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By Electronic Mail

Hon. Jeffrey Cohen  
Acting Secretary  
NYS Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Case 13-E- 0199 – In the Matter of Electric Vehicles**

Dear Secretary Cohen:

In accordance with the schedule adopted in this proceeding, enclosed for filing with the Commission please find the Comments of the Retail Energy Supply Association.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*  
Usher Fogel, Counsel

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**CASE 13-E-0199 - In the Matter of Electric Vehicle Policies.**

**COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. PRELIMINARY STATEMENT**

The Retail Energy Supply Association (RESA)<sup>1</sup> submits these comments in response to the *Notice of New Proceeding And Seeking Comments* issued on May 22, 2013<sup>2</sup>. In the Notice, the Commission instituted this proceeding to review policies that may impact consumer acceptance and use of electric vehicles and to further develop the Commission's policies regarding electric vehicles and the services and infrastructure that they require. Initially, this proceeding will address questions pertaining to the jurisdiction of the Commission and its impact of consumer acceptance and use of plug-in electric vehicles (PEVs). To this end the Notice identifies various questions applicable to the extent of Commission jurisdiction and appropriate policies applicable to PEV and its attendant infrastructure.

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<sup>1</sup>RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> Case 13-E-0199 - In the Matter of Electric Vehicle Policies. *Notice of New Proceeding And Seeking Comments*, issued on May 22, 2013("Notice")

RESA supports the Commission's efforts to develop appropriate policies in this growing area of consumer based activity. As will be detailed below, the Commission should recognize that this entire market is competitively based and must be allowed to flourish in an independent competitive atmosphere unencumbered by needless regulation and oversight.

## **II. RESA RESPONSE TO QUESTIONS**

The following specific responses are provided to the questions posed by the Commission in the Notice.

Jurisdiction over Charging Stations:

1. To what extent and in what ways would the development of consumer acceptance and use of electric vehicles and of the supporting services for electric vehicles be affected by the Commission's determination that it does or does not have direct jurisdiction over publicly available Charging Stations, their operators or the transaction between publicly available Charging Station operators and members of the public?

### **RESPONSE:**

The matter of jurisdiction and consumer acceptance of PEV and charging stations is integrally related to the nature of this new and emerging market. The manufacturing, distribution and sale of electric vehicles are conducted in a competitive market through the interplay of market forces. There are numerous manufacturers producing a wide variety of vehicles tailored to particular market segments. Similarly as the Commission recognizes, in contrast to electric utilities subject to its jurisdiction, Charging Stations are not in any way an inherent monopoly and potential customers could choose whether or not to use a particular Charging Station or a different Charging Station located at a different site. In view of this "competitive market for Charging Stations" the regulation of Charging Station rates and practices could be characterized

as unnecessary.<sup>3</sup> In sum, both the markets for PEVs and Charging Stations are competitive in nature and practice and do not require the direct imposition of Commission regulation. Thus, the Commission, regardless of whether it deems itself to have jurisdiction, should choose not to apply jurisdiction. It is simply unnecessary.

In many key areas, this market is analogous to the exercise of Commission jurisdiction over electric appliances such as refrigerators, washing machines and other domestic appliances. Originally, the Commission asserted that it had and exercised jurisdiction over the sale and distribution of refrigerators. However, in the seminal case of *In Re City Ice & Fuel Co.*, 260 AD 537 (3<sup>rd</sup> Dept 1940) *app den* 285 N.Y. 858, the Court of Appeals affirmed the determination that the sale of refrigerators even when conducted by a utility is not considered to be the rendition of utility service. The absence of Commission jurisdiction has in no way hindered the growth and development of this retail appliance market. To the contrary the sale of appliances is part of our embedded retail market infrastructure.

The mobile banking industry has also grown significantly without the imposition of regulation over the underlying infrastructure. Thus, customers now have access to their accounts through Automated Teller Machines (ATM) at numerous retail locations, including grocery stores, pharmacies and many other retail establishments. The pricing plans for these units are negotiated in a competitive manner between the retail vendor and the financial institution.

Similarly, the motor fuel retail distribution market developed in an open competitive market and resulted in the establishment of a fulsome distribution network of gas stations throughout the breadth of the country.

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<sup>3</sup> Notice, p. 4

Most recently, the mobile telephone market that has literally changed the lifestyle of the entire nation has proliferated with little direct regulation over mobile phones and their ancillary devices including phone charging equipment. Customers are free to purchase phones and charging equipment from their vendor of choice unencumbered by direct regulation by the Commission. And phone charging stations are now made available at no charge at airports, conference centers and other areas where users may congregate.

The business structure and environment for this nascent industry should incentivize private companies to invest in the requisite PEV and Charging Stations thereby making use of the flexibility of the capital markets that are more readily accessed by for-profit entities. This is far preferable than allowing electric utilities to own charging stations which would then be ratepayer-subsidized and subject the ratepayer to additional risk.

In practice, the growth, location and proliferation of Charging Stations will be directly related to consumer acceptance of PEVs. As the demand by consumers for such vehicles increases, market forces will inevitably ensure that Charging Stations will be available to serve this market segment, in a variety of formats, pricing schedules and venues. This is the process that unfolded successfully in banking, mobile phones and motor fuel industries without the influence of direct regulation.<sup>4</sup>

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<sup>4</sup> It is worthwhile to note that even without Commission oversight the consumer would still fall within the protective ambit of Federal and state antitrust, fair trade practices, and consumer protection laws.

2. In determining whether the provisions of the Public Service Law provide it with jurisdiction, should the Commission consider the manner in which a customer is billed for electric vehicle charging services, e.g., per kWh, per hour, day, month, etc?

**RESPONSE:**

As noted, in the Response to Question #1, RESA urges the Commission to recognize that its assertion of jurisdiction is tenuous and it is more reasonable for the Commission to refrain from exercising jurisdiction given the highly competitive structure of this market.

The pricing structure adopted by the owner of the Charging Station will and should reflect what is most economic for all impacted parties and what mechanism appeals to consumers. This should not be the basis upon whether the Commission determines to assert jurisdiction. It is important to emphasize that the pricing structures for charging services can take many different forms than the simply traditional volumetric kWh format as assumed by the question. It is quite conceivable that a vendor may provide the charging service at no additional charge in order to entice a consumer to purchase the main product sold by the vendor.

Starbucks, the ubiquitous coffee chain, now provides free WIFI internet service in all of their retail stores. This is offered in order to entice consumers to come to their stores and hopefully purchase other products. Similarly, gas stations currently provide air filling services at a nominal charge, and at airports and other public venues mobile phone charging stations are also made available at no cost to the consumer.

3. If the commenter argues that the Commission should assert jurisdiction over publicly available Charging Stations and their operators, how should the Commission exercise that jurisdiction? For example, should public Charging Stations and their operators be subject to rate regulation?

**RESPONSE:**

RESA does not recommend that the Commission assert jurisdiction

Utilities as Owners or Operators of Charging Stations:

4. Should the Commission allow electric distribution utilities operating in New York State to own or operate Charging Stations: a. as part of their regulated operations?  
b. segregated from their regulated operations, treating Charging Station assets as nonutility property and revenues and expenses related to Charging Station operations as revenues and expenses from nonutility operations?

**RESPONSE:**

The Commission should not allow distribution utilities to own or operate Charging Stations as part of their regulated operations or even if segregated from regulated operations. It is clear as the Commission has acknowledged that Charging Stations are not a regulated monopoly and consumers are free to go to their vendor of choice. In this type of market there is no need to enable or empower the utility to participate as a competitive vendor. The applicable standard is that the utility should be allowed to deploy its assets only in those areas where competitive markets are not available or where a natural monopoly does in fact exist. Even if the operations are “segregated”, given the ubiquitous presence of the utility and the fluid status of utility assets, allowing the utility to participate will impede market development or hinder competition.

5. Should unregulated affiliates of electric distribution utilities operating in New York State own or operate Charging Stations?

**RESPONSE:**

The Commission may consider allowing unregulated affiliates to participate in this market by applying the standards that the Commission developed with respect to retail access.

Impact of PEV charging on Electric Infrastructure:

6. State-wide, the number of PEVs has increased from 962 in May 2012 to 3,931 in April 2013. Based on Department of Motor Vehicle Records, the concentration of PEVs by zip code can be ascertained.
  - a. What steps can be taken to ensure that utilities are aware of new EVCE locations so they can proactively address any necessary distribution facility upgrades?
  - b. What customer privacy concerns need to be addressed?
  - c. If distribution facility upgrades are necessary to accommodate PEV charging, should such costs be shared among all customers (*i.e.*, rate-based), or allocated in some other way?
  - d. At what level of PEV use would there be transmission level performance impacts? Are there any strategies that could minimize such impacts?
  - e. To what extent can the State's solar photovoltaic (PV) policies, under the NY Sun initiative, be utilized to offset potential increases in peak demand that may result from the expanded use of EVCE, particularly at publicly available charging stations?

**RESPONSE:**

At this point in time, it is difficult to formulate meaningful responses to these highly technical questions that may produce differing responses from each utility and can also be impacted by location, other increases in electric usage and many other factors. As a general matter the capital upgrades associated with PEV charging should be treated like all other system upgrades and shared among all customers.

Utility Metering and Rate Issues:

7. How should the Commission exercise its regulatory authority to ensure that PEV charging, both at Charging Stations and in private locations, occurs in a manner that is consistent with grid capabilities, *e.g.*, through time of use (TOU) or other rate structures?

**RESPONSE:**

The Commission will in all circumstances retain jurisdiction over the sale of electricity by the utility to the owner of the Charging Station. Consequently it will have the final say over the rate design and attendant rates for service provided to Charging Stations. With this regulatory authority it will have the ability to implement rate designs that are consistent with established rate design goals. Thus, for example the Commission may direct that the utility



implement a TOU rate design for Charging Stations. The owner who is subject to this rate will then develop pricing plans for the end use customer that will mirror the charges that are incurred by the owner.

The question also presumes that the owner of the Charging Station will only purchase electricity from the utility. In practice, however, given the extent of the competitive retail market, it is just as probable that the owner will use an ESCO as the electric supplier. In this case, the pricing plan will be a matter of competitive negotiations.

8. Do existing rate structures need to be modified to accommodate the evolution of the PEV market? Are additional measures needed to increase the use of TOU rates for EVCE?

**RESPONSE:**

It is premature to formulate a specific rate structure policy at this time until more detailed industry information becomes available.

9. What additional metering policies or protocols (*e.g.*, dual metering, submetering) may be needed to accommodate various EVCE options?

**RESPONSE:**

It is premature to formulate a specific metering policy at this time until more detailed industry information becomes available. Generally, the Commission should seek to impose least cost metering requirements that do not hinder market development.

Consumer Issues:

10. What risks face consumers in the market for EV charging services and how does, or should the market or other entities address those risks?

**RESPONSE:**

It does not appear that consumers face unique risks in this market that are markedly different than the risks of participating in other retail markets. It will be important to ensure that

customers are adequately informed of the key elements associated with use of this service through a comprehensive consumer education program

11. To what extent should outreach efforts integrate PEV and solar PV information?

**RESPONSE:**

RESA does not have a definitive position on this matter.

**III. CONCLUSION**

The PEV and Charging Station markets are best served by allowing these competitive retail markets to develop without the imposition of Commission regulation or involvement by regulated electric distribution utilities in the retail use, sale and installation of these devices.

RESA thanks the Commission for the opportunity to submit comments in this proceeding.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*

Usher Fugal, Counsel

Dated: July 5, 2013