

**GOBIERNO DE PUERTO RICO**  
**JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO**  
**ATTN: CHAIRMAN EDISON AVILÉS-DELIZ**  
**DEL NEGOCIADO DE ENERGIA DE PUERTO RICO**

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**IN RE: PUBLIC COMMENTS ON  
DEPLOYMENT OF ELECTRIC VEHICLE  
CHARGING INFRASTRUCTURE**

**Case #: NEPR-MI-2021-0013**

**Filed January 20, 2022**

**WRITTEN COMMENTS OF TESLA, INC.**

Tesla, Inc. (“Tesla”) appreciates the opportunity to provide written comments to the Junta Reglamentadora Servicio Público (“JRSP”) on the topic of proposed modifications to the definition of “Electric Service Company” as set forth in Section 1.08, (A)(5) of Regulation 8701, as necessary to address the promotion of commercial EV charging station development as part of Docket Number: NEPR-MI-2021-0013. The comments below support modification language aligned with the recommendations as proposed in the Resolution and Order of November 18, 2021 in this same docket.<sup>1</sup>

Puerto Rico’s definition of “Electric Service Company” in Regulation 8701 should make clear that EV charging and those that own and operate EV charging equipment are specifically not “Electric Service Companies.” Clarifying this definition can be helpful at this early stage of EV charging infrastructure development and can also serve to support one of the other recommendations from the November 18 Resolution and Order<sup>2</sup> of billing on a \$/kWh basis to EV drivers. Without this clarification EV charging owners and operators will not have regulatory certainty regarding the ability to charge EV drivers for EV charging. Electric power sale/retail specifically for EV charging does not constitute an entity an “Electric Service Company” and including this clarification in statute will prevent conflict with the existing definition of “Electric Service Company” Section 1.08, (A)(5)(c)(iv) which explicitly lists “Electric power billing” and

<sup>1</sup> <https://energia.pr.gov/wp-content/uploads/sites/7/2021/11/20211118-MI20210013-Resolution-and-Order.pdf>

<sup>2</sup> Ibid

“Electric power resale” as qualifying conditions of being an “Electric Service Company.”

**About Tesla**

Tesla is a manufacturer of electric vehicles, energy storage equipment, EV charging equipment, and is also a charging network owner and operator. Tesla’s mission is to accelerate the transition to sustainable energy through the development of all-electric vehicles and clean energy products, including photovoltaic solar and battery storage. All Tesla vehicles sold in North America are currently manufactured in Fremont, CA. Tesla’s vehicle line-up includes the Model S sedan, Model X crossover vehicle, Model 3 sedan, and Model Y crossover vehicle. The vehicles have all-electric range of up to 405 miles per charge (Model S), and industry leading performance and safety ratings.

In 2021, Tesla delivered more than 936,000 vehicles globally. In the future, Tesla is also planning to launch the Cybertruck pickup, Roadster sports car, and a Class 8 Semi truck. Tesla also owns and operates an extensive Supercharger network of direct current fast chargers (“DCFC”), with over 3,200 stations and 30,000 Supercharger connectors deployed globally. There are currently two Tesla Supercharger locations in Puerto Rico, one site in Guaynabo and another in Aguadilla.

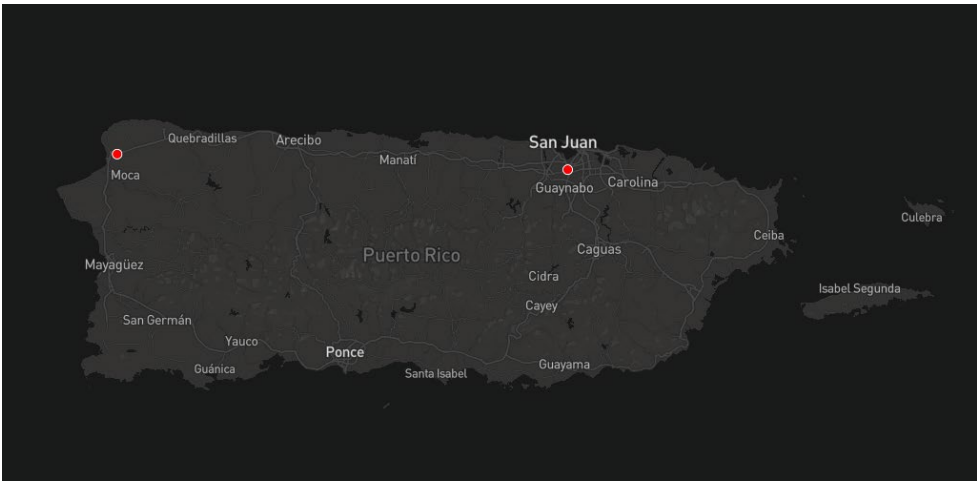


Figure 1 – Tesla Supercharger locations in Puerto Rico as of 1/20/2022. Red pins represent existing stations.

**Are natural or legal persons that offer electric power resale for the exclusive purpose of electric vehicle charging in Puerto Rico, an “Electric Service Company” under Regulation 8701 Section 1.08, (A)(5)?**

Tesla agrees with the position The Energy Bureau published in the November 18 Resolution and Order that states, “The delivery of electricity via EV charging to an end user does not constitute functioning as an electric utility, as defined in statute.” Further, Tesla recommends the Junta Reglamentadora Servicio Público amend the current definition of “Electric Service Company” to clearly exempt EV charging stations from being considered an “Electric Service Company” and thereby enable EV charging providers to bill on a dollar per kWh (“\$/kWh”) basis.

Private entities and persons that offer charging services to electric vehicle drivers are not an “Electric Service Company” as defined by Regulation 8701, nor are they operating as public utilities in a practical sense. EV charging providers are engaged in a limited electricity service that only enables electric transportation, and the electricity provided through the charging equipment cannot be used for other devices or purposes. More specifically, charging equipment enabling the rapid charging of electric vehicles typically uses electricity supplied to them from an Electric Service Company. Additionally, the electricity that passes through electric vehicle charging stations into customer vehicles is being used primarily in an application that was not considered when the statute was written. The electricity is being used as a transportation fuel rather than a traditional source of power for homes and businesses.

Tesla would also like to highlight that electric vehicle charging providers, themselves, are most often direct customers of the Electric Service Company. Public charging sites (including Tesla Superchargers) are typically located “behind” standard utility meters where the electric vehicle charging provider takes service from the Electric Service Company. In some instances, Tesla also

purchases electricity from a retail electricity provider in territories that allow customers to select their electricity generation supplier. Tesla and other charge operators operate across multiple different utility territories, and do not have exclusive territories in which they alone provide charging services.

### **Are there precedents for how EV charging providers are categorized in other jurisdictions?**

The Energy Bureau efforts to clarify the status of EV charging providers is a timely issue. Thus far 38 States and the District of Columbia<sup>3</sup> have determined that EV charging equipment owners and operators are not public utilities or electric service companies. Tesla appreciates the Energy Bureau seeking written comments on this topic with the goal of issuing guidance about the Junta Reglamentadora Servicio Público's treatment of third-party charging operators. A similar approach has been taken by Commissions in other States, including Alabama, Arizona, Delaware, Kentucky, New York, Oklahoma, and Pennsylvania.<sup>4</sup> The Commissions in those States also found that charging operators are not electric service companies.

### **What are the benefits of removing regulatory uncertainty around EV charging providers?**

There are two primary benefits of clarifying that EV charging providers are not electric service companies. First, it would allow for continued investment in charging infrastructure by non-utilities, therefore enabling more Puerto Ricans, including those without access to home charging, to purchase EVs without the concern of where they will charge their vehicles. Second, with regulatory clarity EV charging providers would be able to bill customers on a \$/kWh basis which aligns with the principles provided in the November 18 Resolution and Order, *"Billing to end users of EV charging stations shall be on a unit (\$/kWh) basis, not time-based (\$/minute)."*<sup>5</sup>

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<sup>3</sup> Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, Washington D.C., West Virginia.

<sup>4</sup> Alabama Docket No. 32694. Arizona Docket RU-00000A-18-0284 Decision No. 77289. Delaware Docket No. 19-0377. Kentucky PSC Case No. 2018-00372. New York Case 13-E-0199. Oklahoma OAC 165:35-13-1(C). Pennsylvania PUC Policy Statement Order M-2017-2604382.

<sup>5</sup> Case No. NEPR-MI-2021-0013 Resolution and Order, November 18, 2021. Page 3 of 8, Point 7.

Tesla agrees that the fairest way to bill customers for charging services is on a \$/kWh basis because the driver is paying for the energy they receive. The predominant alternative approach to billing for charging services is on a \$/minute basis. The pitfall of the \$/minute approach is that two drivers that are parked for the same duration will be billed the same amount yet can receive two completely different quantities of kWh in that time because the rate of charge is dependent on a variety of factors. These factors include the vehicle's charging capabilities, state of charge, battery temperature, and other factors. For example, if two cars are at a similar type of charging station for 30 minutes that charges \$0.35/minute, both cars will pay the same amount (\$10.50) because the price is based on time. But Car A is able to charge at higher power levels and received 60 kWh during that time, while Car B charges more slowly and received 20 kWh. That means Car A effectively paid \$0.175/kWh while Car B effectively paid \$0.525/kWh. Given the regulatory uncertainty as to whether non-utility charging operators are authorized to bill drivers on a \$/kWh basis, until the definition of "Electric Service Company" is clarified EV drivers may be billed on a \$/minute basis in Puerto Rico.

**How could officially clarifying EV charging providers are not "Electric Service Companies" improve electric car penetration and support Puerto Rico's energy policy?**

Amending statute to clarify that EV charging providers can resell electricity, bill customers, and charge on a \$/kWh basis for the express purpose of EV charging will improve EV driver experience and increase fairness. EV charging providers must be able to engage in these necessary activities without the risk of being classified as an "Electric Service Company." EV charging providers are engaged in a competitive landscape where there is not only competition for attractive charging sites but there is also price competition between different charging providers. A competitive landscape provides customers with a variety of options to charge their EV. There are multiple public

charging service providers, and drivers also have opportunities to charge at private workplaces, at home, or at any available electrical receptacle within distance of their vehicle. Operating in such a competitive environment is in the public interest because it enables a variety of charging business models, service providers, and continued innovation.

Tesla, with regulatory clarity from the Commission, believes EV drivers in Puerto Rico would welcome the added pricing transparency and fairness that comes with billing on a \$/kWh basis. Pricing competitiveness and transparency aligns with Puerto Rico's Principles for Initiating EV Infrastructure Deployment as set forth in the November 18 Resolution and Order and Tesla welcomes the EV driver benefits that would come with regulatory clarity in Puerto Rico.

## **Conclusion**

EV charging operators and owners do not fit the definition of "Electric Service Companies" as set forth in Regulation 8701 Section 1.08, (A)(5) nor are they operating as public utilities in a practical sense. No state or jurisdiction in the U.S. has defined EV charging providers as electric service companies and Tesla believes designating charging stations as "Electric Service Companies" would have a significant negative impact on the availability of charging, customer choice, and continued innovation. Tesla believes there is an opportunity for explicit clarification as to the status of EV charging providers through amendment to Regulation 8701 Section 1.08, (A)(5). Tesla proposes modifying the existing definition of "Electric Service Company" by including language in Regulation 8701 Section 1.08 (A)(5) under a new subsection (e) that states:

*"The delivery of electricity via EV charging to an end user does not constitute functioning as an electric service company, as defined in statute. EV charging station owners and operators are able to sell/resell electricity and bill customers for the exclusive purpose of EV charging without being considered an electric service company."*<sup>6</sup>

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<sup>6</sup> Tesla's proposed modification language to the definition of "Electric Service Company" as necessary to promote commercial EV charging station development.

Thank you for the opportunity to provide comments in this case. Tesla looks forward to continuing to engage with the Energy Bureau and other stakeholders to support transportation electrification in Puerto Rico.

Sincerely,

A handwritten signature in black ink that reads "Bill Ehrlich". The signature is written in a cursive, slightly slanted style.

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