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Don't Pump the Brakes on Electric Utilities' EV Charging Proposals in Pa.

BY DEVIN T. RYAN
Special to the Legal

Across the country, the public and private sectors have made significant efforts to increase the deployment of electric vehicles (EVs) and electric vehicle charging stations. Of note, the Infrastructure Investment and Jobs Act of 2021 (IIJA) will provide $7.5 billion to help create a national network of EV charging stations, including $4.75 billion in funds available to states under the National Electric Vehicle Infrastructure (NEVI) Formula Program. If Pennsylvania's plan under the NEVI Formula Program is approved, Pennsylvania will have $171.5 million in funds available for EV charging infrastructure over the 2022-2026 period. At the same time, the private sector has been making significant investments in EVs and EV charging stations, with automakers, EV charging companies and electric utilities predominantly leading the charge.

On the utility side, the EV-related initiatives have included EV charging tariffs, investments in make-ready infrastructure for EV charging stations, and the installation and ownership of publicly available EV charging stations. Relevant to Pennsylvania, electric utilities have proposed these types of initiatives in proceedings before the Pennsylvania Public Utility Commission (PaPUC) over the past few years. Furthermore, several electric utilities in Pennsylvania are members of the recently announced National Electric Highway Coalition, which is "a collaboration among electric companies that are committed to providing electric vehicle (EV) fast charging stations that will allow the public to drive EVs with confidence along major U.S. travel corridors by the end of 2023."

However, electric utilities' EV charging proposals have been met with opposition in PaPUC proceedings. A common allegation is that the electric utility's EV charging proposal is unreasonable because it will disrupt the competitive market for EVs and EV charging stations, as the utility can recover its capital costs and expenses in base rates. Opposing parties also claim that electric utilities' ratepayers should not pay for behind-the-meter facilities, including EV charging stations. Yet, most stakeholders agree that the expansion of EVs and EV charging infrastructure is in the public interest and would produce substantial benefits for the electric utilities' customers and the commonwealth by expanding electricity usage during off-peak hours and reducing carbon emissions.


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To understand where Pennsylvania ranks among its peers and to inform where the PaPUC could head in the future, it's important to examine Pennsylvania electric utilities' recent EV proposals before the PaPUC, including EV incentives and proposals to own and operate EV charging stations, and how the PaPUC has ruled on them to date, and how the commonwealth compares to other states.

Pennsylvania Electric Utilities' Recent EV Charging Proposals in PaPUC Proceedings

Electric utilities have made several EV-related proposals in PaPUC proceedings in the last few years. In 2021 alone, the PaPUC reviewed and considered EV-related proposals in base rate proceedings

for Duquesne Light Co. (DLC), PECO Energy Company—Electric Division (PECO) and UGI Utilities, Inc.—Electric Division (UGI Electric). Those proposals varied in their scope and design, but all shared a common goal—to expand the infrastructure needed to support a wider proliferation of EVs.

Specifically, in its 2021 base rate case, DLC proposed a transportation electrification (TE) program, consisting of, among other components:

- The public, workplace and multi-unit dwelling make-ready pilot, under which DLC would construct and own the make-ready infrastructure for EV charging stations in public locations, workplaces, and multi-unit dwellings;
- The fleet and transit charging pilot, under which DLC would, among other things, install, own, and maintain EV charging stations for fleet and transit customers; and
- The home charging pilot, where DLC would offer to install EV charging stations in residential customers' homes.

Ultimately, the parties reached a partial settlement of the DLC 2021 base rate case, which included a resolution of the TE program proposals. Under that partial settlement, DLC's TE program was largely approved with certain modifications, such as various reporting requirements, rebates for fleet and transit customers installing EV charging stations instead of DLC installing and owning EV charging stations for those customers, and the withdrawal without prejudice of the home charging pilot.

In addition, PECO proposed an EV charging pilot as part of its 2021 base rate case. The proposed pilot consisted of three programs: transit charging program, which would provide incentives to transit authorities for certain EV charging stations that are primarily used for electric buses; Level 2 (L2) charging program, which would provide incentives to qualifying commercial and industrial customers that install L2 chargers; and EV education and outreach program, designed to increase customer awareness and knowledge about PECO's EV initiatives. PECO and the parties entered into a settlement that resolved all of the issues in the case, including the EV charging pilot. The settlement, which the PaPUC approved without modification, generally authorized the EV charging pilot subject to certain modifications, such as some reporting requirements and changes to the qualifications for the L2 program.

Lastly, in its 2021 base rate case, UGI Electric proposed an EV program consisting of the following proposals: UGI Electric's installation and ownership of three publicly available EV charging stations; a new Rate EV-C, setting forth the rates and charges for use of those utility-owned EV charging stations; a make-ready infrastructure component, under which UGI Electric would install, own, and maintain make-ready infrastructure for qualifying EV charging stations available to the public; and EV education and awareness. A few parties raised concerns with aspects of UGI Electric's proposals, particularly the utility's proposal to own and operate three publicly available EV charging stations. As alleged support, they argued that UGI Electric, as an investor-owned utility, would distort the competitive market by installing and operating publicly available EV charging stations. In the end, the parties reached a settlement of all issues that the PaPUC approved without modification. Under that settlement, UGI Electric's make-ready infrastructure and EV education and awareness proposals were approved with some modifications. However, the settlement required UGI Electric to withdraw without prejudice its EV charging station ownership proposal and its proposed Rate EV-C.

Electric Utilities' EV Charging Initiatives in Other States

As noted above, EV charging proposals have been met with opposition in Pennsylvania, especially those involving utility ownership of EV charging stations.

Meanwhile, utilities in other states have been allowed to move forward with more expansive EV initiatives. "According to an [Edison Electric Institute] survey issued early" in 2021, "52 electric companies in 31 states and the District of Columbia had received regulatory approval to begin electric transportation programs of various types, with budgets totaling nearly $3 billion." Notably, "just three states—California, New York and New Jersey—account for more than 80% of the budget total." Further, in Maryland, Potomac Edison Co. is "installing 59 charging stations, including 20 fast-charging stations across its seven-county Maryland territory," as well as seven utility-owned EV charging stations at multifamily properties, pursuant to its "EV Driven" plan that was

approved by the Maryland Public Service Commission.

By comparison, even modest proposals in Pennsylvania, such as UGI Electric's proposal to install, own, and maintain only three public EV charging stations, have been opposed because they allegedly could disrupt the competitive market. At the very least, the actions by regulators in the neighboring states of New York, New Jersey and Maryland show that the deployment of EV charging infrastructure in Pennsylvania would benefit from increased investments by electric utilities.

Proposed Legislation in Pennsylvania That Would Affect Electric Utilities' EV Charging Initiatives

Two bills introduced in the General Assembly would, if enacted, resolve several issues regarding electric utilities' EV charging initiatives in Pennsylvania and encourage additional investment.

First, Senate Bill 435, the Clean Transportation Infrastructure Act, would require the PaPUC to establish statewide and regional goals for transportation electrification. The proposed legislation also would require certain electric utilities to file "transportation electrification infrastructure development plans," which would describe how they would "support deployment of the transportation electrification infrastructure reasonably necessary to achieve" the PaPUC's goals. The proposed legislation further states that the utility's plan can "include transportation electrification charging stations owned and operated by the electric distribution company and third parties, incentives for customers and third-party charging station owners and customer education programs related to installing or using transportation electrification charging stations." Electric utilities would recover the costs of implementing their plans through either traditional base rates (under Section 1308 of the Public Utility code) or alternative ratemaking (under Section 1330 of the Public Utility Code), subject to a cost cap.

Second, House Bill 1285, Building Forward Pennsylvania's Energy Infrastructure, would permit an electric utility to file a petition with the PaPUC for approval of a Section 1307 reconcilable surcharge to recover the "reasonable and prudent costs incurred to install electric vehicle charging infrastructure through an approved long-term plan that includes collaboration with private industry and has been deemed in the public interest by the commission." The long-term plan must include, at the very least, "a description of the planned types, quantities, costs and locations of facilities to be constructed, a proposed budget and a schedule of deployment." Similar to Senate Bill 435, there would be a cap on the costs recoverable through the surcharge.

Thus, although these pieces of legislation vary to some degree, they share some common aspects, including: the utility's submission of a plan for its deployment of EV charging infrastructure; and the utility's ability to recover the costs of implementing its plan, subject to certain cost caps.

Conclusion

Electric utilities would be well-positioned to learn from their own deployment of EV charging infrastructure, as it would enable them to gather and evaluate data on the impacts that EV charging stations have on their distribution systems. Such knowledge would benefit the electric utilities, their customers and the commonwealth because it would: better enable electric utilities to provide reasonable, safe, adequate, and reliable service, as required by Section 1501 of the Public Utility Code; and better facilitate the deployment of EV charging infrastructure and, by extension, a wider adoption of EVs in the commonwealth. Thus, Pennsylvania could benefit from spurring further investment by electric utilities in EV charging infrastructure by following neighboring states' approach in PaPUC proceedings, by enacting legislation designed to allow and encourage electric utilities' investments in EV charging infrastructure, or both.

Devin T. Ryan *is a principal in Post & Schell's energy and utilities practice group and focuses his practice on energy and public utility law, representing electric, natural gas, water and wastewater utility clients. He can be reached at dryan@postschell.com.*