Decision 10-07-044 July 29, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals. | Rulemaking 09-08-009 (Filed August 20, 2009) |

# DECISION IN PHASE 1 ON WHETHER A CORPORATION OR PERSON THAT SELLS ELECTRIC VEHICLE CHARGING SERVICES TO THE PUBLIC IS A PUBLIC UTILITY

## 1. Summary

The Commission initiated this rulemaking to ensure California's investor-owned electric utilities are prepared for the projected statewide market growth of light-duty passenger plug-in hybrid electric vehicles and battery electric vehicles throughout California. Senate Bill 626 (Kehoe, Chapter 355, Statutes of 2009) requires the Commission to evaluate policies to overcome any barriers to the widespread deployment and use of plug-in hybrid and electric vehicles.

Today we address the nature of the Commission's regulatory authority over entities that sell electric vehicle charging services to the public. We conclude that the legislature did not intend that this Commission regulate providers of electric vehicle charging services as public utilities pursuant to §§ 216 and 218. We also identify sources of Commission regulatory authority to

address the potential impacts of electric vehicles to help the state achieve its greenhouse gas and renewable energy goals.

In Phase 2 of this rulemaking, the Commission will further address policies to overcome barriers to the widespread use of electric vehicles and will develop a policy approach that makes optimal use of this regulatory authority to achieve these goals.

## 2. Procedural Background

The Commission initiated this rulemaking on August 24, 2009 as part of our efforts to ready the electric infrastructure for light-duty passenger plug-in hybrid electric vehicles and battery electric vehicles (collectively "electric vehicles").

The Assigned Commissioner issued a Scoping Memo on January 12, 2010 setting the procedural schedule and scope of the proceeding. The Scoping Memo also confirmed that the Commission will address the requirements of Senate Bill 626 (Kehoe) in this rulemaking.

This decision resolves Phase 1 of the rulemaking. The question before the Commission is whether the sale of electric vehicle charging services to the public makes a corporation or person a public utility within the meaning of § 216 solely because of that sale, ownership or operation.

This question was raised early in the proceeding as a priority matter. In comments filed on October 5, 2009, soon after the Commission issued this rulemaking, parties expressed broad agreement that the Commission should move quickly to clarify the nature of its regulatory authority over the sale of electric vehicle charging services to the public. Parties confirmed the urgency of this issue at the November 18, 2009 prehearing conference, stating in one instance that "clarity around Section 216 and 218 [of the Pub. Util. Code] are

critical in terms of investment in California…."

(November 18, 2009 RT 43:11-12.)

The assigned Commissioner agreed that the nature of the Commission's regulatory oversight needed to be addressed expeditiously and, as a result, identified this issue as the first to be addressed in the proceeding, explaining that:

> At the November 18, 2009 prehearing conference and in comments, parties requested the Commission address issues related to the provision of electric vehicle charging services by entities other than the electrical corporations currently regulated by the Commission as public utilities. Parties described the resolution of these issues as "critical" to bringing private investment to California for electric vehicle charging infrastructure and requested the Commission address these issues as soon as possible. I agree.
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> (Scoping Memo at 3.)

Accordingly, the Assigned Commissioner's Scoping Memo (Scoping Memo) places within the scope of this proceeding the question, stated broadly, of the extent to which §§ 216 and 218 apply to providers of electric vehicle charging services. The Scoping Memo emphasized that these providers could include owners of standalone electric vehicle charging spots that sell a single type of transportation fuel, electric recharging; 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.

Moreover, in an effort to focus the attention of parties on this key issue, the assigned Commissioner put forward a preliminary legal interpretation based on an initial review of parties' comments and the rationale the Commission applied in Decision (D.) 91-07-018[1] concerning the operation of facilities for the sale of compressed natural gas for a transportation fuel. This preliminary interpretation posited that an entity owning, controlling, operating, or managing electric vehicle charging facilities is not a "public utility" pursuant to the Public Utilities Code and asked parties to provide a legal and policy analysis in response to this preliminary interpretation. (Scoping Memo at 5.) Parties provided the requested analysis in briefs filed on February 8, 2010 and reply briefs filed on March 1, 2010. The arguments presented by parties are summarized below.

## 3. Positions of Parties

### 3.1. Southern California Gas Company and San Diego Gas & Electric Company

Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) (collectively SEU) conclude that electric vehicle[2] charging is not a public utility service. SEU cites to D.91-07-018 and D.91-07-017[3]

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[1] D.91-07-018, 1991 Cal. PUC LEXIS 509 (July 2, 1991). In D.91-07-018, the Commission found as follows: "Persons operating service stations for the sale of CNG [compressed natural gas], other than those who are public utilities by reason of operations other than operating a service station, are not subject to regulation by this Commission. Those persons may sell CNG at prices they deem appropriate."…"Our jurisdiction on CNG sales is limited to PG&E's side of the meter and the connection to the service stations' side of the meter." (D.91-07-018, Conclusions of Law 18 and 19).

[2] All references to the term "electric vehicles" refer to light-duty passenger plug-in hybrid electric vehicles and battery electric vehicles.

[3] In D.91-07-018 and D.91-07-017, cases involving requests by PG&E and SDG&E, respectively, to expand their natural gas vehicle program, the Commission found that

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for authority to support its argument, which is that the sale of electricity for the sole use as a transportation fuel is not "power" under the Public Utilities Code. SEU also urges that the Commission place the following issues in Phase 2 for immediate consideration: (1) changes to the Electric Tariffs Rule 18 of Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) and Rule 19[4] of SDG&E's tariff to accommodate electric vehicle service providers and (2) development of tariffs to offer services to electric vehicle charging customers. SEU recommends workshops to determine the role of the utilities in owning and operating electric vehicle charging infrastructure, both residential and commercial/public charging.

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natural gas fuel providers are not subject to Commission jurisdiction. The Commission made analogous findings in both decisions. These findings, as set forth in D.91-07-017, are reproduced below:

> Findings of Fact
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> 18. Persons operating service stations for the sale of CNG [compressed natural gas] for use solely as a motor vehicle fuel, other than those who are public utilities by reason of operations other than operating a service station, are not subject to regulation by this Commission. Those persons may sell CNG as a motor vehicle fuel at prices they deem appropriate.
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> 19. Our jurisdiction on CNG sales is limited to SDG&E's side of the meter and the connection to the service stations' side of the meter.

[4] Tariff Rule 18 and Rule 19 are entitled "Supply to Separate Premises and Use by Others," and govern whether and how electricity delivered to a utility end-use customer can be redelivered and/or resold by the customer.

### 3.2. PG&E

In contrast to SEU, PG&E submits that entities providing electric vehicle charging are public utilities under Section 216. PG&E cites to California Supreme Court cases *Greyhound*[5] and *Richfield*[6] for the proposition that entities providing electric vehicle charging fall within the "dedication to public use" standard. PG&E also addresses its preferred level of regulation. It suggests that flexible regulation or light-handed regulation is appropriate, including non-price regulation of safety, inter-operability, and reliability of equipment and services. PG&E further suggests no need exists for traditional cost-based regulation of pricing, as long as no market power is demonstrated. PG&E also raises the potential that the Federal Energy Regulatory Commission (FERC) would have exclusive jurisdiction over electricity sales to retail entities under the Federal Power Act, 16 U.S.C. §§ 791 *et seq*., unless FERC disclaims such jurisdiction, citing to *Order Disclaiming Jurisdiction*, Docket No. ER94-775-000 (April 2, 2001).

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[5] In *Greyhound Lines, Inc. v. Public Utilities Comm*. (1968) 68 Cal.2d 406, the Supreme Court affirmed the findings of the Commission on "dedication to public use" of a commuter bus service, stating: "The various indicia of dedication are not uniformly applicable to different utilities or uniformly useful in answering different questions, and the scope of dedication is not determined by mechanical formulas but ultimately by the fact that the utility has dedicated its resources to a particular enterprise, venture, or undertaking."

[6] In *Richfield Oil Corp. v. Public Utilities Comm.* (1960) 54 Cal.2d 419, the Supreme Court annulled the order of the Commission finding dedication of an oil company to public use by providing service to selected customers under contracts, stating "… the Legislature by its repeated reenactment of the definitions of public utilities without change has accepted and adopted dedication as an implicit limitation on their terms."

### 3.3. SCE

Similar to PG&E, SCE argues that the Commission does not have the authority to exempt from regulation entities that SCE describes as, clearly public utilities and load-serving entities under the code. According to SCE, legislation is needed to exempt the retail sale of electricity for use as transportation fuel but that the Commission has discretion to determine the appropriate level of regulatory oversight. SCE suggests the Commission treat entities that provide electric vehicle charging as Electric Service Providers (ESPs).[7] SCE claims the ESP designation will ensure that entities providing electric vehicle charging operate on a level playing field with investor owned utilities under Tariff Rule 22.[8] As another possibility, SCE suggests the Commission regulate the sales of electricity to retail customers at regulated rates, terms and conditions under SCE's Tariff Rule 18. SCE echoes PG&E's concern that in the absence of Commission-regulated rates, a utility's sale of electricity to an electric vehicle charging provider would be subject to the exclusive jurisdiction of FERC. SCE also takes the position that no regulation is required if entities providing charging services sell no electricity but just the charging equipment and retain no ownership, management, control or operation of such equipment.

[7] Pub. Util. Code § 216(h). An ESP is an entity that provides electric supply services to Direct Access customers within an investor owned utility's service territory. An ESP may also provide certain metering and billing services to its Direct Access customers. ESPs remain subject to the Commission's specific jurisdiction over procurement-related obligations and consumer protections.

[8] Electric Tariff Rule 22 governs Direct Access service to ESPs.

### 3.4. Sacramento Municipal Utility District

Sacramento Municipal Utility District's (SMUD) position is that the Commission should regulate entities providing electricity for electric vehicle charging. In the absence of Commission regulation, SMUD sees complications for infrastructure planning to accommodate electric vehicle growth. According to SMUD, if electricity is sold at a profit, utility status is required. In SMUD's view, regulation depends on the nature of the product sold or the manner of the delivery of the electricity. SMUD believes that exempting electric vehicle charging from regulation would not promote orderly and reliable development of charging. SMUD draws a distinction between electricity and natural gas. SMUD points out that natural gas must be processed (value-added) before it is used as a vehicle fuel and argues that, in the absence of value-added, which does not exist with electricity, regulation is mandated. One exception noted by SMUD is that battery swapping provides a value-added component but charging directly from the grid does not. SMUD notes the importance of imposing the right "rate design" on electric vehicle charging service providers to incent off-peak charging, which, in SMUD's view, cannot be done if fully unregulated.

### 3.5. EV Service Provider Coalition

The EV Service Provider Coalition, consisting of Better Place, Coulomb Technologies, Inc. (Coulomb), and Ecotality/eTec, submitted a joint pleading. They claim that the Commission has no jurisdiction over electric vehicle charging service providers that offer electricity as a form of transportation fuel. This coalition supports the analysis in the Scoping Memo and states that over-reaching jurisdiction will stifle competition, innovation and investment in the industry. They suggest the Commission adopt tariff rules to facilitate the

provision of electric vehicle services in a manner that is as convenient and seamless as possible.

### 3.6. Better Place

Better Place also submitted its own brief. In its brief, Better Place expands upon topics addressed in its joint brief filed with the EV Service Provider Coalition. Better Place reiterates that charging should not be regulated but recognizes the diversity in business models makes determining the boundary between utility/non-utility service difficult. Better Place also submits that no evidence exists of the Legislature's intent to regulate electric vehicle charging. Better Place concludes that electric vehicle charging equipment is not electrical plant because it is not used to deliver "light, heat or power" and, in adopting this interpretation, Better Place relies heavily on D.91-07-018 and cites to Section 740.3[9] for support. Better Place argues that the Commission's prior conclusion that natural gas used as a vehicle fuel is not used for "power" in the sense intended by statute is applicable in the case where electricity is used to charge an electric vehicle battery. Better Place further points out that, like compressed natural gas providers, electric vehicle service providers deploy money, time, effort and technology to provide their customers a service, and do not simply sell a commodity. In terms of next steps for this proceeding, Better Place suggests workshops to refine the "exact boundary" of where the

[9] Section 740.3(a) provides, in pertinent part, as follows: "The commission, in cooperation with the State Energy Conservation and Development Commission, the State Air Resources Board, air quality management districts and air pollution control districts, regulated electrical and gas corporations, and the motor vehicle industry, shall evaluate and implement policies to promote the development of equipment and

*Footnote continued on next page*

responsibility of the investor owned utility ends and the charging providers begins and to refine Rule 18 and Rule 19.

### 3.7. Coulomb Technologies, Inc.

Coulomb expands upon topics addressed in its joint brief filed with the EV Service Provider Coalition to emphasize that the Commission should support the Scoping Memo position that the Commission does not have the regulatory authority regarding the price that an electric vehicle charging facility operator charges for services or other aspects of operation of such facilities. According to Coulomb, only this outcome will enable a market that will encourage competitive market forces to bring benefits to consumers and ensure rapid deployment of the charging infrastructure. Coulomb argues that by treating a charging station as competitive access to the grid as opposed to being a regulated utility, the Commission can foster competition in the nascent infrastructure marketplace and help facilitate rapid deployment.

### 3.8. Clean Energy Fuels Corporation

Clean Energy Fuels Corporation (Clean Energy), a provider of vehicle compressed natural gas, offers reasons why natural gas vehicles need to be addressed in this proceeding. It argues that the regulatory framework should err on the side of facilitating the development of robust and vibrant competition in the California alternative fueled vehicle marketplace. As such, no regulation of entities providing electric vehicle charging is appropriate, all pricing should be

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infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles."

cost based, and investor owned utilities should not be permitted to rate base "behind the meter" home refueling and charging investment.

### 3.9. Western States Petroleum Association

Western States Petroleum Association (WSPA) argues that entities providing electric vehicle charging are not public utilities. Instead, it suggests that Rules 18 and 19 apply and that the Commission consider modifying Rules 18 and 19 to provide for the resale of utility power by an electric vehicle service provider for transportation fuel purposes. WSPA finds that electricity as a transportation fuel does not constitute "power" under the code. WSPA also points out that the Legislature did not include the word "fuel" or "automobile fuel" when defining "electric plant" and argues, therefore, that the provision of vehicle fuel is not a utility service. WSPA further states that the regulation of electric vehicle service providers would be contrary to the purpose of public utility regulation – the protection of consumers from monopoly abuses – and to California's policy goal of developing an electric vehicle infrastructure. The future diversity of transportation fuels, WSPA claims, argues against the existence of monopoly service or the need for regulations.

### 3.10. Division of Ratepayer Advocates

The Division of Ratepayer Advocates (DRA) focuses on "dedication to public use," the implicit requirement that applies before finding an entity is a public utility. DRA finds that entities providing electric vehicle recharging satisfy the "dedication" requirement but DRA advocates for a light-handed regulation that focuses on safety, rates, terms and conditions of service, and impact on the electric grid. DRA is concerned about on-peak charging and suggests that, if these entities are not regulated, the Commission will not be able to control peak use. DRA suggests workshops to develop tariff language to

discourage on-peak charging. In its reply brief, DRA contends that, if investor owned utilities are permitted to enter into the electric vehicle service provider market, investor owned utilities should be prohibited from recovering their related expenses and capital from ratepayers.

### 3.11. The Utility Reform Network

The Utility Reform Network (TURN) argues that entities that provide electric vehicle charging offer a utility service and that legislative action is required to change the situation. TURN contends that the analogy to natural gas vehicles (NGV) must take into consideration that Senate Bill (SB) 547 was pending when the Commission issued D.91-07-017 and D.91-07-018 finding NGV fuel sales outside of its jurisdiction. According to TURN, the fact that legislation was passed confirms that the Legislature believed that entities reselling natural gas as a vehicle fuel were public utilities, otherwise the Legislature would not have passed the bill exempting NGV from jurisdiction. While the Commission holds regulatory authority, TURN suggests the Commission use light regulation similar to competitive gas storage providers. TURN did not specifically describe the aspects of gas storage regulation that would be appropriate here.

### 3.12. Natural Resources Defense Council and Friends of the Earth

Natural Resources Defense Council (NRDC) and Friends of the Earth (FOE) claim that the Commission has and should retain jurisdiction because of the potential increased risk associated with the use of inefficient peak power and unintended impacts to grid management. They rely on the plain language of the Public Utilities Code to argue that electric vehicle charging renders an entity subject to public utility regulation but also express their preference for light-handed regulation. Looking ahead, they explain that regulation must be

mindful of the possibility that electric vehicle charging entities will provide ancillary services to support the grid, energy storage services, charge management aggregation services, and "solar to electric vehicle."

### 3.13. Californians for Renewable Energy and North Coast Rivers Alliance

Californians for Renewable Energy (CARE) and North Coast Rivers Alliance (NCRA) state their preference for regulating electric vehicle charging but prefer "limited, non-pricing regulation." CARE and NCRA suggest that a determination that no regulation is appropriate would require legislative action and, in reply briefs, these parties suggest that the Commission create a new customer class for electric vehicle service providers to control rates.

### 3.14. Interstate Renewable Energy Council

Interstate Renewable Energy Council (IREC) argues that the Commission has no jurisdiction over transactions involving the sale of electricity when a private relationship exists between provider and customer, such as landlord/tenant; shopping center/customer; hotel/guest but admits that the more difficult question to address is the Commission's jurisdiction over public charging spots. IREC notes the lack of information on business models for entities providing electric charging services and finds that this, while not surprising due to the nascent state of the electric vehicle market, makes it difficult to propose solutions to the jurisdiction issue. IREC further notes that Commission jurisdictional analyses are highly fact based. As such, IREC recommends a cautious approach while also proposing that the Commission provide some assurance that in certain situations, electric vehicle charging will

be free from Commission regulation. For example, IREC cites to *Story v. Richardson*, (1921) 186 Cal. 162,[10] for the proposition that landlords serving tenants have not dedicated their service to the public. In its reply brief, IREC refers to Rule 18 and Rule 19 as a way to accommodate "resale" by electric vehicle service providers.

### 3.15. Green Power Institute

Green Power Institute claims that vehicle electrification represents an opportunity to convert transportation to run on renewable sources of energy, assuming that the electricity has a significant renewable component. As a result, Green Power Institute points out that a key consideration will be tariffs applicable to charging entities. Green Power Institute does not support extending the Commission's jurisdiction to electric vehicle service providers.

### 3.16. Environmental Defense Fund

Environmental Defense Fund supports excluding providers of electric vehicle charging services from regulation as public utilities and focuses on the need for innovative rate structures to achieve environmental goals.

## 4. Discussion

### 4.1. Policy Context

Transportation sources are the fastest growing source of greenhouse gas emissions in the United States, accounting for 47% of the net increase in total

[10] In *Story v. Richardson* (1921) 186 Cal. 162, the Supreme Court found "The test to determine a public use is whether the public has a legal right to the use, which cannot be gainsaid, or denied, or withdrawn, at the pleasure of the owner. The essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefiniteness or unrestricted quality that gives it its public character."

United States emissions since 1990.[11] In California, transportation sector emissions represent approximately 38% of the total carbon footprint of the economy.[12] Light-duty vehicle emissions represent the greatest source of transportation sector emissions in certain metropolitan areas in California.[13]

Electrification of the transportation sector in California will reduce greenhouse gas emissions and petroleum consumption and improve ambient air quality. Additional emissions due to increased generation of electricity will be more than offset by the reduction in emissions from conventional vehicle operation. Centralized and distributed electricity generation plants in California that fuel an electric motor are collectively more efficient and produce fewer "well to wheels" greenhouse gas emissions than petroleum extraction, refinement, and distribution to fuel an internal combustion engine.[14] Plug-in electric vehicle characteristics, such as battery storage capacity, electric-drive range, and vehicle usage patterns, influence potential greenhouse gas emission reductions.[15]

California policies that are driving down greenhouse gas emissions in the electricity sector are increasing the potential emissions benefits that would result from increased reliance on electricity as a transportation fuel. In addition, party

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[11] OIR at 3.

[12] Commission Staff White Paper, "Light-duty Vehicle Electrification in California: Potential Barriers and Opportunities," Commission Policy and Planning Division, (May 22, 2009) at 16.

[13] Bay Area Air Quality Management District, "Source Inventory of Bay Area Greenhouse Gas Emissions," Emissions Inventory Section, (Updated February 2010) at 13.

[14] *Id.*

[15] California Air Resources Board, *Climate Change Scoping Plan,* (December 2008).

[15] Commission Staff White Paper (May 22, 2009) at 17.

comments note plug-in electric vehicles may enhance the benefit of distributed generation incentive programs.[16] Provided it meets grid operator requirements, variable charging of electric vehicles can improve (and potentially reduce the cost of) integration of renewable resources, enabling further greenhouse gas emission reductions to the benefit of all ratepayers. In particular, plug-in vehicles may provide "supply-following" demand to support off-peak wind resources.[17]

The widespread use of plug-in electric vehicles complements California policies to promote fuel-switching to a range of alternative and renewable fuels and vehicle technologies, and complements policies to reduce greenhouse gas emissions via reductions in total vehicle miles traveled.[18] The California Air Resources Board's *Climate Change Scoping Plan*, the state's plan to achieve the greenhouse gas emissions limit set by Assembly Bill 32, includes several measures targeting the transportation sector, including the Pavley fuel economy standards and the Low Carbon Fuel Standard.[19] In addition, as part of the Zero Emission Vehicle program, plug-in electric vehicles are assigned credits toward meeting regulation requirements through the sale of vehicle technologies.[20]

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[16] Comments filed by Center for Carbon-free Power Integration, University of Delaware, November 30, 2009 at 5.

[17] Commission Staff White Paper, "Light-duty Vehicle Electrification in California: Potential Barriers and Opportunities," Commission Policy and Planning Division, (May 22, 2009) at 9.

[18] *Id* at 9.

[19] California Air Resources Board, *Climate Change Scoping Plan,* (December 2008).

[20] California Energy Commission, *2010-2011 Investment Plan for the Alternative and Renewable Fuel and Vehicle Technology Program*, (April 2010), at Appendix B.

Electric vehicles can play a very important role in the success of both of those programs.

The legislature has recognized the importance of electric vehicle as evidenced, most recently, by the enactment of Senate Bill 626. Senate Bill 626 requires the Commission to evaluate policies to overcome any barriers to the widespread deployment and use of plug-in hybrid and electric vehicles.

The success of electric vehicles in California will, in significant part, depend on the availability of sufficient charging infrastructure. As emphasized by the Commission's Staff White Paper on vehicle electrification, "[i]nfrastructure investments 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]."[21] Commercial and other publicly accessible charging stations will be important given that there are several times more cars than garages in the United States.[22]

It is within this policy context that the Commission makes this decision.

### 4.2. Legal Analysis of the Public Utilities Code

Our legal analysis in this decision focuses on the applicability of §§ 216, 218, 740.2, 740.3 and related sections. However, as discussed in Section 4.3 below, the Commission has many other sources of regulatory authority that may be important as we develop policies related to electric vehicles in Phase 2.

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[21] Commission Staff White Paper at 12.

[22] *Id.* at 41-42.

Here we determine that the legislature did not intend that the Commission regulate providers of electric vehicle charging services to the public as public utilities.

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

We reach this conclusion early in this proceeding in order to provide regulatory certainty for utilities, entities participating in the electric vehicle markets, investors, and customers. Removing regulatory uncertainty advances the mandates of § 740.2 to remove 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 the issues framed in Phase 2 of this proceeding. We note that a legislative codification of this decision's conclusion would remove additional barriers to widespread deployment and use of electric vehicles by providing the statutory surety to redirect resources away from frivolous litigation towards implementation.[23]

#### 4.2.1. Legal Framework

As DRA and IREC point out, many instances of electric vehicle charging do not constitute "public dedication," and thus, the charging provider would clearly not be an electrical corporation or public utility pursuant to §§ 216 and 218. The most obvious such example is a homeowner that charges his or her

[23] SB 547 expressly stated that CNG fueling does not make an entity a public utility after D.91-07-018 reached the same conclusion, this avoided a waste of stakeholder time and resources unnecessarily litigating the issue.

own vehicle in his or her own garage and does not offer charging services to others. Clearly, the homeowner's charging equipment is not dedicated to public use and the homeowner would not be found to be a public utility. Other examples could include residential and commercial landlords that provide electric vehicle charging as a service on the premises to tenants, condominium associations that provide electric vehicle charging on the premises as a service to the condominium owners, and employers that provide access to recharging facilities as a service to their employees.

Our analysis here is limited to instances in which electric vehicle charging services are offered to the public.

Pursuant to §§ 216 and 218 the Commission regulates as public utilities corporations and persons owning, controlling, operating, or managing facilities used for the transmission, delivery, or furnishing of electricity to the public. However, the Commission does not have the legal jurisdiction to regulate vehicle service stations. The emergence of electric vehicle charging service providers blurs these jurisdictional lines. Under the California Constitution, only the legislature can confer new powers on the Commission, so we have to look for evidence as to the legislature's intent on this question. As discussed further below, we conclude that under §§ 740.2 and 740.3, the legislature only granted limited authority to the Commission to set rules related to electric vehicle charging. Therefore, we conclude that under existing laws, we do not have jurisdiction to broadly regulate electric vehicle charging service providers as public utilities.

Recently enacted § 740.2 requires the Commission, in consultation with other agencies and industries, to evaluate policies to "… develop infrastructure sufficient to overcome any barriers to the widespread deployment and use of

plug-in hybrid and electric vehicles." Section 740.2 directs the Commission to focus on the potential impacts of vehicle charging on electrical infrastructure and grid operations. Specifically, the Commission is directed to address 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 transportation sector to the electrical industry. Section 740.2 does not direct the Commission to regulate electric vehicle charging service providers as public utilities pursuant to §§ 216 and 218. Thus we conclude that the legislature did not intend that the Commission treat electric vehicle charging service providers as public utilities. Rather the legislature intended that we use the authority granted in § 740.2 to address the potential impacts of vehicle charging.

Our review of § 740.3 further supports this conclusion.

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 low emission vehicles. Nothing in § 740.3 explicitly or implicitly directs the Commission to regulate electric vehicle charging service providers as public utilities. In fact, § 740.3(c) requires that the Commission "ensure that utilities do not unfairly compete with nonutility enterprises." Clearly, the legislature contemplated that providers of electric vehicle charging equipment would include both utility and non-utility entities. Therefore, we conclude that § 740.3 further demonstrates that the legislature did not intend the Commission to treat all electric vehicle charging providers as public utilities pursuant to §§ 216 and 218.

In summary we believe that §§ 740.2 and 740.3 demonstrate that the legislature did not intend that this Commission regulate providers of electric

vehicle charging services as public utilities pursuant to §§ 216 and 218. Instead the legislature described how the Commission should regulate the impacts of electric vehicle charging in §§ 740.2 and 740.3. In Section 4.3 below we enumerate these and other sources of Commission authority to pertinent to electric vehicle charging.

#### 4.2.2. Implications

Since providing electric vehicle charging services does not make an entity a public utility, it follows that an electric vehicle charging service provider will generally be an end-use customer of a CPUC-jurisdictional load serving entity. A charging service provider that is connecting to the transmission or distribution system of an investor-owned utility will, at the very least, be a retail transmission and distribution customer of the utility. The charging service provider's load-serving entity could be the investor-owned utility, and electricity service provider, or a community choice aggregator.

To the extent an investor-owned utility provides electric vehicle charging services, provision of such services will not affect the utility's status as a public utility. In Phase 2 we will thoroughly consider the appropriate role of investor-owned utilities with regard to electric vehicle charging including a consideration of terms under which a utility can offer such services.

DRA, NRDC and FOE, PG&E, and SMUD, in arguing that electric vehicle service providers are public utilities, asserted that such a finding is necessary to ensure that vehicle charging occurs in a manner that ensures safety and grid reliability. We share these parties' concerns. However, since providing electric vehicle charging services does not make an entity a public utility, we cannot rely on that authority to pursue these important objectives. Instead we must rely on other important sources of regulatory authority as summarized in Section 4.3

below. Some of these sources of authority are common to all end-use customers. Some are specific to vehicle charging.

Our decision today is consistent with laws and policies pertaining to the electric sector including the Renewable Portfolio Standards (RPS), Resource Adequacy (RA), the Emissions Performance Standard (EPS) and Assembly Bill (AB) 32 programs. Many of these policies apply to load-serving entities, thus, the entity from whom an electric vehicle charging service provider purchases retail electricity will be subject to these various mandates. In other words, load-serving entities remain bound to the existing requirements of RPS, RA, EPS, and AB 32 programs, even for that portion of their electricity sales that is ultimately delivered to charging service providers and vehicle owners for the use as a motor vehicle fuel. It is unnecessary to impose these important policies directly on the charging service providers to ensure that the policies are complied with. The Commission's finding in today's decision in no way allows electricity sales to circumvent these requirements.

If a provider of electric vehicles charging services attempts to procure electricity on the wholesale market, rather than purchasing electricity from a load-serving entity, the charging provider's purchase of electricity will constitute a "direct transaction" under § 331(c) and will be subject to all the obligations and limitations that apply to direct transactions including § 365.1. Section 365.1 suspends the ability of retail end-use customers to acquire service from "other providers" subject to a maximum limit provided in the section. Section 365.1 also requires that the Commission ensure that other providers are subject to the same RPS, RA and AB 32 requirements as the three largest investor owned utilities. In other words, it is illegal for an electric vehicle charging services provider to procure electricity on the wholesale market if the entity selling the

power has not complied with the procurement requirements that apply to the utilities. The Commission will exercise its authority in the area of electric vehicle charging to ensure the law is complied with.

The Legislature has recently praised the benefits of an electric vehicle infrastructure as a major component of the state's efforts to promote the use of low emission vehicles. In Section 740.2 the Legislature directed the Commission to assist with the "widespread deployment and use of plug-in hybrid and electric vehicles." This Commission has broad authority to meet this legislative mandate, and has determined that the approach we take today, in combination with the forthcoming decision addressing the issues scoped into Phase 2 of this proceeding, is the best way to do so. Today's decision is consistent with the state's policy of supporting a vibrant market in electric vehicles.

### 4.3. Other Sources of Regulatory Authority Over Electric Vehicle Charging

While this decision finds that providing electric vehicle charging services does not make an entity a public utility, we have other sources of regulatory authority that we can and will apply to ensure electric vehicle charging is integrated harmoniously into the electric grid. This section amplifies that we retain all authority granted to us under the California Constitution and Public Utilities Code, and discusses specific types of regulatory authority that could be important as we further develop policies in this rulemaking.

#### 4.3.1. Senate Bill 626 (Kehoe)

Section 740.2 (Stats. 2009, c. 355 (SB 626) § 1) states that "[b]y July 1, 2011, the [C]omission shall adopt rules to address all of the following:

(a) The impacts upon electrical infrastructure, including infrastructure upgrades necessary for widespread use of plug-in hybrid and electric vehicles and the role and development of public charging infrastructure.

(b) The impact of plug-in hybrid and electric vehicles on grid stability and the integration of renewable energy resources.

(c) The technological advances that are needed to ensure the widespread use of plug-in hybrid and electric vehicles and what role the state should take to support the development of this technology.

(d) The existing code and permit requirements that will impact the widespread use of plug-in hybrid and electric vehicles and any recommended changes to existing legal impediments to the widespread use of plug-in hybrid and electric vehicles.

(e) The role the state should take to ensure that technologies employed in plug-in hybrid and electric vehicles work in a harmonious manner and across service territories.

(f) The impact of widespread use of plug-in hybrid and electric vehicles on achieving the state's goals pursuant to the California Global Warming Solutions Act of 2006 and renewables portfolio standard program and what steps should be taken to address possibly shifting emissions reductions responsibilities from the transportation sector to the electrical industry."

We agree with SCE that with the enactment of § 740.2, the legislature granted the Commission specific authority to implement rules necessary to facilitate the widespread deployment of electric vehicles in California. This authority extends to policies that apply to electric vehicle charging. We intend to

exercise this authority to the extent necessary based on our deliberations in Phase 2 of this proceeding.

#### 4.3.2. Procurement Authority

The Commission has extensive jurisdiction to enforce procurement requirements. The Renewable Portfolio Standards (RPS), Resource Adequacy (RA), and the Emissions Performance Standard (EPS) are just several examples of such jurisdiction. To 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 all applicable requirements.

#### 4.3.3. Setting the Conditions of Utility Service

Since 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. Following are several examples of such conditions that are already in place:

- The Commission has authority to determine notification and application requirements for customers requesting new electric service. Currently, a customer cannot receive electric service without applying for service with the utility. Additionally, an existing customer is required to provide notice to the utility when the customer makes changes to its connected load.[24] Thus, a prospective provider of electric vehicle services would need to notify and apply to the utility before initiating service. An existing utility customer that installs electric vehicle service equipment is also required to notify the utility. Failure to follow these rules could result in the electric vehicle service

[24] PG&E Electric Rule No. 3, SCE Rule 3, and SDG&E Electric Tariff Book – Rule 3.

provider's service being disconnected. This is a significant source of Commission authority to address the impacts of electric vehicle charging on electrical infrastructure.

- Commission-approved rules provide that a utility can discontinue service if a customer is creating unsafe working conditions for utility employees.[25] Through this authority the Commission can address circumstances in which a provider of electric vehicle charging is operating in an unsafe manner.
- The Commission determines the conditions under which a customer can take service under a particular rate. An electric vehicle charging rate could include rules that the Commissions deems appropriate.[26]
- The Commission sets rules addressing utility and customer obligations pertaining to distribution and service line extensions.[27] These rules provide important Commission authority over all customers, including electric vehicle service providers.
- The Commission has adopted extensive interconnection standards governing how customer-owned equipment connects to the grid.[28] The Commission can use its

[25] *Id.*

[26] For example, SCE has an existing electric vehicle rate for its commercial customers (Schedule TOU-EV-3). Among other things, the tariff state that "[w]here SCE determines that the operation of the EV charging facilities may interfere with service to that customer or other customers, SCE will install a load management device to control when EV charging will occur."

[27] See also PG&E Electric Rule Nos. 15 & 16, SCE Rules 15 & 16, and SDG&E Electric Tariff Book – Rules 15 & 16 addressing utility and customer obligations pertaining to distribution and service line extensions.

[28] See, for example, PG&E Electric Rule No. 21; SCE Rule 21, and SDG&E Electric Tariff Book – Rule 21 concerning interconnection of generation facilities with the distribution grid.

authority to adopt appropriate interconnection standards for electric vehicle charging providers.

### 4.3.4. Setting the Rates Charged to Customers with Electric Vehicle Charging Equipment

The sale of electricity by an investor-owned utility to an electric vehicle charging service provider is a retail electricity transaction. Therefore, the Commission has jurisdiction over that transaction and can set the rate that the provider pays to the utility. If the provider is a bundled customer of the utility, then the Commission can set all components of the rate. If the provider is a customer of an electricity service provider or community choice aggregator, the Commission can set all components of the rate except for the generation component.

Designing and approving the rates that a utility charges its customers is a fundamental area of Commission authority.[29] Rate design has a significant impact on how much electricity consumers use, and when, and the Commission has had a long standing policy of adopting marginal cost-based rates.[30]

Rate design can include volumetric charges (dollar per kilowatt-hour), demand charges (based on peak usage during a specified time period), and fixed charges. Rates can be designed separately for each cost component (i.e., generation, distribution, and transmission) to reflect how a customer's usage impacts the specific cost category. For example, the distribution component of the rate could include a demand charge to reflect the fact that the distribution system is designed to meet peak load.

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[29] Pub. Util. Code § 451.

The Commission's rate design authority may be a tool to address how electric vehicles impact the electric grid and can help to integrate renewable energy resources. The rate that an electric vehicle charging provider pays to the utility will be a cost of doing business that the charging provider may pass on to its customers or absorb. The charging provider will have a strong incentive to operate its business in a manner that is compatible with the needs of the electric grid.

#### 4.3.5. Adopting Demand Response and Energy Efficiency Programs

The Commission has the authority to create demand response and energy efficiency programs to provide customers incentives to reduce their energy usage at certain times (demand response) or on an ongoing basis (energy efficiency). Existing programs have resulted in significant peak load reductions and energy savings.

The Commission can create programs that are specifically targeted at electric vehicle charging to address the potential impacts of charging on electrical infrastructure.

#### 4.3.6. Authority to Adopt Interoperability Standards

Senate Bill 17 (Padilla, Chapter 327, Statutes of 2009) established that "[i]t is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical

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[30] *See* D.82-12-113 (10 CPUC2d 512), D.83-12-065 (13 CPUC2d 619), D.83-12-068 (14 CPUC2d 15), and D.84-12-068 (16 CPUC2d 721).

service, with infrastructure that can meet future growth in demand" and achieve specified policies, which the bill characterizes as a "Smart Grid."[31]

Among other things, the law directs the Commission "to adopt standards and protocols to ensure functionality and interoperability developed by public and private entities, including, but not limited to, the National Institute of Standards and Technology [NIST]…"[32] NIST is considering several standards related to communication between electric vehicles, vehicle charging equipment, and the electric grid.[33]

The Scoping Memo in this rulemaking recognized the importance of interoperability standards in the context of electric vehicles.[34] The Commission's authority to adopt interoperability standards, granted by Senate Bill 17, will be an important tool to ensure that electric vehicles and electric vehicle charging providers can integrate smoothly into the electric grid.

### 4.4. Federal Energy Regulatory Commission (FERC)

In comments, PG&E and SCE have expressed a concern 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.

PG&E's and SCE's concern is misplaced.

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[31] Section 8360.

[32] Section 8362(a).

[33] See NIST Special Publication 1108, *NIST Framework and Roadmap for Smart Grid Interoperability Standards Release 1.0* from the Office of the National Coordinator for Smart Grid Interoperability, Jan 2010 at 70-71. Specifically, SAE J1772, SAE J2836, and SAE J2847 are promising standards that the Commission could adopt pursuant to SB 17.

[34] Assigned Commissioner's Scoping Memo at 12.

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."[35]

In Section 4.2 we conclude 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 exclusive jurisdiction of the California Public Utilities Commission, not under the jurisdiction of FERC.

To the extent any party perceives uncertainty in this area, that party is free to seek a FERC declaratory order or a FERC order disclaiming jurisdiction.

## 5. Immediate Need for Additional Consumer Protection

Some parties commented on the need for additional consumer protection oversight of the retail sale of electricity as a motor vehicle fuel. Currently, the sale of "motor fuel," as governed by the Bus. & Prof. Code, does not include the retail sale of electricity used for motor vehicle fuel. The Bus. & Prof. Code contains important consumer protection laws, including Bus. & Prof. Code §§ 12300-12314 (Standards of Weights and Measures), §§ 12500-12517 (Weighing and Measuring Devices), §§ 16600-17365 (Preservation and Regulation of Competition), and §§ 17500-17930 (Representations to the Public).

[35] 16 U.S.C. § 824(d).

Further amendments to the Bus. & Prof. Code may be appropriate. Such amendments would be consistent with the Legislature's action following the Commission's issuance of D.91-07-018. At that time, the Legislature promptly addressed consumer protection. Recognizing that compressed natural gas was not traditionally considered a "motor fuel" and that its use as such potentially created a gap in applicable consumer protection laws, the Assembly Committee on Utilities and Commerce drew attention to the need to classify compressed natural gas "as a 'motor fuel' for purposes of the Bus. & Prof. Code to avoid creating an entity not subject to any consumer protections laws whatsoever." (Bus. & Prof. Code § 13404.)

This is an area that may require review by the Legislature to expand, if necessary, those protections governing "motor fuel" to include electricity.

### 6. Home Charging Equipment Installation Streamlining

Issues relating to charging installation streamlining are included within the scope of this proceeding (Scoping Memo at 6). Installation streamlining issues are prioritized as the current customer experience in establishing electric charging service presents a potential barrier to the widespread use of plug-in hybrid electric vehicles and battery electric vehicles.

On March 16, 2010, the Commission, in collaboration with the California Air Resources Board and the California Energy Commission, held a Joint Energy Agency workshop entitled "Electric Vehicle Workshop: Accelerating the Installation of Home Charging Equipment." The purpose of the workshop was to identify steps the State Legislature, the Commission, and other state regulatory agencies and local governments can take to streamline single-user residential charging installations.

Workshop panelists included representatives from automakers, charging equipment manufactures, charging equipment installers, local government officials, California Department of Housing and Community Development officials, large municipal utilities and investor-owned utilities. Panelists made a number of recommendations to the Commission, the State, and local governments to improve the current customer experience related to establishing service.

The Scoping Memo indicated the role of the Commission with respect to charging infrastructure streamlining issues is unclear. (Scoping Memo at 6.) In support of this position, workshop panelists indicated installation streamlining is a core competency of local jurisdictions, but that utilities the Commission regulates have a role to play. (March 16, 2010 RT 39.)

Workshop panelists suggested utilities would benefit from early identification of who is purchasing electric vehicles to anticipate whether the distribution system is adequate, provided this information-sharing did not violate customer privacy. (March 16, 2010 RT 156.) To address this issue, the Commission suggested regulated utilities could develop jointly with automakers a formalized notification process to quickly identify charging locations at the time of plug-in electric vehicle purchase. To ensure service reliability at customer-premise installations, and to ensure customer satisfaction, utilities, automakers, and electric vehicle service providers have a shared incentive to develop customer plans to support early identification of charging locations and voltages. Section 4.3.3 herein clarifies the Commission's authority to set terms of notification through customer applications for service. The Commission's authority to set terms of notification via customer applications should

complement ongoing notification processes development through existing partnerships.

Further, March 16 workshop panelists observed that the charging equipment installation time itself is *de minimis*; the installation delay frequently arises in the hand-off of responsibility from one participant in the process to another; i.e., from the customer to the automaker, to the equipment installer, to the local utility, to the local government permitting and inspection official (March 16, 2010 RT 18). Some automakers appear to be addressing this challenge by selecting charging equipment installation companies that will oversee these handoffs.

The Commission again underscores its support for efforts on the part of trade alliances, regional and local governments, utilities, and industry actors to partner and work in parallel to the Commission rulemaking process toward common sets of best practices to prepare for the deployment and widespread use of plug-in electric vehicles. The Commission has authorized regulated-utility funding to participate in plug-in electric vehicle readiness efforts through its general rate case authorization and in certain program authorizations. The Commission intends to continue its consideration in Phase 2 of the proceeding of installation streamlining as part of a broader effort to prepare for the deployment of plug-in electric vehicles at the end of this year (2010).

## 7. Phase 2

This proceeding will remain open for consideration in Phase 2 of this proceeding of a number of additional issues as identified preliminarily in the Scoping Memo. Some of the issues we will potentially address in a Phase 2 decision are as follows:

- Any health and safety issues related to electric vehicle charging and the associated infrastructure;
- The appropriate utility role in the provision of electric vehicle charging services to the public;
- The appropriate utility role with respect to charging equipment on the customer's side of the meter;
- Ways in which the utilities can further help to streamline the installation of home charging infrastructure;
- Cost and benefit allocation, including a consideration of the circumstances in which the costs of any distribution system upgrades should be borne by an individual customer or be recoverable from all customers, and consideration of benefits including improved asset utilization and integration of renewable energy;
- Principles for electric vehicle time-variant rates to align rates with system costs and impacts;
- Metering requirements;
- Any appropriate tariff rules pertaining to an electric vehicle service providers interconnection with the utility's infrastructure;
- Development of appropriate smart charging programs or policies to manage the impacts of electric vehicle charging on the grid;
- Intra - and inter - utility billing policies; and
- Other issues required to comply with SB 626.

Additionally, as indicated in the Scoping Memo, we will continue to leave open the possibility that the Commission should consider natural gas vehicle-related policies while developing policies that apply to electric vehicles.

Parties have suggested workshops as a possible means of developing these issues. We agree that workshops may be helpful. More details regarding process will be provided after a prehearing conference is held in Phase 2.

## 8. Conclusion

After having considered all the arguments presented by parties in this proceeding, we conclude that the ownership or operation of a facility that sells electric vehicle charging services to the public and the selling of electric vehicle charging services from that facility to the public does not make the corporation or person a public utility within the meaning of § 216 solely because of that sale, ownership or operation. In Phase 2 of this proceeding, we will consider a number of other issues raised by parties. We will convene a prehearing conference to initiate Phase 2 and more fully define the issues and the appropriate processes to address those issues.

## 9. Comments on Proposed Decision

The proposed decision of the assigned Commissioner Nancy E. Ryan in this matter was mailed to parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on June 10, 2010 by CARE and NCRA, Clean Energy, DRA, EDF, the EV Service Provider Coalition, the Los Angeles Department of Water and Power (LADWP), NRDC and FOE, PG&E, SCE, SEU, and TURN, and reply comments were filed on June 15, 2010 by DRA, the EV Service Provider Coalition, NRDC and FOE, PG&E, SCE, SEU, and WSPA.

Several parties including CARE and NCRA, DRA, NRDC and FOE, PG&E and TURN commented on the decision's analysis of § 216 and related sections. The decision has been revised in response to parties' arguments.

DRA, NRDC and FOE, and SCE contend that the decision needs to state that the Commission retains jurisdiction in a number of areas that will be important to protect consumers and the environment and ensure a successful

expansion of electric vehicle use. In response, we have added a new Section 4.3, which lays out important sources of regulatory authority that the Commission will consider using as we develop policies in Phase 2.

Other revisions have been made to the body of the decision in response to comments. Below we discuss comments that are not addressed elsewhere.

Clean Energy believes the Commission should prohibit utilities from putting in ratebase investments to provide home refueling and recharging services. We decline to address Clean Energy's request in this decision. As indicated in Section 7, the Commission will address the appropriate utility role in the provision of electric vehicle charging services to the public and with respect to home refueling equipment in Phase 2.

The EV Service Provider Coalition asks that the Commission clarify that the sale of electric vehicle charging services does not constitute a retail sale of electricity. We concur and have made clarifying revisions.

LADWP is concerned the decision does not consider the scenario where a municipality has not opened up its service territory for retail sales by other entities. This decision, however, is limited in scope and does not address the rights or obligations of municipalities.

NRDC and FOE request that the Commission explicitly acknowledge the linkages between alternative-fueled vehicles, renewable energy, and greenhouse gas emissions. The Commission's belief that the growth of electric and natural gas transportation can help to reduce the environmental impacts of energy use in California is a primary motivating factor for initiating this rulemaking.[36] The

[36] OIR at 2-3.

decision has been revised to explicitly state this and emphasize that the Commission will continue to implement applicable environmental laws and regulations as electric transportation expands in the state.

NRDC and FOE also emphasize that vehicle charging must be properly managed to fulfill the Commission's statutory obligations to ensure safe and reliable electric services. We agree. Ensuring that electric vehicles do not have adverse impacts on our electric system in terms of reliability and safety is one of the primary objectives of this rulemaking.[37] Section 4.3 above describes some of the sources of regulatory authority that could be important as we develop policies in Phase 2 of this rulemaking.

PG&E is concerned that the decision could be used by parties to argue against a utility's provision of electric vehicle charging equipment and services. We cannot predict what arguments parties will make in the future; however, we clarify that this decision does not address the utilities' role with regard to vehicle charging. That issue will be taken up in Phase 2.

SCE agrees that electric vehicle charging services should not be regulated as public utilities but requests that we address whether electric vehicle charging providers are covered by the load cap adopted in Senate Bill 695.[38] We clarify that a charging provider would not be subject to the cap unless the charging provider is an electric service provider or is otherwise purchasing electricity at wholesale to supply to customers.

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[37] *Id.* at 2, 12-14, and 23-24.

[38] Codified as Pub. Util. Code § 365.1.

SCE is concerned that the decision is disclaiming jurisdiction over sales of electrical vehicle charging services would result in the utility being required to separately meter electricity going toward charging and electricity going to other purposes. First, SCE is incorrect that this decision is disclaiming jurisdiction over sales of electricity for use as a motor fuel. On the contrary, this decision is only finding that selling electric vehicle charging services does not make an entity a public utility. The Commission retains jurisdiction over an investor-owned utility's sale of electricity to a charging provider or any other utility customer, even if the electricity is subsequently used as a motor fuel. Second, nothing in this decision requires that an investor-owned utility meter charging load separately from other end uses. Metering policy will be examined in conjunction with rate policy in Phase 2.

SCE requests clarification that the decision's findings only relate to light-duty electric vehicles. As indicated in this decision, 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.

## 10. Assignment of Proceeding

Nancy E. Ryan is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

## Findings of Fact

1. The Commission's March 16, 2010 workshop was transcribed. The assigned Administrative Law Judge advised parties of her intention to enter the transcript into the record. No party objected.

2. If a homeowner charges his or her own vehicle in his or her own garage and does not offer charging services to others, the homeowner's charging equipment is not dedicated to public use.

3. Residential and commercial landlords that provide electric vehicle charging as a service on the premises to tenants, condominium associations that provide electric vehicle charging on the premises as a service to the condominium owners, and employers that provide access to recharging facilities as a service to their employees have not dedicated their equipment to public use.

4. Section 740.2 requires the Commission to develop policies to overcome barriers to the widespread deployment and use of plug-in hybrid and electric vehicles

5. Section 740.2 directs the Commission to focus on the potential impacts of vehicle charging on electrical infrastructure and grid operations.

6. Section 740.3 directs the Commission to promote policies to facilitate the use of electric power to fuel low emission vehicles and requires that the Commission "ensure that utilities do not unfairly compete with nonutility enterprises."

7. Sections 740.2 and 740.3 do not direct the Commission to regulate electric vehicle charging service providers as public utilities pursuant to §§ 216 and 218.

8. Legislative codification of this decision may save valuable stakeholder resources.

9. Our decision today is consistent with the state's other policy goals set forth in the RPS, RA, EPS, and the AB 32 programs.

## Conclusions of Law

1. It is reasonable to enter the March 16, 2010 workshop transcript into the record of this proceeding.

2. If a homeowner charges his or her own vehicle in his or her own garage and does not offer charging services to others, the homeowner is not a public utility pursuant to §§ 216 and 218.

3. Residential and commercial landlords that provide electric vehicle charging as a service on the premises to tenants, condominium associations that provide electric vehicle charging on the premises as a service to the condominium owners, and employers that provide access to recharging facilities as a service to their employees that have not dedicated their equipment to public use are not public utilities pursuant to §§ 216 and 218.

4. It is reasonable to conclude, consistent with the underlying rationale of the Public Utilities Code and Sections 740.2 and 740.3, that the legislature did not intend that this Commission regulate providers of electric vehicle charging services as public utilities pursuant to §§ 216 and 218.

5. If a provider of electric vehicles charging services procures electricity on the wholesale market the Commission has jurisdiction to enforce procurement requirements and other laws and rules that apply to direct transactions including Pub. Util. Code § 365.1.

6. Pub. Util. Code § 740.2 grants the Commission specific authority to implement rules necessary to facilitate the widespread deployment of electric vehicles in California.

7. If an electric vehicle service provider receives 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.

8. If an electric vehicle service provider is a bundled customer of an investor-owned utility, the Commission can set all components of the retail rate paid by the provider.

9. If an electric vehicle service provider is a customer of an electricity service provider or community choice aggregator, the Commission can set all components of the retail rate paid by the provider except for the generation component.

10. Pub. Util. Code § 8362(a) directs the Commission to adopt standards and protocols to ensure functionality and interoperability developed by public and private entities.

11. 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."

## O R D E R

**IT IS ORDERED** that:

1. The March 16, 2010 workshop transcript is entered into the record of this proceeding.

2. Rulemaking 09-08-009 remains open for Phase 2.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners