarding utility investment in EV charging infrastructure.

Sierra Club recommends that the Commission refer to language adopted by the Oregon Legislature as an appropriate model to clarify this issue in Vermont. Our prior comments in this proceeding set out the key language from the Oregon statute, SB 1547 § 20(4)(f), the full version of which is available for review at <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled> (last visited December 12, 2018).

Below, we suggest language for a public interest test that is based on Oregon SB 1547 § 20(4)(f), but also incorporates language related to complementary private investment and labor interests, and includes a full set of criteria that Sierra Club believes should be used in the review of a proposed utility investment. Sierra Club proposes that the following language be added to Title 30 of the Vermont Statutes, 30 V.S.A. §§ 201 – 271:⁴

- (1) Each electric public utility may file, or the commission may request an electric public utility to file, applications for programs or investments to support widespread transportation electrification.
- (2) When considering transportation electrification programs and determining cost recovery for investments and other expenditures related to programs proposed by an electric distribution utility under subsection (1) of this section, the Commission may consider whether the investments and other expenditures are:
 - (a) Reasonable and prudent, as determined by the Commission;
 - (b) Reasonably expected to improve the electric distribution utility’s electrical system efficiency, the integration of variable generating resources, operational flexibility and system utilization during off-peak hours;
 - (c) **Reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services; attract private capital investments; and utilize high quality jobs and skilled worker training programs;**
 - (d) Reasonably expected to support widespread transportation electrification and to increase access to the use of electricity as a transportation fuel;
 - (e) Reasonably expected to provide competitively priced power to consumers who charge electric vehicles in a manner consistent with electric grid conditions; and
 - (f) Transparent, incorporating public reporting requirements to inform program design and commission policy.

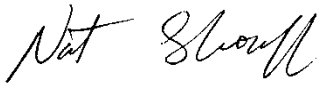
A full text of Sierra Club’s suggested statutory language addressing the role of utilities and third party providers of EV charging services is included as Attachment A.

⁴ Although there are multiple potential locations for such language, one logical place would be to simply add a subsection (h) to the existing language of Title 30, Chapter 5, Section 218, 30 V.S.A. § 218, which addresses “Jurisdiction over charges and rates.”

Thank you for the opportunity to provide feedback on the Commission's efforts to accelerate EV adoption and promote transportation electrification in Vermont.

If you have any questions about the material in the comments, please do not hesitate to contact me at 415.200.9778 or nathaniel.shoaff@sierraclub.org.

Respectfully submitted,



Nathaniel Shoaff
Senior Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 200-9778
nathaniel.shoaff@sierraclub.org

_____/s/_____

Robb Kidd
Conservation Program Manager
Sierra Club Vermont
P.O. Box 492
Montpelier, VT 05602
(802) 505-1540
robb.kidd@sierraclub.org

Attachment A

Legislative declaration.

(1) The General Assembly finds and declares that:

- (a) Widespread transportation electrification is necessary to diversify the transportation fuel mix, improve national security, and protect air quality;
- (b) Widespread transportation electrification requires that electric distribution utilities increase access to the use of electricity as transportation fuels;
- (c) Widespread transportation electrification should provide consumers with fuel cost savings;
- (d) Widespread transportation electrification should stimulate innovation, competition, and increased choices in charging equipment and charging networks and should also attract private capital investments and create high-quality jobs; and
- (e) Widespread transportation electrification should improve the electric distribution utilities' electrical system efficiency and operational flexibility, including the ability of an electric distribution utility to integrate variable generating resources and to make use of off-peak generation resources.

SECTION 1. Transportation electrification – definition.

The use of electricity from external sources of electrical power, including the electrical grid, for all or part of vehicles, vessels, trains, boats, or other equipment and the related programs and charging and propulsion infrastructure investments to enable and encourage this use of electricity.

SECTION 2. Transportation electricity resale – exemption.

The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge plug-in electric vehicles does not make the corporation or person an electric distribution utility within the meaning of this section solely because of that ownership, control, operation, or management. Electric distribution utilities may provide the services described in this subsection as unregulated services, or as regulated services subject to the jurisdiction of the Public Utilities Commission (“Commission”).

SECTION 3. Transportation electrification programs.

(1) Each electric public utility may file, or the commission may request an electric public utility to file, applications for programs or investments to support widespread transportation electrification.

(2) When considering transportation electrification programs and determining cost recovery for investments and other expenditures related to programs proposed by an electric distribution utility under subsection (1) of this section, the Commission may consider whether the investments and other expenditures are:

- (a) Reasonable and prudent, as determined by the Commission;
- (b) Reasonably expected to improve the electric distribution utility's electrical system efficiency, the integration of variable generating resources, operational flexibility and system utilization during off-peak hours;

- (c) Reasonably expected to stimulate innovation, competition, and increased consumer choices in electric vehicle charging and related infrastructure and services; attract private capital investments; and utilize high quality jobs and skilled worker training programs;
- (d) Reasonably expected to support widespread transportation electrification and to increase access to the use of electricity as a transportation fuel;
- (e) Reasonably expected to provide competitively priced power to consumers who charge electric vehicles in a manner consistent with electric grid conditions; and
- (f) Transparent, incorporating public reporting requirements to inform program design and commission policy.

SECTION 4. Transportation electrification programs – rates.

Investments and other expenditures related to programs proposed by an electric distribution utility under Section 3, subsection 1, be may considered part of an electric distribution utility’s rate base and may be considered in calculating rates.