November 2, 2026

New Mexico Public Regulation Commission
P.O. Box 1269
Santa Fe, NM 87504-1269

RE: Charge Ahead Partnership Comments on Docket 26-0000133

Dear Chair O'Connell and Commissioners Aguilera and Nibert,

Enclosed are comments of Charge Ahead Partnership ("CAP") in reference to Docket 26-0000133 (In the Matter of El Paso Electric Company's Application for Approval of its Transportation Electrification Plan for 2027–2029).

Sincerely,

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I. Introduction

In 2019, the New Mexico Legislature passed House Bill 521, codified as NMSA 1978, § 62-8-12 ("Transportation Electrification Statute" or "TES"), which sets forth requirements for public utilities to file applications to expand transportation electrification. In 2022, the New Mexico Public Regulation Commission ("the Commission") opened Case No. 22-00085-UT to adopt rules pursuant to the TES, ultimately promulgating 17.9.574 NMAC by Final Order issued December 14, 2022 (effective February 14, 2023). Charge Ahead Partnership ("CAP") submitted comments in that rulemaking, including proposed rule text addressing utility ownership of electric vehicle ("EV") charging stations.

On July 1, 2026, El Paso Electric Company ("EPE" or "the Company") filed its 2027–2029 Transportation Electrification Plan ("TEP"). Among the programs proposed is a utility-owned direct current fast charging ("DCFC") pilot program, under which EPE seeks a capital budget of $2,300,578 to deploy and operate DCFC stations at two locations (roughly $1.15 million per site) in its New Mexico service territory, with an additional $352,341 in operations and maintenance costs over a ten-year period that the Company excludes from the proposed TEP budget.[1]

Pursuant to 1.2.2.23(F) NMAC, CAP respectfully submits these written comments in opposition to the Utility-Owned DCFC Pilot Program ("the DCFC program"). While CAP is not an official party to this proceeding, we have an interest in its outcome because many of our members have business locations across New Mexico and within EPE's service territory. CAP's position is that the Commission should reject the Company's DCFC program on the grounds that it would discourage private investment in public DCFC stations and therefore reduce consumer choices in EV charging, which is inconsistent with the TES. EPE's TEP should support private investment in New Mexico's EV charging network rather than supplant it.

II. About Charge Ahead Partnership

CAP's membership comprises 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, restaurants and fuel retailers, own the real estate that is best suited for DCFC infrastructure. Many of these businesses are located along highway corridors, and all of them offer the amenities that drivers 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.

[1] Direct Testimony of Edwin Martinez on behalf of El Paso Electric Company, Case No. 26-0000133 (July 1, 2026) ("Martinez Direct") at 44–45.

III. Comments on EPE's Utility-Owned DCFC Pilot Program

A. The DCFC program would reduce consumer choice and discourage private investment, contrary to the TES

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. Private businesses cannot compete with a regulated monopoly that can pass on the costs of its investments in DCFC stations to all of its ratepayers. Additionally, it is not prudent for vertically integrated utilities to utilize ratepayer funding to expand their monopolies into EV charging services when there are private companies eager to invest their own capital.

These concerns are valid given the Company's request to own and operate fast charging stations at two sites within its service territory, a racetrack and casino in Sunland Park and a furniture store near the Mesilla Valley Mall in Las Cruces. The Commission should reject this proposal because utility-owned DCFC stations would compete unfairly with investments private businesses have made or are making in these services. Furthermore, in reviewing a TEP application, NMSA 1978, § 62-8-12(B)(4) directs the Commission to consider whether the proposed investments, incentives, programs and expenditures are "reasonably expected to support increased consumer choices in electric vehicle charging and related infrastructure and services; allow for private capital investments and skilled jobs in related services…" A ratepayer-funded retail charging business that competes unfairly with private businesses runs counter to that statutory criterion.

In 2022, the Commission adopted CAP's recommended language that TEPs should be required to include "strategies and measures for coordinating with existing business locations that sell and dispense transportation fuel to the public."[2] The Company's TEP falls short of this requirement. Its only mention of the issue is a statement that its "Customer Outreach Program, commercial programs and administration budget include strategies and measures for coordinating with existing business locations that sell and dispense transportation fuel to the public."[3] EPE does not say what those strategies are, which fuel retailers it has contacted, or how the pilot program is designed with them in mind. The TEP itself does not mention fuel retailers anywhere. Furthermore, a ratepayer-funded, utility-owned retail charging station that competes with fuel retailers would not constitute "coordination" by any reasonable account.

B. The necessity of a level playing field in New Mexico's EV charging market

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. That competition has served drivers well for decades, and New Mexico drivers should be able to count on it as more consumers switch to EVs. EPE's proposal would allow an entity that does not face these competitive pressures to participate in a market that should be driven by fair competition.

[2] 17.9.574.11(B)(6) NMAC. See also Final Order, Case No. 22-00085-UT (Dec. 14, 2022); Initial Comments of Charge Ahead Partnership, Case No. 22-00085-UT, page 8.
[3] Martinez Direct at 62.

The Company's own testimony acknowledges that private charging providers set their prices based on a combination of capital costs, electricity costs, rate of return and ongoing operations and maintenance expenses.[4] EPE would not face these challenges, because it would recover its capital and authorized return from all ratepayers regardless of how much its stations are used. EPE states that it is not seeking approval of a DCFC charging rate in this proceeding, and that if the program is approved it will later develop and seek approval of a rate that "does not undercut existing DCFC pricing in its New Mexico service territory."[5] If the pilot is approved, EPE would sell DC fast charging under a fixed, Commission-approved rate, filed by Advice Notice under 17.1.210 NMAC,[6] and that rate would stay in effect until EPE asks the Commission to change it.

A commitment not to "undercut" existing pricing is not reassuring to CAP's membership and only serves to create more uncertainty in New Mexico's charging market. First, a regulated rate would be set at a single point in time without much regard for how the rate will track as the market fluctuates. Even if the rate is designed not to "undercut" the market at first, when private operators' costs rise and they must raise prices, EPE's pricing would remain static, and any shortfall would fall on the general body of ratepayers. Second, EPE sets the electricity and demand charges that are a principal operating cost for private charging providers. If the Company also sells charging services directly, it would then be in competition with those same operators that are subject to demand charges while EPE's stations may not be. Finally, all charging operators should operate under the same competitive risks and access to electric rates on a level playing field.

C. Concerns about EPE's proposed sites

EPE has identified two sites for its utility-owned DCFC pilot: a Household Furniture store in the Mesilla Valley Mall area of Las Cruces and the Sunland Park Racetrack and Casino. The Las Cruces Convention Center is listed as an alternative.[7] None of these options is a strong location for public fast charging. These proposed locations demonstrate why electric utilities are typically not well suited to determine the best sites for consumers to refuel their vehicles.

Drivers who need on-the-go charging services are typically looking for a location that also has a place to get food, a restroom and somewhere well-lit and safe, at any hour. A furniture store doesn't offer that. It keeps retail hours, has no food service, and is not a place people visit to pass the time it takes to charge. EPE's own description concedes the point: it says restaurants and other services are "within walking distance," which means they are not on site. EPE also labels the area "underserved" while describing it as "one of the largest retail and commercial areas in southern New Mexico" with "high daily vehicle traffic."[8] A busy regional shopping district near I-25 and U.S. 70 is exactly the kind of location private operators compete for, and private operators can be expected to serve it as EV adoption grows. EPE ratepayers should not be forced to underwrite a utility-owned station in a market that private capital is positioned to serve.

[4] Martinez Direct at 45–46.
[5] Martinez Direct at 46.
[6] Direct Testimony of George Novela on behalf of El Paso Electric Company, Case No. 26-0000133 (July 1, 2026) at 25–26.
[7] Martinez Direct, Ex. EM-1 (2027–2029 Transportation Electrification Plan), App. C at 38–40.
[8] Id. at 38.

The Sunland Park site raises similar concerns. EPE describes the racetrack and casino as a regional entertainment destination drawing visitors from El Paso County and northern Chihuahua.[9] While the racetrack and casino may indeed be an important regional entertainment destination, a casino is an attraction where people typically park and stay for hours. It isn't the type of place a driver on I-10 who needs a quick charge is going to want to stop and go inside.

The Convention Center alternative is also not a strong candidate for public DCFC stations. Its traffic depends on the events calendar, so usage would likely be high during conferences and low most other days. It already sits in an area with public Level 2 charging.[10] As a public convention center, it is also well positioned to partner with a private operator or pursue federal funding without putting the cost on EPE's ratepayers.

CAP's members operate the locations drivers actually choose when they refuel: fuel retailers, convenience stores, grocery stores, big-box retailers and restaurants along the corridors people already travel. These businesses are open long hours, offer food and restrooms and have every incentive to keep their sites clean, safe and fully functional. They prioritize a quality customer experience at convenient locations because their own money is at stake. EPE's proposed sites reflect choices made by a regulated utility that will recover its costs whether or not drivers use the charging stations.

D. Regulated electric utilities are not well suited to provide public DCFC service

New Mexico has already seen how utility-owned fast charging plays out. Southwestern Public Service ("SPS"), Xcel Energy's New Mexico utility, received approval to build and operate public fast-charging stations as part of its 2022–2024 TEP. In September 2023, SPS told the Legislature it was targeting eight stations. It had selected four sites, but none were built, and it still lacked a signed agreement with one of its site hosts.[11] By the time SPS filed its next plan in 2024, it had cut the program to three sites with six ports, and none were yet in service.[12] The pattern was the same in Xcel's other states. In Colorado, Xcel received approval in December 2020 and had no operating fast chargers as of October 2023. In Minnesota, none of the 21 stations approved in 2022 had moved beyond pre-construction by mid-2023, and costs had risen 40 percent.[13] Colorado regulators later rejected Xcel's request for 460 more company-owned chargers and redirected that money to rebates for private companies.[14]

One reason for these shortcomings is the simple fact that utilities do not own the kind of real estate drivers want to stop at. A utility building public charging must first find a property owner willing to host it, negotiate an agreement, and design around someone else's site. The Company's testimony states that it will, "continue coordination with potential site hosts to secure locations." CAP's members, by contrast,

[9] Id. at 39.

[10] Martinez Direct at 12.

[11] Southwestern Public Service Co., Presentation to the N.M. Transportation Interim Legislative Committee (Sept. 29, 2023) ("SPS Presentation").

[12] Direct Testimony of Patrick J. Murphy on behalf of Southwestern Public Service Co., Case No. 24-00120-UT, at 15–16.

[13] *Xcel Energy should "reassess how it can best support transportation electrification," says Minnesota AG*, Utility Dive (July 10, 2023); *Colorado energy regulators reject Xcel's plans to build hundreds of EV charging stations*, Denver Gazette (Apr. 22, 2024).

[14] *Colorado energy regulators reject Xcel's plans*, Denver Gazette (Apr. 22, 2024).

already own the convenience stores, travel centers, grocery stores and restaurants along New Mexico's corridors, with the parking, power, lighting and amenities a fast-charging site needs. When a business owns the site and puts its own capital at risk, the charger is far more likely to get built than when a utility has to rent space on someone else's property and learn how to run a competitive retail business.

Utility ownership also puts ratepayers on the hook for equipment that may become obsolete long before its costs are fully recovered. Charging technology is changing quickly. Just a few years ago, 50 kW was standard for public fast charging. Today, as EPE itself notes, 150 kW is considered the minimum and many new vehicles can accept 350 kW, and at least one charging company has already announced a next-generation charger capable of 750 kW.[15][16] A private operator that bets wrong on technology absorbs the loss. When a utility bets wrong, ratepayers keep paying for a stranded asset, and the utility keeps earning its return.

A utility earns its return on the capital it places in rate base, not on whether its chargers are well-maintained or how many drivers use them. This means the utility has little incentive to ensure its charging stations are well maintained and fully functional. For example, in Maryland in 2022, an EV driver independently tested all 69 of Baltimore Gas and Electric's ratepayer-funded fast chargers. Only 71 percent were fully functional, and a retest a few months later found 65 percent. Over the same period, the utility was reporting uptime of 95 percent or more.[17] The problem was serious enough that the Maryland General Assembly passed a law in 2023 requiring utility-operated public chargers to meet a 97 percent uptime standard.[18] Even after that law took effect, an independent review of Pepco's chargers in Maryland in September 2024 found 18 percent of ports offline, including ten sites where every port was down.[19]

EPE's proposal does nothing to address these risks. It contains no construction deadline, no uptime requirement, no penalty if its stations go down, and no plan for what happens when the equipment becomes obsolete. EPE says utility ownership "allows EPE to ensure reliable operation and maintenance,"[20] but the record in Maryland and Xcel's experience in New Mexico, Colorado and Minnesota show why the Commission should be wary of utilities' ability to maintain EV charging stations.

E. EPE should not be allowed to monetize Clean Transportation Fuel Program credits from ratepayer-funded chargers

New Mexico's Clean Transportation Fuel Program ("CTFP") took effect this year. It awards credits to suppliers of low-carbon transportation fuel, including electricity used to charge EVs, and those credits can

[15] Martinez Direct at 43.

[16] Press Release, EVgo, *EVgo Announces Next-Generation Charging System Capable of 750kW* (Sept. 29, 2026), https://www.evgo.com/press-release/evgo-announces-next-generation-charging-system-capable-of-750kw/.

[17] Comments of Lanny Hartmann, Md. Pub. Serv. Comm'n Case No. 9478 (Sept. 12, 2022); Testimony of Lanny Hartmann in Support of H.B. 834, Md. House Env't & Transp. Comm. (Mar. 28, 2023), https://mgaleg.maryland.gov/cmte_testimony/2023/eee/15884_03272023_15231-246.pdf.

[18] Md. Code Ann., Pub. Util. § 7-904 (effective Oct. 1, 2023).

[19] Plug-In Sites, *Pepco EVsmart Charger Audit* (Sept. 18, 2024), https://pluginsites.org/pepco-evsmart-charger-audit-september-18-2024/.

[20] Martinez Direct at 26.

be sold to producers and importers of higher-carbon fuels that must offset their emissions.[21] For public charging, the owner of the charging equipment claims the credits.[22] If the DCFC program is approved, EPE would own the stations and could claim the credits they generate. EPE's testimony discusses credit revenue at length, but it says nothing about the credits its own stations would produce.[23]

For a private operator, credits make charging stations a more attractive investment by closing the gap between what a charger costs to build and run and what drivers will pay to use it. Attracting more private investment into charging and other alternative fuels is one of the overarching goals of the CTFP. A utility-owned charger that is receiving ratepayer subsidies should not be eligible for this incentive because the ratepayers have already paid for the charger and the utility earns its authorized return whether it is busy or idle. Credits on a ratepayer-funded charger do not incentivize a charger to be built that would not have been built anyway. They are simply a second revenue stream for a utility that bears none of the investment risk private businesses must take on.

The simplest solution is for the Commission to reject the request for ratepayer funding for the utility-owned charging stations. If EPE believes public fast charging is a sound business, it is free to invest shareholder funds, ideally through a separate, unregulated affiliate, and compete on the same terms as every other charging provider. EPE would then earn credits the same way any private operator does, on its own investment and at its own risk.

IV. Conclusion

For the reasons stated above, CAP respectfully recommends that the Commission reject the DCFC program and its associated capital and O&M budgets. If the Commission is inclined to permit EPE to own public charging stations at these locations, it should limit the charging investment to Level 2 chargers. Casinos, convention centers and shopping districts are places where people stay for hours, not minutes. A Level 2 charger fits that kind of use case and costs a small fraction of what a fast charger does, so ratepayers would carry far less risk. Furthermore, Level 2 investments would not compete with investments private businesses are making in public DCFC stations. Fast charging is built for drivers who need to get back on the road quickly, and belongs at locations designed for short, frequent stops. Those are the locations private operators and CAP's members are positioned to serve.

Thank you for your consideration of CAP's comments. CAP stands ready to provide any additional information that would assist the Commission.

[21] NMSA 1978, § 74-1-18; 20.2.92 NMAC (effective Apr. 1, 2026).

[22] N.M. Env't Dep't, *Clean Transportation Fuel Program Participant Frequently Asked Questions* (Mar. 2026); see 20.2.92.401–.403 NMAC.

[23] See Martinez Direct at 24–25, 48–51.