



Andrew S. Johnson
Executive Secretary, Maryland Public Service Commission
William Donald Schafer Tower
6 St. Paul Street, 16th Floor,
Baltimore, Maryland 21202

RE: In The Matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio – Case No. 9478

Dear Executive Secretary Johnson and members of the Maryland Public Service Commission,

On behalf of Charge Ahead Partnership, I am writing to you today to provide our comments in response to the Maryland Public Service Commission's request for comments evaluating the Phase I utility programs and the appropriate role for utilities within the EV charging sector moving forward.

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

Sincerely,

/s/ Jay Smith

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



STATE OF MARYLAND
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PETITION OF THE
ELECTRIC VEHICLE WORK GROUP FOR
IMPLEMENTATION OF A STATEWIDE ELECTRIC
VEHICLE PORTFOLIO

Case No. 9478

COMMENTS OF CHARGE AHEAD PARTNERSHIP

I. Introduction

In January of 2019 the Maryland Public Service Commission (the Commission) approved filings from several of Maryland’s electric utilities, Baltimore Gas and Electric Company (BGE), Delmarva Power and Light (Delmarva), Potomac Electric Power Company (Pepco), and The Potomac Edison Company (PE), for a five-year electric vehicle (EV) charging infrastructure pilot program that would see more than 5,000 level 2 and direct current fast charging (DCFC) stations installed across the utilities’ service territories.¹ Additionally, Southern Maryland Electric Cooperative Inc. (SMECO) also received approval in January of 2019 for its own public EV charging program.² March 2024 saw the utilities file their most recent semi-annual EV Pilot Program Progress Reports and Final EV Program Reports, prompting the Commission to request comments regarding evaluation of the utility programs and the appropriate role for utilities within the EV charging sector moving forward.³

¹ Maryland PSC Approves Modified Utility Electric Vehicle Portfolio, Maryland Public Service Commission, January 14, 2019. https://www.psc.state.md.us/wp-content/uploads/MD-PSC-Approves-Modified-Utility-EV-Charging-Portfolio_01142019-1.pdf

² Combined Semi-Annual Progress and Final Electric Vehicle Program Report of Southern Maryland Electric Cooperative, Inc. Regarding Implementation of its Approved Public Electric Vehicle Charging Program, Maryland PSC case No. 9478, March 1, 2024.

³ Notice of Hearing In The Matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio, Maryland PSC Case No. 9478, April 2, 2024.

II. About Charge Ahead Partnership

Charge Ahead Partnership's (CAP) membership is comprised of businesses, organizations and individuals that share the common goal of expanding Maryland's EV charging network and ensuring Maryland 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 DCFC infrastructure. Many of these businesses are located along highway corridors and offer the amenities that drivers will demand while refueling.

The biggest challenge to widespread EV adoption in Maryland, and consequently also a barrier to Maryland's ambitious greenhouse gas reduction goals, is the lack of a robust, statewide DCFC 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 Maryland's EV charging network so that it promotes fair competition and encourages private investment in the EV charging business.

Included below is an overview of CAP's response to the Commission's solicitation for comments on the existing utility programs and the appropriate role of Maryland's electric utilities in the EV charging market going forward. Our comments are focused on the public charging elements of the EV portfolio and not on residential, workplace/fleet, and other programs. We encourage you to consider these comments as you evaluate the utility programs as well as regulatory policy that will best position Maryland to create a competitive and consumer-centric DCFC network across the state going forward.

III. Comments on Phase I Utility Programs

As an initial matter, CAP believes that the public charging programs approved in 2019, while well intentioned, have ultimately had a negative impact on reducing range anxiety, and thus EV adoption and the overall buildout of Maryland's EV charging network. The consistent reliability concerns for utility-owned and operated chargers, coupled with the site locations of the

chargers, have likely discouraged EV adoption.⁴ These shortcomings highlight the need for utility ownership to be phased out over time and instead encourage private enterprise to fill the role of owning and operating publicly available DCFC stations.

Electric utilities owning and operating DCFC stations creates a major barrier to private investment in the growing EV charging market, as private businesses simply cannot compete with regulated electric utilities that have the ability to pass on the costs of their investments to all of their ratepayers. Furthermore, the reliability challenges that have plagued Maryland's network of utility-owned and operated EV charging stations underscore why electric utilities are not well suited to enter competitive markets that are better served by unregulated businesses. When electric utilities use ratepayer funding to finance investments in DCFC stations, instead of private entities risking their own capital, there is no incentive to provide a positive consumer experience. Electric utilities operate in a guaranteed rate of return environment and will collect their return irrespective of whether the EV driver has a positive re-charging experience. Conversely, unregulated businesses with their own capital at risk have every incentive to ensure a positive customer experience, which hinges on many factors but none more important than well maintained and operational charging equipment.

The approach under the Phase 1 Utility Programs have yielded lower charger reliability and uptime for Maryland's utility-owned EV chargers. For example, during the period from July 1 to December 31, 2023, 28% of SMECO's chargers fell below 97% uptime.⁵ Meanwhile the report from Delmarva and Pepco from the last two quarters of 2023 revealed an average uptime of 91.4% for Delmarva and a 95.4% average uptime for Pepco, both below the 97% uptime standard, including six Delmarva and five Pepco chargers which fell below 50% uptime for the reporting period.⁶ BGE has also faced reliability issues. The 2023 BGE semi-annual report four years into the EV pilot program included a customer satisfaction survey which stated that "26% of respondents reported not being able to complete a charging session, and 27% reported broken

⁴ See, e.g., Niraj Chokshi, "A Frustrating Hassle Holding Electric Cars Back: Broken Chargers," The New York Times, (Aug. 16, 2022) available at <https://www.nytimes.com/2022/08/16/business/energy-environment/electric-vehicles-broken-chargers.html>

⁵ Southern Maryland Electric Cooperative, Inc. Combined Semi-Annual Progress and Final Electric Vehicle Program Report, Maryland PSC Case No. 9478, March 1, 2024.

⁶ Potomac Electric Power Company's and Delmarva Power & Light Company's Semi-Annual Progress Report regarding Implementation of Approved Electric Vehicle Charging Program Offerings, Maryland PSC Case No. 9478, March 1, 2024.

equipment.”⁷ These reliability issues are not new and are particularly concerning for DCFC stations. A Maryland-based EV driver visited all 69 BGE fast chargers in September of 2022 and found that “29% of the chargers had some kind of deficiency, ranging from complete failure to reduced power output” and a follow-up round of testing two months later determined that “the number of malfunctioning chargers had increased from 29% to 35% of the total.”⁸

The reliability concerns associated with utility-owned EV chargers prompted the Maryland General Assembly to pass the Electric Vehicle Charging Reliability Act, House Bill 834, in 2023. Additional regulatory action from the Commission in implementing this legislation prompted the adoption of the same 97% reliability requirement included in the federally funded National Electric Vehicle Infrastructure (NEVI) grant program.⁹ It is also noteworthy that BGE has been awarded a federal Electric Vehicle Charger Reliability and Accessibility Accelerator grant (Grant) to replace nine broken public chargers.¹⁰ On April 2, 2024, BGE filed a request with the Commission to extend its authority to own and operate the nine replacement chargers to 2030 so that BGE may satisfy its obligations under the grant. Concerningly, BGE’s grant will fund the replacement of charging stations that were already funded with ratepayer funding. BGE’s request is a perfect example of how electric utility owned EV charging stations that are funded with ratepayer dollars can easily become stranded assets that habitually depend on ratepayer or government subsidies. Additionally, BGE’s request did not include any information on where the 20% match that grant awardees must provide as a matching share would be sourced from, be that BGE shareholders, other grants or potentially at further expense to BGE ratepayers.¹¹ Should the Commission approve BGE’s request it should declare that BGE’s required 20% match is not eligible for cost recovery from BGE’s ratepayers. If BGE is allowed to access ratepayer funds for the 20% match it will

⁷ Lanny Hartmann, Opinion: Ensuring reliable EV infrastructure for Maryland’s sustainable future, Maryland Matters, March 14, 2023. <https://www.marylandmatters.org/2023/03/14/opinion-ensuring-reliable-ev-infrastructure-for-marylands-sustainable-future/#:~:text=The%20results%20indicated%20that%2029,to%2035%25%20of%20the%20total.>

⁸ Hartmann, 2023.

⁹ Order No. 90971, Order on Electric Vehicle Charging Stations Reliability and Reporting Standards, Maryland PSC Case No. 9478, January 10, 2024.

¹⁰ Baltimore Gas and Electric Company - Request for Approval to Extend its Authority to Own and Operate 9 Replacement Chargers to 2030 satisfying Grant Obligations. Case No. 9478 (ML 308724)

¹¹ U.S. DOT Federal Highway Administration, Electric Vehicle Charger Reliability and Accessibility Accelerator, https://www.fhwa.dot.gov/environment/nevi/evc_raq/evc_raq_nevi_10pct_webinar.pdf

further hinder the competitive EV charging market and unnecessarily burden the utilities' ratepayers.

As stated by the Federal Highway Administration (FHWA) in NEVI guidance, "the purpose of public funding is not to discourage private investment, but instead to catalyze additional private investment and supplement and fill gaps to provide a convenient, affordable, reliable, and equitable national EV charging network."¹²

It is important to note that the siting of all of Maryland's utility-owned chargers at property leased, owned or occupied by a unit of state, county or municipal government for public use has also likely shaken consumer confidence in EV charging services. The siting dynamic for Phase 1 shines a light on the fact that electric utilities, without their own prime real estate, must settle for locations that lack the amenities or convenience that the traveling public is accustomed to, disincentivizing EV adoption. While some municipal properties, such as parks or libraries, may be convenient locations for level 2 chargers that patrons can utilize while already visiting the location, these properties do not serve as strong locations for DCFC stations. Government property and buildings lack the amenities that drivers have come to expect when refueling including bathrooms, food and drink options, on-site staff and other amenities available to drivers 24 hours a day, 7 days a week.

CAP believes that previous Commission approval of the utilities' EV charging programs, while well intentioned, has ultimately hindered the development of Maryland's privately-owned EV charging infrastructure by damaging the competitive market and instead relying on electric monopolies to own and operate DCFC stations. As the Commission reflects upon the utility programs of the last five years, we encourage consideration of the negative impacts that a lack of fair competition in the EV charging market has had upon the consumer experience, both in terms of amenities and reliability of DCFC stations.

IV. Assessing the Proper Role of Electric Utilities in the EV Charging Market

A. The Necessity for a Level Playing Field in the Nascent EV Charging Marketplace

¹² NEVI Program Guidance, Federal Highway Administration, February 10, 2022.
https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf

Consumers refuel at approximately 125,000 retail fueling locations across the country. The retail fuels market today is the most transparent and competitive commodity market in the United States. Consumers can easily see fuel prices and decide where to refuel based on the posted price without having to leave their vehicles. This dynamic leads to price competition and consumer choice. EV drivers should have access to the same competitive, stable and convenient prices and options that drivers of internal combustion engine vehicles have enjoyed for decades. This requires an EV charging market driven by competition and innovation, one that cannot be achieved if private investment is discouraged from entering the market.

The widespread ownership and operation of EV charging stations by Maryland's electric utilities illustrates a major barrier to private investment in DCFC stations, which is the threat of electric utilities leveraging their regulated status to generate an artificial competitive advantage over other businesses. This acts as a disincentive for private investment as private entities cannot rationally invest their own capital if there is risk of that investment being undercut by utility investment.

Throughout the country regulatory officials have been grappling with this issue of regulated electric utility participation in the electric vehicle charging market, including here in Maryland where the Office of Peoples Counsel pointed to the risks of monopoly utilities undermining the competitive market through ownership and operation of EV charging stations.¹³ Some states that have previously allowed utility ownership have taken positive steps to move away from that model and implement regulatory policy that gives private businesses more certainty that unfair competition will not be tolerated. Just recently, the Colorado Public Utilities Commission (CPUC) rejected a component of Xcel Energy's Transportation Electrification Plan (TEP), which had included a proposal to own and operate hundreds of DCFC stations in Colorado.¹⁴ The CPUC's final decision included notable language in support of the competitive marketplace and several policy departures from Xcel's last TEP decision which approved a pilot program for utility-owned

¹³Comments of the Office of People's Counsel, In the Matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio, Maryland PSC Case No. 9478, October 6, 2021, p. 3.

¹⁴ Weiser, Scott, "Colorado energy regulators reject Xcel's plans to build hundreds of EV charging stations", Denver Gazette, April 22, 2024, https://denvergazette.com/news/business/colorado-puc-rejects-xcels-plan-to-build-460-ev-chargers/article_a0332928-004e-11ef-a84f-d7a36ca15336.html

DCFC stations. This most recent decision indicates a general finding by the CPUC that the private market is and should be driving EV charging station investments.¹⁵

In a similar departure from utility ownership, the California Public Utilities Commission (California PUC) created a new program in 2022 intended to encourage private investment in EV charging stations while limiting the ability of public utilities to seize monopolistic control of the marketplace. Instead of allowing electric utilities to spend ratepayer funds on utility-owned and operated EV charging stations, the California PUC implemented a rebate program that aims to offset the up-front cost for third-party operators to buy and install chargers. It explicitly forbids electric utilities from using rebate funds from this program to subsidize their own investment in EV chargers. See below from statements from former California PUC Commissioner Cliff Rechtschaffen during the commission's Nov. 17 meeting.

*"The utilities will not be permitted to own any of this infrastructure, and the rationale for that is that will mean lower cost for ratepayers because the charger and other equipment will not be in the utility rate base...We think the program moves in the direction of rightsizing the role of the utility in EV infrastructure, and to allow the utilities to focus more on the areas within their core competency...Also while there has been an argument for utility ownership in a nascent market, where customers need more handholding, given the advancing state of the market by mid-decade, utility ownership should really not be necessary, even to reach difficult to access measurements."*¹⁶

These views regarding utility ownership of public EV charging stations are shared by one of the sponsors of the EV Charging Reliability Act, Delegate Fraser-Hidalgo. In a 2021 opinion piece, the Delegate correctly identified several of these issues, and the need for a level playing field, stating "While small businesses have to cover the high price tag of installing an EV charger

¹⁵ Colorado Public Service Commission, Decision No. C24-0223, Proceeding No. 23A-0242E, "We acknowledge the potential competitive concerns that...Public Service [Xcel] could theoretically become a competitor at some point in the future. However, we note that (1) the Company is at best only operating a few public charging stations as of the time of answer testimony in this Proceeding, and (2) while it reserves the right (in Settlement paragraph 23) to propose such ownership in the future, the market factors that led the Company to withdraw its initial proposal to own public chargers in this Proceeding are only going to intensify in the future, making it increasingly unlikely that the Commission will approve Company ownership, except perhaps in areas that the unregulated market remains uninterested in serving."

¹⁶ California Public Utilities Commission - Voting Meeting, November 17, 2022, 44:08, https://www.adminmonitor.com/ca/cpuc/voting_meeting/20221117/

with private funds, utility companies do not. Many utility companies across the country are already seizing the opportunity to control the EV charging market because they have the unique advantage of being able to pass the cost of installing and operating new EV chargers onto their consumers by simply increasing rates,” adding that “we cannot implement policies that could block the private market from being able to install chargers on a competitive basis.”¹⁷ As the Commission considers the best role for electric utilities in this market going forward, the path laid out by Delegate Fraser-Hidalgo should be adhered to.

B. Rate Design for Direct Current Fast Charging Stations

The lack of a rate or set of rates that are specifically developed for DCFC stations is a key structural challenge discouraging the private market from investing in public DCFC as public DCFC stations are typically subjected to costly demand charges. These demand charges can create an insurmountable obstacle to private entities offering DCFC services due to their cost, lack of predictability and delayed billing.

CAP is aware that the Commission has previously approved demand charge relief riders in January 2019 through Order No. 88997, but more recently denied a request from Pepco, Delmarva and BGE (the joint utilities) for a public EV charging demand charge relief rider.^{18 19} CAP did not participate in these proceedings, but as the Commission evaluates the role of electric utilities going forward, we believe DCFC specific rate design should continue to be a key consideration. Specifically, the Commission should evaluate the feasibility of time varying rate (TVR) rate structures based on the amount of electricity being provided to the EV. If properly applied, volumetric TVR’s can reduce unnecessary costs for EV charging providers while also utilizing cost causation principles, which was identified by the Office of Peoples Counsel as a concern with the demand charge relief rider filed by the joint utilities in 2023.²⁰ There are examples from other

¹⁷ Fraser-Hidalgo: Private Sector Is Critical in Meeting Demand for EV Charging Stations, David V. Fraser-Hidalgo, Maryland Matters, September 27, 2021, <https://www.marylandmatters.org/2021/09/27/fraser-hidalgo-private-sector-is-critical-in-meeting-demand-for-ev-charging-stations/>

¹⁸ In the matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio. Case No. 9478. Order No. 88997. EV Portfolio Order.

¹⁹ In the matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio. Case No. 9478. Order No. 90984. Order on Electric Vehicle Demand Charge Relief Program.

²⁰ Case No. 9478, OPC Comments on the Joint Application of Potomac Electric Power Company, Delmarva Power & Light Company, and Baltimore Gas and Electric Company for Approval of a Public Electric Vehicle Charging Demand Charge Relief Rider – for the July 26, 2023 Administrative Meeting (“OPC Comments”).

jurisdictions that have adopted TVRs as a reasonable alternative to demand charges²¹; however, CAP is not advocating for a singular solution. Indeed, it may be beneficial for utilities to have several options for EV charging providers that incent various types of load flexibility. To support Maryland’s EV adoption goals, it is imperative that the Commission continue to explore creative approaches to DCFC rate structure that could improve the economics of owning and operating DCFC stations. To that end, CAP encourages the Commission to direct each electric utility under its jurisdiction to file public DCFC specific rates for consideration by the Commission.

To establish a level playing field, private businesses also need certainty that all owners and operators of publicly accessible DCFC stations will operate with the same competitive risks and access to electric rates on a level playing field. There are documented instances across the country where regulated utilities have owned and operated DCFC stations without subjecting their own chargers to demand charges. A study conducted between 2012 and 2022 found that of the 27 rates offered by investor-owned utilities at utility-owned charging stations “Not a single offered rate for utility-owned infrastructure included a demand charge.”²²As the Commission evaluates the future role of utilities in the EV charging market, it should consider the detrimental impact of electric utilities undercutting the competitive market on the price to recharge.

C. Equity Considerations for Maryland’s Development of EV Charging Infrastructure

Allowing electric utilities to recover the costs associated with owning and operating DCFC stations from ratepayers will adversely affect the entire rate base as well as the development of the competitive EV charging market. This has the largest impact on individuals in low-income and fixed-income communities who are more sensitive to price fluctuations and are less likely to own EVs. Also, as discussed in Section I regarding BGE’s grant and associated filing with the Commission, there is the inherent risk of electric utility investments in DCFC stations becoming stranded assets. EV charging technology evolves quickly and can, equally as quickly, render ratepayer funded EV infrastructure obsolete. The investment risk for owning and operating EV

²¹ In the Matter of the Petition of Northern States Power Company for Approval of General Time-of-Use Service Tariff, Docket No. E002/M-20-86
<https://www.edockets.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId=%7b3045B56F-0000-C717-8A47-BA1EBB6314F3%7d&documentTitle=20201-159322-01>

²² Snapshot of EV-Specific Rate Designs Among U.S. Investor-Owned Electric Utilities, Peter Cappers, Andrew Satchwell, Cameron Brooks, & Sam Kozel, Lawrence Berkeley National Laboratory Electricity Markets & Policy Energy Analysis & Environmental Impacts Division, April 2023. <https://eta-publications.lbl.gov/publications/electric-vehicle-program-designs-and>

charging stations should be on private, unregulated businesses rather than utility ratepayers that may never own an EV. This view closely aligns with the National Association of State Utility Consumer Advocates which stated, “NASUCA recommends states consider whether public utility involvement in the development of electric vehicle charging stations might limit entrance or competition that might otherwise benefit consumers and whether that involvement might cause ratepayers to take on risks that could or should more appropriately and cost-effectively be borne by private enterprise.”²³

D. Right-Sizing the Role of Electric Utilities in the EV Charging Market

As the Commission evaluates the future role of electric utilities in the EV charging sector it should consider whether or not it is appropriate for vertically integrated electric utilities to further expand their monopolies to EV charging services when private businesses are eager to invest. CAP acknowledges that Maryland’s electric utilities will play a critical role in ensuring Maryland’s grid infrastructure is prepared to support a statewide fast charging network. The most effective way to build out Maryland’s charging network is through a coordinated partnership between Maryland’s electric utilities and private, unregulated businesses. Instead of seeking to participate in the competitive EV charging market, utilities should look to facilitate partnerships through a make-ready model. This model will allow electric utilities to focus on make-ready infrastructure and distribution system upgrades needed to prepare charging sites for DCFC stations while unregulated businesses that compete on price and quality of service invest their private capital to own and operate publicly available DCFC stations. This approach will encourage private investment and increase consumer choices in Maryland’s EV charging market. This sentiment is also echoed by Delegate Fraser-Hidalgo in his opinion piece where he stated that “In order for our nation’s transportation system to effectively and fully transition away from fossil fuel reliance, utilities will need to play a vital role in this transition, but policies must be balanced and not provide for an artificial or unfair advantage.”²⁴

E. Considerations of the NEVI Formula Grant Program

²³ The National Association of State Utility Consumer Advocates (Resolution 2018 – 02.) <https://nasuca.org/wp-content/uploads/2017/08/2018-02-Protection-for-Ratepayers-as-EV-Adpotion-Rates-Increase-Final-6-24-18.pdf>

²⁴ Fraser-Hidalgo, 2021.

Maryland's EV charging network is slated to receive over \$62 million in federal assistance over the next several years through the NEVI program. The purpose of the NEVI funding is to catalyze additional private investment in the EV charging network,²⁵ which could be substantially delayed if electric utilities continue to be allowed to corner the market in Maryland by owning and operating DCFC stations using ratepayer funding without market or competitive forces at play. The Commission should ensure that electric utilities do not use ratepayer funds to pursue these federal funding opportunities. These grants should go to private entities putting their own capital at risk for the required matching portion rather than utilities burdening ratepayers with the costs.

Thank you for your consideration of CAP's comments. As the Commission studies this issue, CAP is prepared to be a resource and welcomes all future opportunities to participate in this process.

Sincerely,

/s/ Jay Smith

Jay Smith

Executive Director

Charge Ahead Partnership

Jay@chargeaheadpartnership.com

www.ChargeAheadPartnership.com

²⁵ NEVI Program Guidance, Federal Highway Administration, February 10, 2022.

https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf