<u>Commonwealth of Pennsylvania</u>

<u>Before the Public Utility Commission</u>

RE: In the Matter of Electric Utility Rate Design for Electric Vehicle Charging; M-2023-3040755

Dear Chairperson DeFrank and members of the Pennsylvania Public Utility Commission,

On behalf of Charge Ahead Partnership, I am writing to you today to provide our comments in response to the Proposed Policy Statement Order regarding Electric Utility Rate Design for Electric Vehicle Charging; M-2023-3040755.

Please find our comments below and do not hesitate to reach out if we can be of further help to the commission.

Sincerely,

<u>/s/ Jay Smith</u>
Jay Smith
Executive Director
Charge Ahead Partnership
Jay@chargeaheadpartnership.com
www.ChargeAheadPartnership.com

Comments of Charge Ahead Partnership

I. Introduction

Charge Ahead Partnership (CAP) is grateful to the Pennsylvania Public Utility Commission (the Commission) for releasing the Proposed Policy Statement regarding Electric Utility Rate Design for Electric Vehicle Charging (the Policy Statement) and considering these issues at a crucial time in the development of the electric vehicle (EV) charging market. As enumerated in the Commission's Proposed Policy Statement Order, the Policy Statement is the result of almost two years of work by the Commission examining rate design for EV charging in Pennsylvania. This process included an informal workgroup which several Pennsylvania based CAP members participated in. CAP commends the Commission for its dedication to taking feedback from stakeholders, both prior to the development of the Policy Statement and again on the proposed Policy Statement.

CAP firmly believes that the following issues should be considered as the Commission finalizes the Policy Statement regarding Electric Utility Rate Design for Electric Vehicle Charging:

- The Commission should require Pennsylvania's electric utilities to propose rates for the sale of electricity to EV charging providers that utilize alternatives to traditional demand-based rate structures and supports a level playing field for competition in Pennsylvania's EV fast charging market.
- The Commission should develop and implement strategies to ensure the deployment of EV charging stations does not overly burden ratepayers. These strategies should include requirements for electric utilities that choose to own EV charging stations to do so through a separate, unregulated entity that cannot be cross subsidized with their regulated business. This approach would also mitigate the inherent anti-competitive risks associated with regulated utilities participating in private markets based on fair competition.

II. About Charge Ahead Partnership

CAP's membership is comprised of businesses, organizations and individuals that share the common goal of expanding Pennsylvania's EV charging network and ensuring Pennsylvania is positioned to meet EV drivers' expectations of quality service, safety and the affordable, competitive pricing to which they have grown accustomed with the established refueling network. Our corporate members, from big box retailers, to grocery stores and restaurants, to existing fuel retailers, own the real estate that is best suited for Direct Current Fast Charging (DCFC) infrastructure. Many of these businesses are located along highway corridors, and all of them offer the amenities that drivers will demand while refueling.

The biggest challenge to widespread EV adoption in Pennsylvania is the lack of a robust, statewide EV fast charging network that is co-located with the services and amenities, such as food vendors, restrooms, lighting and security, that consumers have come to expect when they refuel. CAP believes that a competitive, market-based approach is the most efficient and economical way to build Pennsylvania's EV charging network so that it promotes fair competition and encourages private investment in the EV charging business.

Retailers, including gas stations, convenience stores and grocery stores, can be found in every community across the country, including small, disadvantaged and rural communities. In many instances, these businesses are the largest employers and largest taxpayers in their communities and the only location where local residents can buy groceries. If Pennsylvania sends the necessary policy and regulatory signals to these businesses, they will invest in EV charging infrastructure to meet the demand of their customers.

Included below is an overview of CAP's perspective on EV charging policies that would encourage robust free market competition in Pennsylvania. We encourage you to consider these issues as you implement regulatory policy that will shape the future of Pennsylvania's EV fast charging network. Doing so will position Pennsylvania to create a competitive and consumer-centric approach to building a robust EV fast charging network across the commonwealth. Also included below is CAP's response to the Policy Statement and specific recommendations which will help the Commission best achieve EV charging policy which accomplishes these goals.

III. The Importance of Addressing Demand Charges and EV Charging Rate Structure

In order for private investors to make the considerable investment necessary in EV charging infrastructure, systemic challenges within Pennsylvania's current electricity market must be addressed. Specifically, DCFC stations have unique power needs that require high power capacity for charging but consume relatively low amounts of energy per charge. This high demand over short periods of time subjects EV fast chargers to costly "demand charges," which are fees based on the highest level of electricity used during a billing period. Demand charges are a key barrier to private investment in EV charging services.

Demand charges were created to compensate electric utilities for their investment in the capacity needed to meet spikes in demand, largely caused by industrial customers. These charges pre-date EVs and are incompatible with the realities of owning and operating a DCFC station. The single use of a DCFC station can incur a demand charge that doubles or triples the electric bill of the operator. In the early stages of EV adoption, there are not enough EV drivers to offset these demand charges, making the cost of providing EV charging services prohibitively expensive. Furthermore, demand charges are difficult to pass along to the EV driver at the time of charging, because they are not posted until the end of the month when a customer pays their electric bill. For these reasons, the presence of demand charges in Pennsylvania's EV charging marketplace has severely limited private investment thus far.

CAP encourages the Commission to pursue regulatory policy that requires regulated utilities to offer tariffs for the sale of electricity to electric vehicle charging providers that utilize alternatives to traditional demand-based rate structures. The Commission should prioritize volumetric structures based on the amount of electricity being provided to the EV. Ultimately, the rates that the Commission approves should set forth the terms and conditions for the sale of electricity to DCFC station providers. To promote private investment and fair competition in Pennsylvania's EV charging business, it is imperative that the rates, terms and conditions for DCFC stations are applied to all DCFC providers, including electric utilities or their subsidiaries that choose to provide EV charging services. The

Commission should incorporate strategies to develop and implement competitively neutral electricity tariffs aimed at and optimized for the low-cost operation of EV charging stations while ensuring transparency in pricing.

IV. The Importance of Fair Competition and a Level Playing Field

A further major barrier to private businesses investing in DCFC stations is the threat of electric utilities investing ratepayer funds in EV charging stations without market or competitive forces at play. If allowed to participate, electric utilities have inherent advantages in the EV charging market given their monopoly status. If electric utilities are permitted to provide DCFC services directly to the public, as they are seeking to do across the country[1], it would undoubtedly undercut the development of a competitive EV charging market in Pennsylvania. Private businesses cannot compete with a regulated monopoly that can pass on the costs of their investments in DCFC stations to all of their ratepayers.[2] Additionally, it is not prudent for rate-regulated electric utilities to utilize ratepayer funding to expand their monopolies to EV charging services when there are private companies eager to invest their own capital.[3] Finally, utility investments in charging stations could lead to stranded assets as EV charging technology evolves quickly and could render ratepayer funded EV infrastructure obsolete before the amortization period is complete.

Ensuring that Pennsylvania's EV charging market is based on fair competition and transparency for all EV charging providers will mitigate financial impacts on ratepayers by encouraging private investment. However, private businesses need certainty that their investments in EV charging services will not be competed with unfairly by utility owned charging stations. To address this uncertainty, CAP believes that electric utilities that choose to own EV charging stations should do so through a separate, unregulated entity that cannot be cross subsidized with their regulated business, as such they can compete fairly with other private sector entities in the free market. In 2023, Oklahoma, Georgia and Texas passed legislation to enact elements of this policy.[4]

Furthermore, CAP acknowledges that Pennsylvania's electric utilities will play a critical role in ensuring Pennsylvania's grid infrastructure is prepared to support a statewide fast charging network. The most effective way to build out Pennsylvania's charging network is through a coordinated partnership between the commonwealth's regulated electric utilities and private, unregulated

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[1] *See, e.g.*, Minnesota Public Utilities Commission Docket No. 22-432, Public Utilities Commission of Nevada Docket No. 22-09006, Arkansas Public Service Commission Docket No. 22-026-TF and Indiana Utility Regulatory Commission Docket No. 45772.

[2] *See, e.g.*, Peter G. Scholtz, Assistant Attorney General, Minnesota Office of Attorney General comment letter in Docket No. 22-432. "Xcel's EV proposals — particularly $193 million earmarked for an expanded fast-charging network — implicate important public policy questions about whether and under what conditions the Company should be allowed to use its ratepayer-funded monopoly to compete in a new business area," Scholtz wrote.

[3] *See, e.g.*, Keven Gedko, Assistant Attorney General, New Mexico Office of Attorney General comment letter in Docket No. 22-00085-UT. "The NMAG agrees that ratepayer funds should not supplant private capital, nor should utilities unnecessarily profit off of new assets where such interference stifles market development and increases rates - which only serves to discourage electrification," Gedko wrote.

[4] Oklahoma Senate Bill 502 http://www.oklegislature.gov/BillInfo.aspx?Bill=SB+502&Session=2300, Georgia Senate Bill 406 https://www.legis.ga.gov/legislation/64250, Texas Senate Bill 1002 https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB1002.

businesses. The Commission, through its jurisdiction over electric utilities, should implement regulatory policy to facilitate that partnership through the make-ready model. This model will allow utilities to recover the costs of make-ready infrastructure to prepare charging sites for DCFC stations while unregulated businesses that compete on price and quality of service own and operate publicly available DCFC stations. This will encourage private investment and increase consumer choices in Pennsylvania's EV charging market.

V. Comments and Recommendations on the Policy Statement

CAP supports and appreciates the Commission's position in the Policy Statement encouraging electric distribution companies (EDCs) to implement rates specifically for EV charging customers. This is encouraging, but CAP recommends that the Commission strengthen this language to require Pennsylvania's EDCs to file electric rates specifically for EV charging and include a time frame in which to do so. This proceeding comes at a crucial juncture in the development of Pennsylvania's EV charging network with the Department of Transportation already beginning to award millions of dollars in federal grants to expand access to EV charging through the National Electric Vehicle Infrastructure Formula Program.[5] Merely encouraging EDCs to develop EV specific rate structures with no concrete timeline or directive could prolong private industry uncertainty as EDCs weigh the proposal of such rates. Certainty about an EV specific rate structure is crucial to businesses considering investing in DCFC stations and uncertainty can ill be afforded at a time when many businesses are considering whether to leverage their own private capital to pursue federal grants that include substantial matching requirements for the grant recipient.

CAP is also happy to see the Policy Statement state that EDCs should take into consideration rates for DCFC stations, including demand charges. As previously mentioned, demand charges create a major barrier for businesses who wish to offer DCFC services to customers. The implementation of predictable and volumetric rates is essential to establishing a business case for EV charging and allowing for providers to accurately recover costs from EV drivers. As with the previous recommendation, CAP encourages the Commission to take a stronger stance on the issue of DCFC rate design and require the EDCs under its jurisdiction to file EV charging specific rates that are free of demand charges. Should these rates include time of use rates, as encouraged for consideration by other parts of the policy statement, or any other alternative rate structure to demand charges, the Commission should ensure that the evaluation of any EV specific rates considers the realities of offering public DCFC services to consumers.

To look for an example of a regulatory body successfully requiring EDCs to file EV charging rates free of demand charges, the Commission need only look to neighboring New Jersey. In an order concluding the 2023 basic general service (BGS) case for New Jersey's EDCs the New Jersey Board of Public Utilities directed the EDCs to make proposals regarding rate design for DCFC stations in their 2024 BGS case. The utilities all did so, with PSE&G, Atlantic City Electric, Rockland Electric and Jersey Central Power & Light proposing temporary pilot programs with a focus on kWh billing

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[5] Millions of federal dollars slated for 54 EV charging projects across Pennsylvania, Marley Parish, Pennsylvania Capital-Star, August 14, 2023. https://www.penncapital-star.com/energy-environment/millions-of-federal-dollars-slated-for-54-ev-charging-projects-across-pennsylvania/

instead of existing demand frameworks.[6] While CAP was supportive of these proposals, permanent programs and not temporary pilots are preferred to give EV charging providers lasting certainty. The Board of Public Utilities found the EV charging proposals from the EDCs to be reasonable and directed them to implement two-year DCFC pilot programs when concluding the 2024 BGS case. Strong directives to EDCs in this manner will ensure quick and dedicated establishment of EV specific rates.

Furthermore, CAP agrees with the Commission and several members of the workgroup whose recommendations helped to shape the Policy Statement that there is not a one-size-fits-all approach to rate structure which the Commission should impose upon all of Pennsylvania's utilities. The unique needs and demands of each EDC should be taken into consideration as alternatives to demand charges are implemented.

Finally, CAP encourages the Commission to add additional language to the policy statement which will ensure that competition and innovation guide the development of Pennsylvania's EV charging network. While the ruling of the Commonwealth Court in *Lloyd v. Pennsylvania Public Utility Commission, 904 A.2d 1010 (Pa. Cmwlth. Ct. 2006)* may help to safeguard against the competitive concerns of utility ownership of EV charging stations funded by ratepayer dollars, legislation, such as the currently pending House Bill 1240 which would put into statute the ability of EDCs to own and operate EV charging stations and recover the cost through the rate base, or further rulings would conflict with *Lloyd*.[7] The Commission should take this opportunity to reinforce the decision of the *Lloyd* case and state that EDCs cannot participate in the EV charging market through the ownership and operation of EV charging stations unless this is done through a separate and unregulated subsidiary that cannot access ratepayer funds. Furthermore, to provide further confidence to private entities investing in EV charging, the Commission should insert language in the Policy Statement which will ensure that EV charging specific rates are implemented fairly and do not give preferential treatment to EV chargers owned and operated by a utility or utility subsidiary. Any utility-owed chargers which could potentially be built in the future should be required to operate under the same rates, terms and conditions as any charger owned and operated by a private business.

State regulatory bodies from across the country have taken positive steps in this space to help protect the competitive EV charging market. In 2020, the New Jersey Board of Public Utilities (NJBPU) established a "shared responsibility model" for the state's EV ecosystem. This model prioritizes private investment for the ownership and operation of EV charging stations. In areas where installation of publicly-accessible EV chargers has not yet materialized in the private market, utilities may then, and only then, own and operate EV Chargers as a "Last Resort." [8] In New York, the Department of Public Service adopted a staff proposal which compares charging station ownership to Distributed Energy Resource (DER) ownership, citing the Commission's previously stated policy that DER development should occur by utilizing competitive markets as opposed to being built by monopoly utilities using ratepayer funding. Under this recommendation, the private market is expected to build, own, and operate the EV charging stations, fostering a competitive environment and

[6] New Jersey Board of Public Utilities Docket No. ER23030124.

[7] Pennsylvania House Bill 1240, 2023-2024.
https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2023&sind=0&body=H&type=B&bn=1240

[8] State of New Jersey Docket QO20050357.
https://publicaccess.bpu.state.nj.us/CaseSummary.aspx?case_id=2109188

preventing increased costs for ratepayers. Staff affirmed that utility ownership of EVSE should be limited to circumstances in which the private market is not satisfying customer demand.[9] A third example comes from Missouri where the Public Service Commission found that allowing utilities to own EV charging stations would hinder competition among private businesses and burden ratepayers and should therefore only be permitted on an unregulated basis without access to ratepayer funding.[10]

VI. Conclusion

The issuance of a final policy statement regarding EV charging rate design will send a strong signal to all parties in Pennsylvania that are already investing, or considering investing, in the EV charging market. The Commission should take every available opportunity in this proceeding to ensure the buildout of Pennsylvania's EV charging network will be conducted on a fair and level playing field. Thank you again for your work on this Policy Statement, your evaluation of these crucial issues and for your consideration of CAP's comments. As the Commission works to finalize the Policy Statement we are happy to serve as further a resource in any way that might be helpful.

Sincerely,

/s/ Jay Smith

Jay Smith
Executive Director
Charge Ahead Partnership
Jay@chargeaheadpartnership.com
www.ChargeAheadPartnership.com

[9] New York State Department of Public Service Case # 18-E-0138. https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=18-E-0138&CaseSearch=Search

[10] Public Service Commission of the State of Missouri, File No. ET-2016-0246, Report and Order. https://psc.mo.gov/CMSInternetData/ON/Orders/2017/041917246.pdf