Decision 20-09-025 September 24, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification.	Rulemaking 18-12-006

DECISION CLARIFYING STATUS OF ELECTRIC VEHICLE CHARGING SERVICE PROVIDERS AS PUBLIC UTILITIES

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DECISION CLARIFYING STATUS OF ELECTRIC VEHICLE CHARGING SERVICE PROVIDERS AS PUBLIC UTILITIES

Summary

This decision holds that the providers of medium- and heavy-duty electric vehicle charging services, and off-road electric vehicle or off-road electric equipment charging services, are not public utilities, based on an analysis of Public Utilities (Pub. Util.) Code Sections 740.2, 740.3, 740.12, 216, and 218. This decision orders Southern California Edison Company and Pacific Gas and Electric Company to modify their respective Electric Rule 18 tariff to give effect to this holding.

This proceeding remains open.

1. Procedural Background

The instant rulemaking was established by the Commission on its own motion by an Order Instituting Rulemaking (OIR) issued on December 19, 2018. This proceeding will provide a framework for the Commission to consider utility applications for investments and rates related to zero emission vehicles (ZEVs), and also address issues held over from the predecessor transportation electrification proceeding – Rulemaking (R.) 13-11-007.

The OIR named the following respondents, and automatically made them parties to the proceeding: Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Liberty Utilities (CalPeco Electric) LLC, Bear Valley Electric Service (A Division of Golden State Water), and PacifiCorp d/b/a Pacific Power.

The following non-respondents filed comments on the OIR and were automatically made parties to the proceeding per Commission Rule of Practice and Procedure (Rule) 1.4(a)(2): Small Business Utility Advocates (SBUA); EVgo Services LLC (EVgo); California Hydrogen Business Council; Uber Technologies, Inc.; The Greenlining Institute (Greenlining); SemaConnect, Inc.; Sierra Club; CALSTART; Enel X North America, Inc.;[1] Natural Resources Defense Council (NRDC); The Utility Reform Network (TURN); ChargePoint, Inc.; San Diego Association of Governments; National Asian American Coalition; National Diversity Coalition (NDC); MCE; Sonoma Clean Power Authority; California Choice Energy Authority; Silicon Valley Clean Energy Authority; Peninsula Clean Energy; California Large Energy Consumers Association (CLECA); Coalition of California Utility Employees; Utility Consumers' Action Network (UCAN); Coley Girouard; Advanced Energy Economy; General Motors LLC; Alliance for Automotive Innovation;[2] Ford Motor Company; San Diego Airport Parking Company; California Transit Association; Alliance for Transportation Electrification; Siemens Digital Grid; GREENLOTS; Lyft, Inc.; Environmental Defense Fund; Public Advocates Office at the California Public Utilities Commission (Cal Advocates); and Tesla, Inc.

[1] Initially appearing in this proceeding as Electric Motor Werks, Inc.

[2] Initially appearing is this proceeding as Alliance of Automobile Manufacturers and Association of Global Automakers, Inc.

A prehearing conference (PHC) was held on March 1, 2019, to discuss the issues of law and fact, the need for evidentiary hearing, and the proceeding schedule for resolving the issues identified in the OIR. At the PHC the following entities requested and were granted party status: Green Power Institute (GPI), California Energy Storage Alliance, Energy Producers and Users Coalition (EPUC), Monterey Bay Community Power, and Envoi Technologies.

Subsequent to the PHC the following entities moved for, and were granted, party status: Center for Community Action and Environmental Justice, and East Yard Communities for Environmental Justice; City of Long Beach, California; Community Environmental Council; Union of Concerned Scientists; Silicon Valley Leadership Group; Nuvve Corporation; American Honda Motor Co., Inc.; BNSF Railway; Vehicle-Grid Integration Council; Cruise LLC; UL LLC; East Bay Community Energy; Center for Biological Diversity; California Independent System Operator Corporation (CAISO); Connect California LLC; Electrify America, LLC (Electrify America); Sacramento Municipal Utility District (SMUD); Center for Sustainable Energy; Plug In America; Local Government Sustainable Energy Coalition; Ecology Action; EVBox North America, Inc.; City and County of San Francisco; Redwood Coast Energy Authority; the City of San José; AMPLY Power, Inc.; Volvo Group North America; GRID Alternatives; Trillium USA; and Daimler Trucks North America, LLC.

The assigned Commissioner's scoping memo and ruling (scoping memo) in this proceeding was filed on May 2, 2019. The scoping memo set the issues to be considered in this proceeding, including "[a]ny other policies or issues related

to [transportation electrification] that are not otherwise addressed by other Commission proceedings."[3]

On July 1, 2020, CALSTART; AMPLY Power, Inc.; ChargePoint, Inc.; Daimler Trucks North America LLC; Greenlots; Tesla, Inc.; Trillium USA; and Volvo Group North America (collectively "Moving Parties") filed a motion seeking clarification of the Commission's position on whether certain operators of electric vehicle service equipment are considered "public utilities" under the Pub. Util. Code. A response to the motion was filed by Electrify America on July 13, 2020. Further responses to the motion were filed on July 16, 2020, by PG&E and SCE. This decision disposes of the motion.

1.1. Issues Before the Commission

The issue before the Commission in this decision is narrow: the Moving Parties request clarification from the Commission regarding whether the prior determination in Decision (D.) 10-07-044 that the Commission does not regulate providers of battery electric vehicle (EV) charging services as public utilities applies generally, regardless of the size or class of electric vehicle being charged. As the Moving Parties focus the policy implications of their requested relief on the expansion of charging infrastructure for medium- and heavy-duty EVs in California,[4] this decision seeks to clarify the status of medium- and heavy-duty

[3] Scoping memo at 7.

[4] Joint Motion at 1.

EV charging service providers as public utilities.[5] This issue is properly within the scope of this proceeding as it is a transportation electrification issue not otherwise addressed in another Commission proceeding.[6]

2. Discussion

2.1. Defining Public Utilities Generally

Pub. Util. Code Section[7] 216(a)(1) defines a public utility as including "every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof."

Section 218(a) states that an electrical corporation "includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others." Generally

[5] Per 17 Cal. Code Regs. § 95481, a medium-duty EV is an EV that is rated between 8,501 and 14,000 pounds gross vehicle weight rating, and a heavy-duty EV is an EV that is rated at or greater than 14,001 pounds gross vehicle weight rating. A full discussion of the definition of light-duty, medium-duty, and heavy-duty appears in Section 2.2 of this decision.

[6] R.09-08-009, in which D.10-07-044 was issued, is closed. The current proceeding – R.18-12-006 – is a successor rulemaking to that proceeding.

[7] All further references to "Section" are to a section of the Pub. Util. Code unless otherwise stated.

speaking, entities meeting the definitions of these sections are public electric utilities subject to the Commission's jurisdiction.[8]

2.2. Commission Consideration of EV Charging Service Providers as Public Utilities

The Commission originally considered the question of whether the providers of EV charging services were public utilities as defined by Sections 216 and 218 in R.09-08-009. Resolving this question was judged to be a matter of urgency, and the Commission rendered D.10-07-044 in order to address it in a timely manner.[9]

Providers of EV charging services take a wide variety of forms. As noted by D.10-07-044, they could include owners of standalone electric vehicle charging stations that sell electric recharging services; owners of shared station arrangements where several types of transportation fuels, including electric recharging, are sold; residential and commercial landlords that provide electric vehicle charging as a service on the premises to tenants, guests of the tenants, customers of the tenants, and perhaps others; condominium associations that provide electric vehicle charging on the premises as a service to the condominium owners, their guests, and others; employers that provide access to recharging facilities as a service to their employees; and "potentially others."[10]

[8] D.10-07-044 at 19.

[9] D.10-07-044 at 2-4.

[10] D.10-07-044 at 3.

Despite the wide variety of EV charging service providers, D.10-07-044 held that they were not public utilities under Sections 216 and 218. The Commission's determination was based on a holistic analysis of those Sections, along with a consideration of the Commission's duty to promote transportation electrification codified in Sections 740.2 and 740.3.

Without restating the extensive legal analysis of D.10-07-044 with respect to Sections 216, 218, 740.2, and 740.3; the most relevant conclusions from D.10-07-044 are as follows:

- Providers of EV charging services that do not make their equipment available to the public (e.g., homeowners using EV chargers in their garages or employers providing EV charging solely to their employees) have not dedicated their equipment to public use are not public utilities pursuant to Sections 216 and 218.[11]
- It is reasonable to conclude, consistent with the underlying rationale of the Pub. Util. Code and Sections 740.2 and 740.3, that the Legislature did not intend that the Commission regulate providers of EV charging services as public utilities pursuant to Sections 216 and 218.[12]
- The sale of electricity by an investor-owned utility to a provider of EV charging services is a retail sale of electricity, not a wholesale sale or a "sale for resale."[13]

[11] D.10-07-044, COL 3.

[12] D.10-07-044, COL 4.

[13] D.10-07-044, COL 11.

- Sections 740.2 and 740.3 do not direct the Commission to regulate providers of EV charging services as public utilities pursuant to Sections 216 and 218.[14]

These holdings were qualified by dicta in D.10-07-044 that stated "all references to the term 'electric vehicles' refer to light-duty passenger plug-in hybrid electric vehicles and battery electric vehicles, thus the findings only relate to light-duty electric vehicles."[15] The term "light-duty" was not defined by the Commission in its decision, nor was a definition offered for what is not a light-duty electric vehicle.

The Moving Parties and utility responses demonstrate the need to define the terms "light-duty," "medium-duty," and "heavy-duty" with regard to EV charging service providers, especially in light of the significant investment needed to achieve the state's greenhouse gas reduction and air quality goals through the widespread electrification of the transportation sector. The regulations of the California Air Resources Board (CARB) with respect to the Low Carbon Fuel Standard program define a light-duty EV as one that is rated at 8,500 pounds or less gross vehicle weight rating.[16] They also define a medium-duty EV as one that is rated between 8,501 and 14,000 pounds gross vehicle weight rating, and a heavy-duty EV as an EV that is rated at or greater

[14] D.10-07-044, FOF 7.

[15] D.10-07-044 at 38.

[16] 17 Cal. Code of Reg. § 95481(a)(89)(A).

than 14,001 pounds gross vehicle weight rating.[17] These definitions should be used by the Commission when referring to these terms in the future.

This decision holds that "light-duty" as it appears in D.10-07-044 should be regarded as referring to EVs rated at 8,500 pounds gross vehicle weight or less rating.

2.3. Motivation for the "Light-Duty" Qualification

According to the Moving Parties, the addition of the qualifying dicta regarding "light-duty" EV charging service providers was made in response to SCE's comments on the proposed decision. Moving Parties allege that the "light-duty" qualification was not briefed or discussed during the Commission's deliberative process. Moving Parties theorize that the "light-duty" qualification was added, at SCE's request, "primarily to distinguish conductive EVs (such as electric rail, conductive overhead electric buses, etc.) from battery electric EVs."[18]

Moving Parties reason that because D.10-07-044 drew no distinction between light-duty and non-light-duty EVs when discussing the legal analysis of whether providers of EV charging services should be regarded as public utilities, "it is reasonable to conclude that the final decision's added note that 'the decision's findings only relate to light-duty electric vehicles' was meant only to contextualize the decision, and not to imply that a completely different

[17] 17 Cal. Code Regs. § 95481.

[18] Joint Motion at 4-5.

conclusion would apply to providers of [medium- and heavy-duty] vehicle charging services."[19]

2.4. Impact of the "Light-Duty" Qualification on the Provision of EV Charging Services

Moving Parties claim that they are seeking an exemption for medium- and heavy-duty EV charging services from classification as public utilities to address "real concerns that are holding up the financing and completion of projects currently nearing completion, or in various phases of development and construction, to serve" medium- and heavy-duty EVs.[20]

The Moving Parties cite the following examples of medium- and heavy-duty EV charging service projects that are adversely affected by the "light-duty" qualification in D.10-07-044:

- A transit bus charging depot has been designed and built to immediately serve ten buses, with a total of forty buses by 2022. The depot is being developed by a "full service" EV charging service provider that will own the infrastructure and provide charging to the transit district for a fee. The utility is willing to provide the "make ready" under its existing fleet program, and work to interconnect the project. However, according to Moving Parties, the EV charging service provider will not be able to provide charging to the transit district for their buses without an exemption of medium- and heavy-duty EV charging service providers from classification as public utilities, because otherwise the transit district could be prohibited

[19] Joint Motion at 9-10.

[20] Joint Motion at 10.

from paying the EV charging service provider for fueling under the utility's interpretation of its Electric Rule 18.

- An EV charging service provider and a truck manufacturer have partnered to build EV chargers at private truck depots across the Los Angeles area, which are designed to be used by multiple customers. According to Moving Parties, the utility providing retail service to the depots currently interprets Electric Rule 18 to prohibit the depot and EV charging service provider from charging customers for charging, which means the owner must estimate usage and find other ways to pass along costs to the customers who utilize the infrastructure. The Moving Parties allege that this limitation is hindering adoption of electric trucks by these customers, and others, because the billing workaround is not a sustainable or scalable solution.
- The Moving Parties assert that Trillium is building the nation's first publicly accessible charging station for medium- and heavy-duty EVs as part of a $91 million project funded by CARB, in collaboration with the South Coast Air Quality Management District, the Volvo Group and 13 other organizations. This public charging station will, according to Moving Parties, provide much needed ZEV infrastructure in Orange County that will service EVs operating throughout Southern California. The overall project will deploy 23 electric trucks as well as significant numbers of electric off-road equipment. The project is under a tight deadline imposed by the funding agencies and yet, upon completion of the site, Moving Parties claim that Trillium cannot sell electricity as a fuel to medium- and heavy-duty EV customers due to Electric Rule 18.

Electrify America supplemented these examples in its response to the motion. Electrify America provides public electric vehicle charging services,

including fast charging stations, that are available to light duty EVs as well as medium- and heavy-duty EVs. They state that they do not restrict access to their EV charging services and "therefore may provide electric vehicle charging services to one or more vehicle classes identified in the [joint motion] simultaneously." As a result, Electrify America agrees with the Moving Parties that the holdings of D.10-07-044 create ambiguity for the providers of EV charging services, and supports the request of the Moving Parties to apply the holdings of D.10-07-044 to medium- and heavy-duty EV charging service providers as well.[21]

SCE's response concurs with these assertions. They argue that D.10-07-044's limitation to "light-duty" electric vehicles, and the corresponding limitation in SCE's Electric Rule 18 language, "pose a significant obstacle to the expansion of charging infrastructure to serve [medium- and heavy-duty electric] vehicles."[22]

No party found fault with these assertions or raised contrary factual allegations. Therefore, this decision finds that there are extant examples of how the lack of a formal exemption of medium- and heavy-duty EV charging service providers from classification as public utilities is frustrating the deployment of medium- and heavy-duty EV charging infrastructure in California.

[21] Electrify America response at 1-2.

[22] SCE response at 4.

3. Discussion

Moving Parties describe the crux of the issue plainly when they argue that the inclusion of the "light-duty" qualification in D.10-07-044 was not meant to imply that a completely different conclusion would apply to providers of medium- and heavy-duty vehicle charging services. In other words, they argue that the Commission did not mean to exclude medium- and heavy-duty EV charging services from the conclusions of its legal analysis and holdings, even if the text of the decision does so.

However, subsequent to D.10-07-044 the Legislature created Section 216(i), which states that:

> The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management. For purposes of this subdivision, "light duty plug-in electric vehicles" includes light duty battery electric and plug-in hybrid electric vehicles. This subdivision does not affect the commission's authority under Section 454 or 740.2 or any other applicable statute.

While it would be convenient to conclude that the Commission simply committed an oversight when including the original qualification in D.10-07-044, the existence of Section 216(i) means that the Legislature itself has determined that such an oversight should be codified as law. It is not possible for the Commission to hold that the Legislature made a mistake that should be

"clarified" through a subsequent Commission decision interpreting that language.

The plain meaning of the statute should be respected. In other words, the Commission should not read into the words of the statute meaning that would not ordinarily be assumed and should not interpret Section 216(i) as providing that "light-duty" means all EVs. Instead, Section 216(i) should be interpreted as having the same meaning as adopted by the Commission in this decision and does not include the vehicle classifications at issue in the Moving Parties' request.

This decision therefore concludes that the Commission in D.10-07-044, and the Legislature in adopting Section 216(i), only intended to exempt the providers of light-duty EV charging services from classification as public utilities. The question remains: may the Commission exempt medium- and heavy-duty EV charging services from classification as public utilities notwithstanding D.10-07-044 and the language of Section 216(i)?

3.1. Overall State Policy Supports an Exemption for Medium- and Heavy-Duty EV Charging Service Providers

The analysis in D.10-07-044 that led to the exemption of light-duty EV charging service providers from being classified as public utilities is broad and takes into account the Legislature's desire to expand EV ownership and operation in California. The analysis of D.10-07-044 applies equally as well to medium- and heavy-duty EV charging services, and therefore medium- and

heavy-duty EV charging services should be exempted from classification as public utilities.

As a starting point, the overall policy context that faced the Commission in 2010 continues to exist today. In D.10-07-044, the Commission found that "[t]he success of electric vehicles in California will, in significant part, depend on the availability of sufficient charging infrastructure…. [I]nvestments at the customer site, commercial site, public charging site, and distribution system level are all required to prepare the electricity system for the widespread use of [electric vehicles]."[23] Recently adopted legislation reveals that this policy context still holds true.

Senate Bill (SB) 350 (Ch. 547, Stats. 2015) found that "[w]idespread transportation electrification requires electrical corporations to increase access to the use of electricity as a transportation fuel… should enable consumer options in charging equipment and services, attract private capital investments…[and] [d]eploying electric vehicle charging infrastructure should facilitate increased sales of electric vehicles by making charging easily accessible."[24]

This decision concludes that, in general, it is the Legislature's intent that the Commission establish policy and authorize reasonable utility investment that benefits utility customers in several ways by attracting private investment in EV charging services, making charging infrastructure more available to Californians,

[23] D.10-07-044 at 17.

[24] Pub. Util. Code § 740.12(a)(1)(E), (F), (H).

and increasing adoption and usage of EVs across all classes and weights, including light-, medium-, and heavy-duty electric vehicles, and off-road electric vehicles or off-road electric equipment.[25]

As already established by this decision, there are extant examples of how the lack of a formal exemption of medium- and heavy-duty EV charging service providers from classification as public utilities is frustrating private investment in the deployment of medium- and heavy-duty EV charging infrastructure in California. Therefore, this decision finds that EV charging service providers are not public utilities, in accordance with the Legislature's overall intentions with respect to providing charging services and developing business models to support widespread transportation electrification.

3.2. Sections 740.2, 740.3, and 740.12 Allow for an Exemption that Includes Medium- and Heavy-Duty EV, and Off-Road Electric Vehicle or Off-Road Electric Equipment, Charging Service Providers

Beyond the overall legislative intent to increase access to EV charging services, the Commission's conclusions in D.10-07-044 regarding the mandates of

[25] While not specifically mentioned by the Moving Parties in their motion, off-road electric vehicles or off-road electric equipment such as Electric Transportation Refrigeration Units are contemplated as part of the broader movement toward transportation electrification codified by SB 350. *See* Pub. Util. Code § 237.5 (defining transportation electrification as including electrification of portions of vehicles or other equipment that are mobile sources of air pollution and greenhouse gases); SB 44 (Stats. 2019, Ch. 297) § 1 (stating Legislature's finding that "the state must take additional actions to immediately reduce health-threatening criteria air pollution and climate-threatening greenhouse gas emissions by outlining a clear path to convert medium- and heavy-duty vehicle segments, as well as off-road equipment, to cleaner technologies and fuels").

Sections 740.2 and 740.3 can just as easily apply to providers of medium- and heavy-duty EV charging services as providers of light-duty EV charging services. In D.10-07-044, the Commission held that Section 740.2 mandated the removal of barriers to the widespread deployment and use of electric vehicles by informing planning prior to the introduction of significant electric vehicles in the market, mitigating related potential risk factors associated with investment opportunities in electric vehicle markets, and providing more certainty around certain regulatory issues.[26]

A review of Section 740.2 shows that the statute only refers to "electric vehicles" and, unlike D.10-07-044, does not distinguish between light-duty and non-light-duty EVs. Furthermore, Section 740.2 sought to advance widescale deployment and use of EVs to help achieve the state's goals pursuant to the California Global Warming Solutions Act of 2006.[27] It is undisputed that electrification of transportation generally, including medium- and heavy-duty EVs, will assist with that policy objective.[28] In light of this reasoning, there is no reason to assume the Legislature sought to limit the mandates of Section 740.2 to purely light-duty EV adoption and charging.

In parallel, Section 740.3 also provides a basis for the extension of the public utilities exemption to medium- and heavy-duty EV charging service

[26] D.10-07-044 at 18.

[27] Pub. Util. Code § 740.2(c)

[28] *See* Pub. Util. Code § 740.12(a)(1)(I). *See also* SCE response at 3-4.

providers. Section 740.3 directs the Commission to develop policies to promote the development of infrastructure needed to facilitate the use of electric power to fuel EVs. Importantly, Section 740.3(c) requires that the Commission "ensure that utilities [that invest in EV charging infrastructure] do not unfairly compete with nonutility enterprises." As the Commission found in D.10-07-044, this is reasonably interpreted to mean that the Legislature contemplated that providers of EV charging services would include both utility and non-utility entities.[29] This leads to the conclusion that the Legislature anticipated that some EV charging service providers would not be classified as public utilities, and as with Section 740.2 there is no distinction drawn by the Legislature between light-duty and non-light-duty EVs in Section 740.3.

Subsequent to the issuance of D.10-07-044 and adoption of Section 216(i), the Legislature adopted Section 740.12 – a comprehensive directive for California agencies, including the Commission, to accelerate widespread transportation electrification to meet the state's greenhouse gas reduction and air quality goals. Among many other objectives, Section 740.12 requires the Commission to approve plans "that deploy charging infrastructure… if they are consistent with this section, [and] do not unfairly compete with nonutility enterprises as required under Section 740.3…."[30] Consistency with "this section" means,

[29] D.10-07-044 at 20.

[30] Pub. Util. Code § 740.12(b).

among other things, that the Commission "take into account"[31] the finding that "light-, medium-, and heavy-duty vehicle electrification results in approximately 70 percent fewer greenhouse gases emitted, over 85 percent fewer ozone-forming air pollutants emitted, and 100 percent fewer petroleum used."[32]

Section 740.12 requires the Commission to deploy charging infrastructure for medium- and heavy-duty EVs, and off-road electric vehicles or off-road electric equipment,[33] to help meet California's climate policy goals, and to ensure that such deployment does not unfairly compete with non-utility enterprises. It is reasonable to conclude, therefore, that the Legislature did not intend for the providers of medium- and heavy-duty EV charging services, and charging services for off-road electric vehicles or off-road electric equipment, to be regarded as public utilities. Otherwise the reference to "nonutility enterprises" in Section 740.12 would be superfluous.

Therefore, this decision concludes that Sections 740.2, 740.3, and 740.12 demonstrate that the Legislature did not intend that this Commission regulate providers of EV charging services as public utilities under Sections 216 and 218. This conclusion applies to light-, medium- and heavy-duty electric vehicle

[31] Pub. Util. Code § 740.12(a)(2).

[32] Pub. Util. Code § 740.12(a)(1)(I).

[33] Pub. Util. Code § 237.5 defines transportation electrification as including electrification of portions of vehicles or other equipment that are mobile sources of air pollution and greenhouse gases (i.e., off-road electric vehicles or off-road electric equipment).

charging services, and off-road electric vehicle or off-road electric equipment charging services.

3.3. Section 216(i) Does not Override Sections 740.2, 740.3, and 740.12

PG&E's response to the motion takes no position on the substance of the request, although it does argue that "the precise scope of the Commission's jurisdiction over private retail EV electric charging sales and exemptions therefrom are set by Pub. Util. Code Section 216 and the Legislature, not by D.10-07-044 or any subsequent 'clarification' or modification of D.10-07-044."[34] This decision disagrees. As noted previously, Sections 740.2, 740.3, and 740.12 provide ample legislative support for the conclusion that medium- and heavy-duty EV charging service providers, and off-road electric vehicle or off-road electric equipment charging service providers, should not be regulated as public utilities, notwithstanding the language of Section 216(i).

It is both reasonable and consistent with the rules of statutory construction not to impose the exclusivity of the "light-duty" exemption present in Section 216(i) upon Sections 740.2, 740.3, and 740.12 where doing so would require us to insert restrictive language into the statutes in clear conflict with the cardinal rule of statutory construction that we "must not insert what has been omitted from a statute."[35]

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[34] PG&E response at 2.

[35] *Boy Scouts of America Nat. Foundation v. Super. Ct.*, 206 Cal.App.4th 428, 446.

If the Legislature intended the public utilities exemption in Section 216(i) for light-duty EV charging services to be exclusive, and that it override considerations regarding medium- and heavy-duty EV charging services in Sections 740.2, 740.3, and 740.12, it could have easily said so. However, the Legislature did not.

Furthermore, Section 216(i) is silent on whether EV charging service providers offering similar services for non-light-duty vehicle should or should not be classified as public utilities. The Commission is therefore not overruling the Legislature in finding that medium - and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, are not public utilities under Commission regulation based on our interpretation of Sections 740.2, 740.3, and 740.12.

Finally, Section 216(i) itself explicitly grants the Commission authority to make other determinations regarding the classification of medium - and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, as public utilities based on its analysis of other statutes, as the Commission does in this decision. In pertinent part, Section 216(i) states that "[t]his subdivision does not affect the commission's authority under Section 454 or 740.2 or any other applicable statute."

For all of the above reasons, Section 216(i) does not prohibit the Commission from determining that medium- and heavy-duty EV charging service providers and charging service providers for off-road electric vehicles or off-road electric equipment, should not be classified as public utilities. As a

result, and in light of the Legislature's intent as expressed through Sections 740.2, 740.3, and 740.12, the Commission holds that it is reasonable to determine that medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, are not public utilities under Sections 216 and 218.

3.4. Applicable Electrified Transportation

In order to address potential concerns regarding the application of this decision's conclusions to various forms of electrified transport, and to ensure harmony with D.10-07-044 and Section 216(i) when referring to the exclusion of certain EV charging service providers from categorization as public utilities, the Commission clarifies that the orders of this decision only apply to EV charging services that may be used by battery electric vehicles, plug-in hybrid electric vehicles, off-road electric vehicles or off-road electric equipment.[36]

For clarity, "battery electric vehicle" means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.[37] "Plug-in hybrid electric vehicle" means a hybrid electric vehicle with the capability to charge a battery from an off-vehicle electric energy

[36] *See* Pub. Util. Code § 216(i).

[37] 17 Cal. Code Regs. § 95481(a)(13).

source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.[38]

"Off-road electric vehicle or off-road electric equipment" means, with the exception of trains or locomotives, any non-stationary device, powered by an electric motor or using an energy storage system, used primarily off the highways to propel, move, or draw persons or property, and used in, but not limited to, any of the following applications: Marine Vessels, Cargo Handling Equipment, Construction or Agricultural Equipment, Small Off-Road Engines, and Off-Highway Recreational Vehicles.

3.5. Other Regulatory Mandates Are Not Affected by this Decision

While this decision finds that medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, should not be regulated as public utilities under Sections 216 and 218, these service providers remain subject to Commission oversight. D.10-07-044 held that Section 740.2 directed the Commission to address the following with respect to transportation electrification even if light-duty EV charging service providers were not regulated as public utilities: grid reliability and infrastructure upgrades, integration of renewable energy resources, technology advancements, legal impediments, and the possible shifting of greenhouse gas emissions reduction responsibility from the

[38] 17 Cal. Code Regs. § 95481(a)(118).

transportation sector to the electrical industry.[39] D.10-07-044 also reasoned that if a provider of EV charging services attempts to procure electricity on the wholesale market, rather than purchasing electricity from a load-serving entity, the EV charging service provider's purchase of electricity would constitute a "direct transaction" under Section 331(c) and would be subject to all the obligations and limitations that apply to direct transactions including Section 365.1.[40]

Furthermore, D.10-07-044 found that "[s]ince an electric vehicle service provider would receive electricity over a utility's transmission and distribution system, the Commission has authority to dictate the terms under which the utility will provide service to the provider."[41] This includes requirements that the customer provide notice to the utility of its desire for service, and that the utility discontinue service to an EV charging service provider if the provider is creating unsafe working conditions for utility employees.[42]

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[39] D.10-07-044 at 20 ("the legislature intended that we use the authority granted in § 740.2 to address the potential impacts of vehicle charging").

[40] D.10-07-044 at 22 (noting that Section 365.1 requires that the Commission ensure that other providers are subject to the same renewable procurement and resource adequacy requirements as the large electric utilities). *See also* D.10-07-044 at 25 ("[t]o the extent a provider of electric vehicles charging services procures electricity on the wholesale market for sale to its customers, we intend to exercise our procurement-related jurisdiction to ensure compliance will [*sic*] all applicable requirements").

[41] D.10-07-044 at 25.

[42] D.10-07-044 at 25-26.g

There were several other sources of Commission authority mentioned in D.10-07-044 that were unaffected by the exemption of light-duty EV charging service providers from classification as public utilities by that decision, including: the power to determine retail rates to be charged to EV charging service providers,[43] the authority to create demand response and energy efficiency programs specifically for EV charging service providers,[44] and the authority to adopt interoperability standards.[45] These sources of Commission authority should continue to apply to medium- and heavy-duty EV charging service providers as well.

As noted by SCE in their response to the Joint Motion, more sources of regulatory authority over EV charging service providers were created by the Legislature subsequent to the adoption of D.10-07-044 to address certain consumer protection issues.[46] This decision concurs with SCE that this evidences a legislative interest in overseeing the operations of EV charging service providers related to consumer protection, even if those charging station operators are not classified as public utilities.

While PG&E implied in its response to the Joint Motion that the relief sought by Moving Parties would exclude Commission oversight of the safety of

[43] D.10-07-044 at 27.

[44] D.10-07-044 at 28.

[45] D.10-07-044 at 28-29.

[46] SCE response at 6-7.

medium- and heavy-duty EV charging service providers,[47] D.10-07-044 found otherwise.[48] In order to ensure consistency with the findings of D.10-07-044, this decision incorporates by reference all holdings made by D.10-07-044 with respect to various sources of Commission authority for regulating EV charging service providers, and applies them to medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment. Through this decision the Commission retains all lawful authority granted to it for regulating EV charging service providers, notwithstanding the finding that EV charging service providers are not classified as public utilities under Sections 216 and 218, regardless of the class of vehicles to which they provide charging services.

3.6. Rule 18 Modifications

Moving Parties specifically request that SCE and PG&E be ordered to modify their respective Electric Rule 18 tariffs to remove any ambiguity that EV charging services are not "public utilities" across all vehicle classes, including medium- and heavy-duty vehicles. Moving Parties claim that this additional instruction is "very important" due to the fact that the interpretation of the Commission's current directives within the large electrical corporation's Electric Rule 18 has been cited as an impediment to the completion and implementation

[47] PG&E response at 2 ("[t]he Motion makes significant arguments on why Commission safety and pricing regulation of such electricity charging sales would restrict and deter the deployment of [medium- and heavy-duty] EVs in California").

[48] D.10-07-044 at 26 ("the Commission can address circumstances in which a provider of electric vehicle charging is operating in an unsafe manner").

of EV charging service projects in the instances where a service provider intends to sell electricity and charging services to medium- and heavy-duty vehicles. According to Moving Parties, SDG&E's Electric Rule 19 already exempts all EV charging, without reference to vehicle class, and so does not require modification.[49]

Because the interpretation of Electric Rule 18 by SCE and PG&E may conflict with the holdings of this decision exempting medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, from classification as public utilities, SCE and PG&E shall make modifications to their respective versions of Electric Rule 18 to conform with the holdings of this decision. SCE and PG&E shall each file a Tier 1 advice letter making the changes to their respective version of Electric Rule 18 no later than 20 days after the effective date of this decision.

Because statewide consistency with the holdings of this decision would help promote the objectives of Sections 740.2, 740.3, and 740.12, all electric utilities subject to the Commission's jurisdiction (other than SCE and PG&E) shall evaluate whether their Electric Rules conform with the holdings of this decision, and if not, shall make modifications accordingly.

If an electric investor owned-utility subject to the Commission's jurisdiction, other than SCE and PG&E, finds its version of its Electric Rules to be non-conforming with the holdings of this decision, it shall file a Tier 1 advice

[49] Joint Motion at 13.

letter making changes to its version of its Electric Rules necessary to conform to the holdings of this decision no later than 20 days after the effective date of this decision.

4. Disposition of Motion

This decision disposes of the motion filed in this proceeding on July 1, 2020, by CALSTART; AMPLY Power, Inc.; ChargePoint, Inc.; Daimler Trucks North America LLC; Greenlots; Tesla, Inc.; Trillium USA; and Volvo Group North America. All other pending motions in this proceeding remain pending.

5. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by SCE, PG&E, UCS, EDF, NRDC, Sierra Club, CALSTART, AMPLY, ChargePoint, Daimler, Greenlots, Tesla, Trillium, Volvo Group N.A., and GPI on September 14, 2020. Reply comments were filed by SDG&E, SCE, CALSTART, AMPLY, ChargePoint, Greenlots, Tesla, Trillium, Volvo Group N.A., Electrify America, and PG&E on September 21, 2020. Changes have been made throughout the decision in response to party comments.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Patrick Doherty and Sasha Goldberg are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. There are extant examples of how the lack of a formal exemption of medium- and heavy-duty EV charging service providers from classification as public utilities is frustrating the deployment of medium- and heavy-duty EV charging infrastructure in California.

2. It is the Legislature's intent that the Commission support the attraction of private investment in EV charging services, make charging infrastructure more available to Californians, and increase adoption and usage of EVs.

3. Even if medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, are not regulated as public utilities under Sections 216 and 218, these entities are still subject to certain forms of Commission oversight.

4. There is a legislative interest in regulating EV charging service providers even if they are not classified as public utilities.

5. The interpretation of Electric Rule 18 by SCE and PG&E may conflict with the holdings of this decision exempting medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, from classification as public utilities.

Conclusions of Law

1. D.10-07-044 held that light-duty EV charging service providers were not public utilities under Sections 216 and 218 based on a holistic analysis of those Sections, along with a consideration of the Commission's duty to promote transportation electrification codified in Sections 740.2 and 740.3.

2. The term "light-duty" as it appears in D.10-07-044 and Section 216(i) should be regarded as referring to EVs rated at 8,500 pounds or less gross vehicle weight rating.

3. The Commission in D.10-07-044, and the Legislature in adopting Section 216(i), only intended to exempt the providers of light-duty EV charging services from classification as public utilities.

4. The analysis of D.10-07-044 applies equally as well to medium- and heavy-duty EV charging services.

5. EV charging service providers are not public utilities, in accordance with the Legislature's overall intentions with respect to providing charging services and developing business models to support widespread transportation electrification.

6. There is no reason to assume the Legislature sought to limit the mandates of Section 740.2 to purely light-duty EV adoption and charging.

7. The Legislature anticipated that at least some EV charging service providers would not be classified as public utilities, and there is no distinction drawn by the Legislature between light-duty and non-light-duty EVs in Sections 740.2 or 740.3.

8. Section 740.12 requires the Commission to help deploy charging infrastructure for medium- and heavy-duty EVs, off-road electric vehicles, and off-road electric equipment, to help meet California's climate policy goals, and to ensure that such deployment does not unfairly compete with non-utility enterprises.

9. The language of Section 740.12 indicates that the Legislature did not intend for the providers of medium- and heavy-duty EV charging services, and charging service providers for off-road electric vehicles or off-road electric equipment, to be regarded as public utilities.

10. Sections 740.2, 740.3, and 740.12 demonstrate that the Legislature did not intend that this Commission regulate providers of light-, medium- and heavy-duty EV charging services, and charging service providers for off-road electric vehicles or off-road electric equipment, as public utilities under Sections 216 and 218.

11. Section 216(i) does not prohibit the Commission from determining that medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, should not be classified as public utilities.

12. It is reasonable to exclude medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, from classification as public utilities under Sections 16 and 218.

13. This decision incorporates by reference all holdings made by D.10-07-044 with respect to various sources of Commission authority for regulating EV charging service providers, and applies them to medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment.

14. The Commission retains all lawful authority granted to it for regulating EV charging service providers, notwithstanding the exemption of medium- and heavy-duty EV charging service providers, and charging service providers for off-road electric vehicles or off-road electric equipment, from classification as public utilities under Sections 216 and 218.

15. Statewide consistency with the holdings of this decision will help promote the objectives of Sections 740.2, 740.3, and 740.12.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company shall make modifications to its version of Electric Rule 18 to conform with the holdings of this decision.

2. Southern California Edison Company shall file a Tier 1 advice letter making changes to its version of Electric Rule 18 necessary to conform to the holdings of this decision no later than 20 days after the effective date of this decision.

3. Pacific Gas and Electric Company shall make modifications to its version of Electric Rule 18 to conform with the holdings of this decision.

4. Pacific Gas and Electric Company shall file a Tier 1 advice letter making changes to its version of Electric Rule 18 necessary to conform to the holdings of this decision no later than 20 days after the effective date of this decision.

5. Each of San Diego Gas & Electric Company, PacifiCorp d/b/a Pacific Power, Bear Valley Electric Service, and Liberty Utilities (CalPeco Electric) LLC

shall evaluate whether its Electric Rules conform with the holdings of this decision, and if not, shall make modifications accordingly.

6. If any of San Diego Gas & Electric Company, PacifiCorp d/b/a Pacific Power, Bear Valley Electric Service, or Liberty Utilities (CalPeco Electric) LLC, finds its version of its Electric Rules to be non-conforming with the holdings of this decision, it shall file a Tier 1 advice letter making changes to its version of its Electric Rules necessary to conform to the holdings of this decision no later than 20 days after the effective date of this decision.

7. Rulemaking 18-12-006 remains open.

This order is effective today.

Dated September 24, 2020, at San Francisco, California

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners