

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

**IN RE: THE DEPLOYMENT OF ELECTRIC
VEHICLE CHARGING INFRASTRUCTURE**

CASE NO.: NEPR-MI-2021-0013

SUBJECT: Jurisdiction over Electric Vehicle
Charging Stations

RESOLUTION AND ORDER

I. Introduction and Background.

On August 26, 2021, The Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution under Case No. NEPR-MI-2021-0013¹ commencing a regulatory proceeding regarding the deployment of electric vehicle ("EV") charging infrastructure. In a resolution and order issued on December 17, 2021, the Energy Bureau specifically requested comment on the appropriate definition of "Electric Service Company" as set forth in Section 1.08(A)(5) of Regulation 8701² in EV charging infrastructure. Two entities, Evergo Puerto Rico LLC, an EV charging station company ("Evergo"), and Tesla, Inc., a manufacturer of electric vehicles and EV charging network owner and operator ("Tesla"), filed responsive comments on January 20, 2022.

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The Energy Bureau is the independent specialized entity in charge of the regulation, supervision, and enforcement of the Puerto Rico energy public policy. The Energy Bureau has broad powers, duties, and responsibilities pursuant to Act 57-2014, among other statutes, to ensure the proper execution and clear implementation of public policies regarding electric power service. The Energy Bureau's role includes interpretation of its own regulations and the statutes that govern those regulations, which includes clarifications of the scope of its jurisdiction and powers. The Energy Bureau exercises its regulatory powers primarily over any entity that is an "Electric Service Company." The definition of an "Electric Service Company" in Regulation 8701 is an implementation and clarification of the statutory definition for "Electric Power Service Company or Electric Power Company" under statute, as most recently amended by Act 17-2019³.

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This resolution determines that, as a matter of law, entities shall not be deemed to be an "Electric Service Company" under Regulation 8701 or as a "Electric Power Service Company or Electric Power Company" under statute solely by the ownership or operation of EV charging equipment, regardless of the method used to charge EV owners and operators for the services. The "charging services" provided by these entities, and any commercial transactions associated with those services, would not be directly regulated by the Energy Bureau. Laws and regulations to protect consumers and regulate commercial transactions more generally would apply but are not under the jurisdiction of the Energy Bureau.

II. Discussion

Many powers and regulatory responsibilities vested in the Energy Bureau are over entities covered by a closely related set of statutory and regulatory terms. First, as updated by Act 17-2019, includes the following definition:⁴

"Electric Power Service Company or Electric Power Company: Shall mean any natural or juridical person or entity, including energy cooperatives, engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid

¹ Resolution, *In Re: The Deployment of Electric Vehicle Charging Infrastructure*, Case No. NEPR-MI-2021-0013, August 26, 2021.

² Amendment to Regulation number 8618, regarding the Certification, Annual Fees and Operational Plans of Electric Service Companies in Puerto Rico, February 17, 2016, ("Regulation 8701").

³ *Puerto Rico Energy Public Policy Act*, Act 17-2019.

⁴ Section 1.2(c), Act 17-2019.



services, energy storage, the resale of electric power, as well as any other electric power service as defined by the Bureau. For purposes of this Act, the Electric Power Authority, or its successor, as well as any electric power transmission and distribution network operator, shall be deemed to be an Electric Power Service Company.”

Regulation 8701 elaborates those terms under one definition for “Electric Service Company” in Section 1.08(A)(5):

“Electric Service Company” refers to:

- a) PREPA;
- b) Any natural or legal person that generates electric power through the use of fossil fuels or renewable energy sources for sale to PREPA or any other electric service company in accordance with a power purchase agreement. This shall not include persons that generate electric power for their own consumption by means of distributed generation that have net metering agreements with PREPA;
- c) Any natural or legal person that offers any of the following services:
 - i. Electric power generation for sale in Puerto Rico through distributed generators that are interconnected to the PREPA power grid with an aggregate capacity of one megawatt (1 MW) or more, regardless of whether or not said distributed generators or the clients to whom the electric power is sold are participants of PREPA’s Net Metering Program;
 - ii. Electric power storage, where at least one storage unit has a nominal capacity of one megawatt (1 MW) or more;
 - iii. Electric power billing; or
 - iv. Electric power resale.
- d) Any natural or legal person that that carries out or offers electric power transmission (wheeling) service.

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In the Resolution and Order issued on December 17, 2021, the Energy Bureau asked for public comment about the following: “Proposed modifications to the definition of “Electric Service Company” as set forth in Section 1.08 (A) (5) of Regulation 8701, as necessary to promote commercial EV charging station development.” Two entities, Evergo and Tesla, provided comments that supported a regulatory amendment to clarify that EV charging does not meet the definition for an Electric Service Company.

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Both commenters noted that applying the relevant rules and regulations for electric service companies to EV charging would be burdensome on a nascent clean energy technology and is not compelled by the underlying rationales that govern utility regulation more generally. As noted by Evergo, EV charging equipment is better thought of as a customer of an electric utility and may be only one of many usages behind the meter for that customer.

As noted in the comments from Tesla, many states have made the determination that the services provided by EV charging station owners and operators are not covered by the jurisdiction of the public utility regulator. Several public utility commissions have interpreted their own statutes and regulations to find that EV charging equipment does not provide generation, transmission, or distribution service and any commercial transaction linked to the usage of EV charging equipment does not constitute resale of power, regardless of the pricing structure for that commercial transaction. That includes the New York Public



Service Commission,⁵ the Massachusetts Department of Public Utilities,⁶ and the Kentucky Public Service Commission.⁷ Each regulatory agency found that EV charging stations provided a more specific charging service not covered by the statutes and regulations that govern utilities.

The Energy Bureau agrees with the rationale provided by these other utility regulatory agencies. As in these other jurisdictions, instead of a modification to the regulation, the Energy Bureau determines that an authoritative clarification of the relevant statutory and regulatory definitions is the appropriate mechanism to provide reasonable certainty to EV charging equipment owners and operators. A close reading of the statutes and regulations clarifies that the Energy Bureau has the authority to do the same. Since EV charging owners and operators provide a more specific charging service that can only charge the battery of an electric vehicle, this service does not constitute energy generation, transmission, distribution services, billing, wheeling, energy storage, billing, or the resale of electric power under the relevant statutory definition. The charging service provided by an EV charging owner or operator does not fall within the definitions of "Electric Service Company" under Regulation 8701. This is true regardless of the pricing structure adopted by the charging equipment owners and operators.⁸

Last, as should be evident, any entity that is an electric power service company, electric power company, or electric service company because of other operations and aspects of that entity does not get relieved from any regulatory obligations or duties if it assumes ownership or operation of EV charging facilities. As discussed in the resolution and order issued in this proceeding on November 18, 2021, the Energy Bureau has substantial authority and responsibilities regarding the deployment of electric vehicle charging stations and related issues without direct jurisdiction over providers of electric vehicle charging and will continue to exercise that authority appropriately to advance the energy policies of Puerto Rico.

⁵ "Charging Stations do not fall within the definition of 'electric plant' because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat or power. Instead, and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services. This service requires the use of specialized equipment and allows the customer to do only one thing, charge a PEV's battery. The primary purpose of the transaction between Charging Station owners/operators and members of the public is the purchase of this service and the use of this specialized equipment. While the customer is using electricity, this is incidental to the transaction." New York Public Service Commission Case 13-E-0199, Declaratory Ruling on Jurisdiction over Publicly Available Electric Vehicle Charging Stations, issued November 22, 2013, p. 4 <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0A1AB82A-ABD4-43FA-B3E6-A4C54EC02220}> (Last visit June 3, 2022)

⁶ "We find that an [Electric Vehicle Specialized Equipment ("EVSE")] owner or operator is not selling electricity within the meaning of Chapter 164. Rather, the EVSE owner or operator is selling EV charging services, i.e., the use of specialized equipment -- EVSE -- for the purpose of charging an EV battery. EVSE allows the customer to do only one thing, charge an EV battery. This result is true regardless of the business model the EVSE owner/operator uses to charge customers for charging services, even if the charge is by a per-kilowatt hour basis or other volumetric energy basis." Massachusetts Department of Public Utilities Docket No. 13-182, Investigation by the Department of Public Utilities upon its own Motion into Electric Vehicles and Electric Vehicle Charging, Order on Department Jurisdiction over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging and Other Matters, August 4, 2014, p. 7 <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9233599>. (Last visit, June 3, 2022)

⁷ "[A]n [electric vehicle charging station] provides a battery charging service where an electric current – that the [electric vehicle charging station] did not generate, transmit, or distribute – passes through a charging port to an EV battery." In the Matter of: Electronic Investigation of Commission Jurisdiction over Electric Vehicle Charging Stations, Kentucky Public Service Commission Case No. 2018-00372, Order dated June 14, 2019, p. 19 https://psc.ky.gov/order_vault/Orders_2019/201800372_06142019.pdf. (Last visit, June 3, 2022)

⁸ Tesla's comments described why a per-kWh pricing structure for EV charging can be fairer and more transparent than alternative pricing structures, because ultimately the EV owner or operator is relying on the quantity of energy provided in order to charge that vehicle. Other pricing structures, such as a price per minute of charging, can lead to unfair and illogical outcomes where a driver gets a significantly different bargain depending on the rate of battery charge provided. See, *In re: Electric Vehicle Chargers Infrastructure Deployment*, Case No.: NEPR-MI-2021-0013, *Written Comments of Tesla, Inc.*, filed on October 7, 2021, pp. 7-8.



III. Conclusion.

For all of the above, the Energy Bureau **DETERMINES** that:

1. The provision of electrical energy through electric vehicle charging equipment to an electric vehicle shall be deemed a "charging service" and thus is not categorized as electric power billing, electric power resale, or any other grid service regulated by the Energy Bureau.
2. Any entity that owns or operates EV charging equipment shall not be deemed an electric power service company, electric power company, or electric service company solely because that entity owns or operates EV charging equipment.

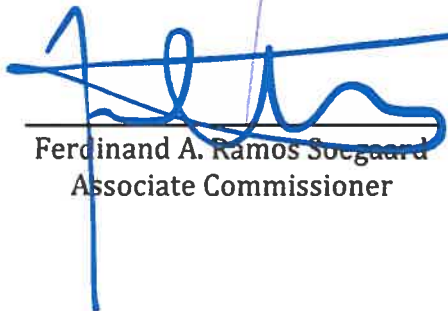
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Lillian Mateo Santos
Associate Commissioner



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Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 3, 2022. Associate Commissioner Ángel R. Rivera de la Cruz did not intervene. I also certify that on June 3, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: agalloza@aggpr.com; alberto.cortes@warrendelcaribe.com; aldo@skootel.com; ana.rodriguezrivera@dlapiper.com; angel.d.rodriguez@outlook.com; antonio@velocicharge.com; apietrantonip@pmalaw.com; azayas@azeng.net; bigwheelcorp@gmail.com; blazquezmalu@gmail.com; brightsunpr@gmail.com; carloscedeno@gmail.com; clrivera@caguasexpressway.com; flota@caguasexpressway.com; cnegrette@solrenew.com; CR.Tejera@ddec.pr.gov; dacosta@aggpr.com; daniel.perez@totalenergies.pr; dcordero@group-em.com; direxec@ciapr.org; divine.energy@hotmail.com; ecruz@pmalaw.com; eduardo.pinera@toyota.com; Edwin.Acevedo@ddec.pr.gov; emelyies.torres@toyota.com; epenenergypr@gmail.com; erica.cosme@gsonnell.com; Fberrios@peritoselectricistas.org; francisco.berrios@hotmail.com; franciscojrullan@yahoo.com; gerard.berlinski@toyota.com; gerardo_cosme@solartekpr.net; gperez@solrenew.com; hamely@motorambar.net; ialsina@plazalasamericas.com; idiaz@glenninternational.com; info@carlosmatta.com; ismael.diaz@warren-ecm.com; jack@pantekpartners.com; jameaux1@aim.com; jan.rodriguez@toyota.com; javrua@sesapr.org; jbouza@caguasexpressway.com; jcardona@aggpr.com; jmartinez@pmalaw.com; jorrodriquez@motorambar.net; jortiz@caguasexpressway.com; jose.maeso@crowley.com; jpibernus@motorambar.com; JSantana@motorambar.com; jtosado@motorambar.net; juan.diaz.galarza@guidehouse.com; jvazquez905@gmail.com; jwilliams@solrenew.com; kenan.d.davila@sargentlundy.com; kkoch@tesla.com; l.marcano@aconer.org; laura.rozas@dlapiper.com; lsundeen@tesla.com; luisgmoreno@gmail.com; Marangelly.Cruz@toyota.com; Margarita.mercado@us.dlapiper.com; Maria.rivera@lumapr.com; marilyn.maldonado@toyota.com; Melvin.Ayala@lumapr.com; mlandron@plazaad.com; mpietrantonip@pmalaw.com; nannette.berrios@solpetroleum.com; nmontes@ccmpr.com; nrodriguez@senado.pr.gov; nsantos@glenninternational.com; Ochavez@Padigm.com; odette@grupofernandezpr.com; omundo@plazalasamericas.com; pablo.rivera@hitachi-powergrids.com; patlopez00@gmail.com; dany.oliva@toyota.com; pjcleanenergy@gmail.com; rdiaz@glenninternational.com; repagan@burnsmcd.com; rry@tcm.law; Ruben.Gonzalez@pumaenergy.com; rvega@guidehouse.com; salvadorlopez5@hotmail.com; shehaly.rosado@ddec.pr.gov; Veronica@pantekpartners.com; Victor.Aponte@toyota.com; victor.martinez@totalenergies.pr; wilfredsonllc@gmail.com; zlopez@efonalledas.com. I also certify that today, June 3, 2022, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today June 3, 2022.


Sonia Seda Gaztambide
Clerk

