


[EXTERNAL] Comments of Charge Ahead Partnership - Docket No. 22-00085-UT

Jay Smith <jay@chargeaheadpartnership.com>

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To: Records, PRC, PRC <PRC.Records@prc.nm.gov>

 1 attachments (317 KB)

CAP Comments Docket 22-00085-UT.pdf;

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Good afternoon,

Please see the attached initial comments of Charge Ahead Partnership for electronic filing in Docket No. 22-00085-UT, in response to the New Mexico Public Regulation Commission's request for comments on the proposed rule to commence a formal rulemaking proceeding.

Please let me know if you have any questions or concerns.

Sincerely,

Jay Smith  
Executive Director  
Charge Ahead Partnership



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A COMMISSION RULEMAKING    )  
PURSUANT TO NMSA 1978 62-8-12, APPLICATIONS    ) Docket No. 22-00085-UT  
TO EXPAND TRANSPORTATION ELECTRIFICATION    )**

**Charge Ahead Partnership  
Initial Comments**

**I. Introduction:**

In 2019, the New Mexico Legislature passed House Bill 521, which was codified as NMSA §62-8-12 (“Transportation Electrification Statute” or “TES”). TES sets forth requirements for public utilities to file applications to expand transportation electrification. In 2020, New Mexico’s three investor owned utilities<sup>1</sup> filed transportation electrification plans (“TEPs”), which were all approved with modifications by the Commission in 2021. On September 2, 2022, the Commission issued a notice of proposed rulemaking to adopt new rules pursuant to TES. The Commission’s notice provides consideration of any alternative proposed amendments to the proposed rule (“Exhibit A”) within the scope of the rulemaking proceeding.

Charge Ahead Partnership’s (“CAP”) suggestions for amendments to the proposed rule are summarized below and included in Section IV as redlined edits. We firmly believe that the following issues should be incorporated into Exhibit A:

- Strategies to support increased consumer choices and private capital investment in electric vehicle charging and related infrastructure and services as prescribed in the Transportation Electrification Statute §62-8-12(B)(4).
- Strategies for coordinating with the private sector and National Electric Vehicle Infrastructure (“NEVI”) formula planning to effectively catalyze a competitive electric vehicle (“EV”) charging market in New Mexico.
- 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 and complying with §40431 of the Federal Infrastructure Investment and Jobs Act (“IIJA”) of 2021.
- Strategies to ensure the burden of the deployment of EV charging stations does not overly burden ratepayers, including plans to provide utility-owned make-ready programs and support customer-owned investments in EV charging stations.

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<sup>1</sup> Southwestern Public Service Company, Public Service Company of New Mexico and El Paso Electric Company.

## **II. About Charge Ahead Partnership**

CAP's membership is comprised of businesses, organizations and individuals that share the common goal of expanding New Mexico's EV charging network and ensuring New Mexico 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 New Mexico 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 New Mexico's EV charging network so that it promotes fair competition and encourages private investment in the EV charging business.

Included below is a high-level overview of CAP's perspective on EV charging policies that would encourage private investment in New Mexico. We encourage you to consider these issues as you develop the proposed rule. Doing so will position New Mexico to create a competitive and consumer-centric approach to building a robust EV charging network across the state.

## **III. Considerations for building an EV charging network**

### **A. Increased consumer choices and private capital investment**

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 gas-powered vehicles have enjoyed for decades.

A 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 electric utilities are permitted to provide DCFC services directly to the public, as they are seeking to do across the country<sup>2</sup>, it would undoubtedly undercut the development of a

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<sup>2</sup> 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.

competitive EV charging market in New Mexico. 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.<sup>3</sup> Additionally, it is not prudent for vertically integrated utilities to utilize ratepayer funding to expand their monopolies to EV charging services when there are private companies eager to invest their own capital. 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.

The Commission's proposed rule should require the inclusion of strategies to increase consumer choices and encourage private investment. CAP acknowledges that New Mexico's electric utilities will play a critical role in ensuring New Mexico's grid infrastructure is prepared to support a statewide fast charging network. The most effective way to build out New Mexico's charging network is through a coordinated partnership between the state's regulated electric utilities and private, unregulated 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.

#### B. Coordination with the private sector and NEVI formula planning

Removing barriers for private businesses to install EV charging stations will ensure that a long-term market for EV charging develops, which will ensure New Mexico's charging network continues to thrive, long after the NEVI funds are completely expended.<sup>4</sup> The NEVI program, which awarded approximately \$38 million to New Mexico over five years, is an opportunity to develop a burgeoning industry. This funding, however, is only a small down payment. The Commission should ensure that electric utilities are planning to engage with the NEVI formula program in a way that sparks significant private investment in the EV charging business. This will grow New Mexico's EV charging industry for decades to come rather than simply distributing money to stranded assets such as broken, poorly maintained EV chargers that currently hinder EV adoption throughout the United States.<sup>5</sup>

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<sup>3</sup> See, e.g., Peter G. Scholtz, Assistant 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.

<sup>4</sup> See, e.g., Watters, David, "To ensure Biden's EV evolution, states must allow private sector to participate," The Hill, (10/09/2022) available at <https://thehill.com/opinion/congress-blog/3680450-to-ensure-bidens-ev-evolution-states-must-allow-private-sector-to-participate/>

<sup>5</sup> 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> ("Many [chargers] sit in parking lots or in front of retail stores where there is often no one to turn to for help when something goes wrong. Problems include broken screens and buggy software. Some stop working mid-charge, while others never start in the first place. Some frustrated drivers say the

C. Electricity tariffs for EV charging stations and compliance with §40431 of the Federal Infrastructure Investment and Jobs Act of 2021.

Congress intended for the IJIA to foster a competitive, private market for direct current fast charging. In order to achieve this, systemic challenges with New Mexico’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 to charge prohibitively expensive.

In IJIA Section 40431,<sup>6</sup> Congress explicitly calls for state regulators to implement rate structures that mitigate the impact of demand charges on the private sector’s ability to generate a return on EV charging investments. Section 40431’s primary author, Senator John Hickenlooper (D-CO), noted in explaining the need for this provision.

*Public EV charging stations, particularly high-powered DC fast charging stations designed for highway corridors and for heavier duty EVs like buses and trucks, face a distinct set of hurdles imposed by the current regulatory system and traditional, demand-based electricity rates. Most prominent among barriers to deploying commercial EV charging are demand charges, which are ... designed to capture the marginal costs imposed on the grid by high-capacity, high-utilization infrastructure such as factories. However, when demand charges are levied upon high-capacity, low-utilization infrastructure such as EV charging stations, they can place a disproportionate cost burden on*

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problems have them second-guessing whether they can fully abandon gas vehicles... One recent study found that about a quarter of the public charging outlets in the San Francisco Bay Area, where electric cars are commonplace, were not working.”); see also Andrew J. Hawkins, “Electric Vehicle Owners Are Fed up with Broken EV Chargers and Janky Software,” The Verge, (Aug. 17, 2022), available at <https://www.theverge.com/2022/8/17/23308612/ev-charging-broken-unreliable-survey-jd-power> (“Finding a public charger has never been easier, but finding one that works remains a serious problem. According to [a JD Power survey from August 2022], one out of every five respondents ended up not charging their vehicle after locating a public charger. And of those who didn’t charge, 72 percent indicated that it was due to the station malfunctioning or being out of service.”)

<sup>6</sup> IJIA Section 40431 amended the Public Utilities Regulatory Policies Act (PURPA).

*the station owners. The high-powered, fast-charging stations our Nation needs to serve the EV driving public ... have different load profiles than most commercial entities, with periods of dormancy punctuated by spikes in activity. And unlike most commercial operations, their demand profile is driven by real-time customer activity. So it is difficult for these stations to optimize their load profiles.<sup>7</sup>*

There are many options for EV charging rate-design that utilize alternatives to traditional demand-based rate structures. CAP encourages the Commission to consider volumetric structures, based on the amount of electricity being provided to the EV. Ultimately, the Commission must establish a rate structure for DCFC stations that mitigates demand charges and sets forth the terms and conditions for the sale of electricity to DCFC station providers. To promote private investment and fair competition in New Mexico's EV charging business, it is imperative that the rates, terms and conditions for DCFC stations are properly applied to all DCFC providers, including electric utilities that choose to provide EV charging services. The proposed rule 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.

#### D. Strategies to mitigate ratepayer cost burden

EV charging services and the ownership and operation of charging stations should be left to private companies that compete on price and quality of services. This approach will ensure that the current fuel transition does not unnecessarily burden utility ratepayers while also preserving a key tenet of the Transportation Electrification Statute. Private investment will be essential to create a more positive customer experience for EV drivers, which will support the growth of New Mexico's EV fast charging network. CAP firmly believes that without an emphasis on quality consumer service as well as charging availability, EV adoption rates will lag.

CAP is encouraged to see that the previously approved TEPs encouraged make-ready programs for utilities to partner with the private sector. This approach model ensures that the jurisdiction between utility-owned equipment and customer-owned equipment remains clear while also mitigating rate payer cost burden and incentivizing private investment.

Private businesses need certainty that their investments in EV charging services will not be unfairly competed with by vertically integrated electric utility owned charging stations. To address this uncertainty, CAP believes that 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

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<sup>7</sup> 167 Congressional Record 140 ed. (August 5, 2021) at S5927 available at <https://www.congress.gov/117/crec/2021/08/05/167/140/CREC-2021-08-05-senate.pdf>.

market. This approach is similar to provisions included in New Mexico’s Administrative Code §17.6.450.14 regarding utility subsidization of affiliates.

#### IV. CAP’s proposed amendments<sup>8</sup>

17.9.574.9 DEFINITIONS: Unless otherwise specified, as used in this rule:

- A. Definitions beginning with “A”: [RESERVED]
- B. Definitions beginning with “B”: [RESERVED]
- C. Definitions beginning with “C”: [RESERVED]
- D. Definitions beginning with “D”: [RESERVED]

*(1) “direct current fast charging station” means a charging system that provides at least 50 kilowatts of direct current electrical power for charging an electric vehicle through a connector based on fast charging equipment standards, and which is approved for installation for that purpose under the National Electric Code through an Underwriters Laboratories Certification or an equivalent certifying organization.*

E. Definitions beginning with “E”:

- (1) “electric vehicle” or “EV” means an electrically powered vehicle, personally owned or otherwise, including but not limited to electric cars, trucks, scooters, and bicycles;
- (2) “electric vehicle charging provider” means the owner of an electric vehicle charging station operating in an electric public utility’s designated service area.*
- (3) “electric vehicle charging station” means any publicly available direct current fast charging station that delivers electricity from a source outside an electric vehicle into one or more electric vehicles separate and distinct from a make-ready infrastructure.*

F. Definitions beginning with “F”: [RESERVED]

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”: [RESERVED]

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”: [RESERVED]

M. Definitions beginning with “M”: [RESERVED]

(1) “measurement and verification” means an analysis performed by an independent evaluator, selected by the commission and proportionally funded by two-year plan applicants, that analyzes the efficacy of two-year plans consistent with the goals of NMAC 17.9.574;

*(2) “make-ready infrastructure” means the electrical infrastructure required to service an electrical load up to, but not beyond the electric public utility’s side of the electric meter. The term ‘make-ready infrastructure’ shall not include an electric vehicle charging station.*

N. Definitions beginning with “N”:

- (1) “NM EV Program” means the new mexico EV infrastructure deployment plan issued by the new mexico department of transportation on July 13, 2022;
- (2) “NMDOT” means new mexico department of transportation;

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<sup>8</sup> CAP’s proposed amendments to Exhibit A are in red and italics.

O. Definitions beginning with "O": [RESERVED]

(1) "off-peak hours" means hours during which electric vehicle charging is incentivized to avoid increased draw on the system during times of peak load;

P. Definitions beginning with "P":

(1) "planning horizon" means the period to which the plan is intended to look forward into the future beyond the plan years for which approval is being sought;

(2) "plan year" means the calendar year(s) for which approval is sought;

(3) "public electric utility" means an investor-owned electric utility certified by the Commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

Q. Definitions beginning with "Q.": [RESERVED]

R. Definitions beginning with "R": [RESERVED]

S. Definitions beginning with "S": [RESERVED]

T. Definitions beginning with "T":

(1) "transportation electrification" means the use of electricity from external sources to power all or part of passenger vehicles, trucks, buses, trains, boats, or other equipment that transport goods or people;

(2) "transportation electrification plan" or TEP means a plan to expand transportation electrification in a utility's service territory.

U. Definitions beginning with "U":

(1) "underserved community" means an area in this state, including a county, municipality or neighborhood, or subset of such area, where the median income of the area is low-income.

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

17.9.574.12 APPLICATIONS TO EXPAND TRANSPORTATION ELECTRIFICATION:

A. In accordance with the filing schedule provided in Subsection 14 below, the utility shall file with the commission an application for approval of a proposed two-year plan to expand transportation electrification in the utility's service area. The application shall include planned investments, incentives, programs, and expenditures that are reasonably expected to increase transportation electrification in the utility's service territory during the two-year period of the plan.

B. A public electric utility's proposed two-year transportation electrification plan application shall include:

(1) strategies for expanding transportation electrification among low-income customers and underserved communities, including but not limited to:

(a) a percentage budgetary carveout for programs aimed at increasing



adoption among low-income customers and in underserved communities, based on the  
percentage of low-income customers in the utility's service territory;  
(b) proposed strategies for expanding transportation electrification among low-income customers and underserved communities, including marketing strategies and budgets;  
(c) supplemental infrastructure rebates for multi-family housing structures, low-income customers, and underserved communities; and  
(d) supplemental infrastructure rebates for mass transit operations that serve low-income customers and underserved communities.

(2) strategies aimed at expanding transportation electrification across multiple vehicle classes, including but not limited to commercial, light commercial, personal automobile, and electric bicycles.

(a) plans shall include the public electric utility's expected customer participation estimates, utility customer outreach budget, and future customer participation projections across each of these classes.

(b) plans shall further target and identify outreach and system planning to service and identify issues around servicing multiple market segments, including but not limited to commercial businesses, multifamily housing structures, single-family houses, and ridesharing and public transit programs.

(c) strategies for coordinating with state NEVI Formula planning *and stakeholders that own or lease existing business locations that already dispense transportation fuel to the public*; and

C. In addition to the proposed two-year plan, the application shall include a planning outlook addressing a five-year planning horizon beyond the period of the two-year plan. The five-year planning outlook shall be presented for informational purposes to inform the commission of the utility's vision for the transportation electrification sector during the planning horizon. Planning outlooks shall include:

(1) the public electric utility's outlook for projected transportation electrification in its service territory, including estimates of the expected numbers of EVs operating in its service territory, broken down by light-duty, medium-duty and heavy-duty vehicle categories;

(2) expected lead times for coordinating with state NM EV Program planning, NMDOT, EV charging station operators, *stakeholders that own or lease existing business locations that already dispense transportation fuel to the public*, and other stakeholders, and for planned construction or planned deployments, including estimated or expected new or upgraded infrastructure needs;

(3) expected lead times for needed regulatory approvals to effectuate future plans in the planning horizon, to carry out the two-year plan, and to coordinate with state NEVI Formula planning;

- (4) planned or potential integration with neighboring public electric utility TEP planning and possible strategies for coordinating with rural electric cooperatives, tribes, and pueblos;
- (5) anticipated future grid management requirements and projected peak load requirements to reliably accommodate expanded transportation electrification in the public utility's service territory;
- (6) estimates of projected or forecasted load shifting due to expanded transportation electrification in the public electric utility's service territory;
- (7) forecasted potential for meeting new growth in EV charging infrastructure with renewable energy; and
- (8) any expected or potential policy or statutory issues that could impact expanded infrastructure or network upgrades required by expanded transportation in the public electric utility's service territory.

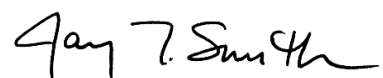
D. The application shall include:

- (1) testimony and exhibits providing a full explanation of the public electric utility's determination of the plan year and next plan year transportation electrification expansion measures to be undertaken, *including utility-owned make-ready infrastructure and customer-owned electric vehicle charging stations*, and their budgetary requirements;
- (2) the cost of transportation electrification expansion measure in the plan year and the next plan year;
- (3) whether the public electric utility intends to recover costs through a tariff rider, base rates, or both;
- (4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;
- (5) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility;
- (6) testimony demonstrating that the proposed transportation electrification expansion plan is reasonably and prudently designed and expected to accomplish any or all of the goals of the transportation electrification expansion plans pursuant to NMSA 1978 Section 62-8-12(B)(1)-(6) and NMAC 17.9.574;
- (7) Whether the public electric utility intends to provide, own, operate or maintain electric vehicle charging stations directly to the public in the plan year and proposals to conduct such business through a separate, unregulated entity that shall not be subsidized by any rate or charge for any regulated services provided by the public electric utility; and*
- (8) Proposals for a solution which sets forth the rates, terms, and conditions for the sale of electricity by the utility to electric vehicle charging providers for the operation of direct current fast charging stations, at a minimum the proposal must include the following:*
  - (a) Alternatives to traditional demand-based rate structures;*
  - (b) Mechanisms to advance private investment in electric vehicle charging pursuant to NMSA 62-8-12(B)(4); and*
  - (c) Strategies to ensure the proposed solution shall not discriminate between electric vehicle charging providers, and the same rates, terms, and conditions thereof apply to all electric vehicle charging providers including an electric public utility's separate, unregulated entity.*

## V. Conclusion

For the reasons previously stated, CAP urges the Commission to implement these amendments to the proposed rule as they would encourage regulatory policy and rate structures that will support private investment in transportation electrification. 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. We look forward to working with the Commission on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Jay Smith". The signature is written in a cursive style with a long, sweeping tail on the "h".

Jay Smith  
Executive Director  
Charge Ahead Partnership  
[www.ChargeAheadPartnership.com](http://www.ChargeAheadPartnership.com)