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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4419**
September 8, 2011
Agenda ID# 10618

R E S O L U T I O N

Resolution E-4419. Southern California Edison ("SCE") requests approval to revise tariff electric Rule 18, Supply to Separate Premise and Use by Others, to provide an exception to existing limitations on the resale of electricity provided to Electric Vehicle Service Providers ("EVSP").

PROPOSED OUTCOME: This Resolution rejects in part SCE's proposed new Rule 18 (H) "Plug-In Electric Vehicle Charging", and approves a revision to existing Rule 18 (E) and (H) as well as revisions to applicable rate schedules.

ESTIMATED COST: No material costs are expected.

By Advice Letter 2528-E, Filed on November 19, 2010.

SUMMARY

SCE's request to revise Rule 18 (H) and the Applicability section of rate Schedules TOU-EV-1, TOU-EV-3, and TOU-EV-4, in compliance with Decision (D.) 10-07-044, is rejected in part. This Resolution rejects SCE's proposed new Rule 18 (H) "Plug-In Electric Vehicle Charging" as inconsistent with Conclusion of Law #11 in D. 10-07-044 that the sale of electricity by an investor-owned utility to an electric vehicle service provider is a retail sale of electricity, not a 'sale for resale.' However, this Resolution approves a narrower revision to existing Rule 18 (E) and (H) and approves the proposed revision to the Applicability sections of Schedules TOU-EV-1, TOU-EV-3 and TOU-EV-4 in order enable customers of SCE to provide charging services dedicated to their employees and to the general public.

SCE filed Advice Letter ("AL") 2528-E on November 19, 2010.

BACKGROUND

The Commission initiated Rulemaking (R.) 09-08-009 to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.

Phase 1 in R. 09-08-009 addressed the nature of the Commission's regulatory authority over entities that sell electric vehicle charging services to the public. Decision (D.) 10-07-044, resolving Phase 1, determined that the legislature did not intend for the Commission to regulate providers of electric vehicle charging services to the public as public utilities.

The Commission based its determination on an analysis and interpretation of the Pub. Util. Code, particularly §§ 216, 218, 740.2, 740.3.

D.10-07-044 specifically addressed the concerns expressed by Pacific Gas & Electric ("PG&E") and SCE that "investor-owned utility sales of electricity to electric vehicle service providers could be deemed a "sale for resale" by FERC, and thus, fall under the exclusive jurisdiction of FERC." (D. 10-07-044, p. 29).

In response, the Commission noted: "Under the Federal Power Act, "sale of electric energy at wholesale in interstate commerce" is subject to the jurisdiction of FERC." "[S]ale of electric energy at wholesale" is defined as "a sale of electric energy to any person for resale."[1]

The Commission concluded that "Selling electric vehicle charging services does not make an entity an electric utility and that a seller of electric vehicle charging services that purchases electricity from an investor-owned utility is an end-user that purchases the electricity at retail. Thus, the sale of electricity by an investor-owned utility to an electric vehicle service provider is a retail sale of electricity, not a wholesale sale or a "sale for resale." This means that the sale falls under the

[1] 16 U.S.C. § 824(d).

exclusive jurisdiction of the California Public Utilities Commission, not under the jurisdiction of FERC" (D. 10-07-044, p. 30).

On November 19, 2010, SCE filed AL 2528-E in order to request tariff changes it contends are necessary to implement provisions of D.10-07-044, regarding what SCE characterizes as resale of electricity for electric vehicles.

On September 1, 2010, PG&E and The Utility Reform Network ("TURN") filed separate requests for rehearing of D.10-07-044. These requests are currently before the Commission pending disposition.

Energy Division staff suspended AL 2528-E on December 1, 2010 for 120 days for further review, prior to the EVSP Coalition protest. Staff then re-suspended AL 2528-E on March 18, 2011 for an additional 180 days for further review.

NOTICE

Notice of AL 2528-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS AND COMMENTS

SCE's AL 2528-E was protested by the EVSP Coalition ("Coalition") on December 9, 2010.

The EVSP Coalition, comprised of BetterPlace, Coulomb Technologies, and ECOtality, protested the portion of AL 2528-E in which SCE proposes modification of Rule 18, but did not object to the proposed changes in the Applicability sections of Schedules TOU-EV-1, TOU-EV-3 and TOU-EV-4. The EVSP Coalition states, "SCE's proposed language is not consistent with D.10-07-044." The Coalition states an "EVSP's purchase of electricity from SCE is a retail transaction, not a 'resale' of electricity."

SCE filed a response to the protest on December 16, 2010. In their reply, SCE states that existing "Rule 18 (E) prohibits any SCE customer – retail or wholesale

– from charging for electricity received from SCE and used by another person under any circumstances *except* as specifically delineated." SCE states that "while Rule 18 cannot, per D.10-07-044, characterize all SCE sales of electricity to EVSPs as FERC-jurisdictional sales for resale; it also cannot characterize all such sales as CPUC-jurisdictional, which the EVSP Coalition appears to advocate."

DISCUSSION

D.10-07-044 did not direct the utilities to file advice letters requesting tariff changes necessary to implement provisions of D. 10-07-044 regarding resale of electricity for electric vehicles.

Accordingly, SCE's AL 2528-E shall be considered a filing made on its own initiative and not in compliance with D.10-07-044.

This Advice Letter provides an opportunity to address the merits of the proposed revisions in light of SCE customer inquiries and in order to provide clarity to the market and promote the proliferation of electric vehicle charging services.

Specifically, SCE alleges that it is prohibited from providing service to prospective customers that want to install charging services dedicated to employees, but that may also be used by the general public. SCE argues that under Rule 18, electric vehicle service providers are not exempt from the prohibition on reselling electricity. Thus, SCE asserts that absent a change to Rule 18, it cannot provide service.

However, SCE's proposed language is more prescriptive than necessary, and may be partially inconsistent with D.10-07-044. Conclusion of Law 11 in D.10-07-044 , p. 35 states: "The sale of electricity by an investor-owned utility to an electric vehicle service provider is a retail sale of electricity, not a wholesale sale or a 'sale for resale.' "

The Commission recognizes that there is uncertainty with respect to whether, or how to implement the summary conclusion of D.10-07-044 as it relates to the general prohibitions included in Tariff Rule 18.

This uncertainty is contrary to the intent of D.10-07-044, which addresses a contested issue in R. 09-08-009 and provides certainty to market participants with respect to the definition of charging services and the Commission's jurisdiction in this area.

Accordingly, although the Commission did not expressly order it in D.10-07-044, we agree with SCE that it is necessary to revise Tariff Rules in order to enable retail customers to provide charging services. However, the language proposed by SCE is overly-prescriptive and contrary to the plain language of Conclusion of Law #11 in D. 10-07-044.

This revision in no way modifies any other aspect of D. 10-07-044, and in particular has no bearing on the price that providers may charge to users of the charging services.

The Commission accordingly rejects in part SCE's proposed new Rule 18 (H) "Plug-In Electric Vehicle Charging" language. However, Energy Division proposes and the Commission hereby approves a revision to SCE's existing Rule 18 (E) and (H) that includes a narrower electric vehicle exemption. This provision under Rule 18 Sections (E) and (H) shall read:

E. Use by Others. A customer shall not charge for electricity received from SCE and used by another person, except:

[…]

5. For use solely as motor fuel for light duty plug-in electric vehicles.

H. Resale of Electricity. Resale of electricity or submetering of electricity for the purpose of resale is prohibited, except as provided for under Section E.1, E.2, E.3, F, or G above. Violation of any provision of this Rule shall result in discontinuance of electricity, or refusal to provide service, in accordance with Rule 11. The sale of electricity by an investor-owned

utility to an electric vehicle service provider under E.5 above is a retail sale of electricity, not a sale for resale.

Approval of SCE's AL 2528-E will establish revised existing Rule 18 (E) and (H) language and revised rate Schedules TOU-EV-1, TOU-EV-3 and TOU-EV-4. The revision to Rule 18 shall be in the form of a Rule 18 (H) Resale of Electricity exemption under the Rule 18 (E) Use by Others section not as a new and separate provision.

There are no costs associated with approval of these tariff revisions.

COMMENTS

This Resolution will be served to the R.09-08-009 service list for 30 day comment.

FINDINGS AND CONCLUSIONS

1. Utilities were not directed to file advice letters in compliance with D.10-07-044.
2. No party protested the proposed revisions to the Applicable sections of Schedules TOU-EV-1, TOU-EV-3 and TOU-EV-4.
3. The revision to Rule 18 shall be in the form of a Rule 18 (H) Resale of Electricity exemption under the Rule 18 (E) Use by Others section not as a new and separate provision.

THEREFORE IT IS ORDERED THAT:

1. The request of Southern California Edison to revise the Applicable sections of Schedules TOU-EV-1, TOU-EV-3 and TOU-EV-4 is approved.
2. The request of Southern California Edison to insert a new Rule 18 (H) "Plug-In Electric Vehicle Charging" is rejected.
3. Southern California Edison is directed to revise its existing Rule 18 tariff electric rule language to align with the specific revisions to existing Rule 18 (E) and (H) given above.

4. Additionally, Pacific Gas &Electric and San Diego Gas & Electric are directed to file Tier 1 advice letters requesting similar revisions to their applicable rules, Rule 18 and Rule 19, respectively, within 30 days of the effective date of this Resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 8, 2011; the following Commissioners voting favorably thereon:

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Paul Clanon
Executive Director