

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 42. PUBLIC CHARGING OF ELECTRIC VEHICLES

Sec. 42.0101. LEGISLATIVE FINDINGS. (a) The legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

(b) The legislature finds that encouraging investment in the deployment of public electric vehicle charging stations is essential to foster the rapid installation and widespread use of public electric vehicle charging stations on property whose owners or tenants desire to install public electric vehicle charging stations.

(c) The legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.

(d) The legislature finds that it is necessary to:

(1) implement competitively neutral policies to encourage competitive private sector investment in public electric vehicle charging station deployment;

(2) develop and implement competitively neutral electricity tariffs that are optimized for public electric vehicle charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs; and

(3) encourage competitive private investment, ownership, and operation of public electric vehicle charging stations, including equipment that allows for fast charging.

Added by Acts 2023, 88th Leg., R.S., Ch. 53 (S.B. [1002](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.0102. DEFINITIONS. In this chapter:

(1) "Direct-current fast charging station" means a charging system capable of delivering at least 50 kilowatts of direct-current electrical power to an electric vehicle's rechargeable battery at a voltage of 200 volts or greater.

(2) "Electric vehicle" means a vehicle that is propelled by one or more electric motors using energy stored in the form of a rechargeable battery.

(3) "Electric vehicle charging provider" means the owner or operator of a public electric vehicle charging station. The term does not include an electric utility or transmission and distribution utility.

(4) "Electric vehicle charging service" means sales made from a public electric vehicle charging station to the public.

(5) "Level two charging station" means a charging system capable of delivering at least 3 and not more than 19.2 kilowatts of alternating-current electrical power to an electric vehicle's rechargeable battery at a voltage of at least 208 volts on a circuit of at least 40 amperes.

(6) "Make-ready infrastructure" means the electrical infrastructure required to service a public electric vehicle charging station's electrical load on the electric utility's or transmission and distribution utility's side of the point of delivery. The term:

(A) includes all site-specific electrical infrastructure required to accommodate engineering, physical, operational, or other constraints for the public electric vehicle charging station, regardless of whether the infrastructure is on the utility's or customer's side of the point of delivery; and

(B) does not include the public electric vehicle charging station or any utility infrastructure on the customer's side of the point of delivery, up to and including the meter.

(7) "Public electric vehicle charging station" means any level two charging station or direct-current fast charging station that delivers electricity from a source outside an electric vehicle into an electric vehicle, is separate and distinct from make-ready infrastructure, and is accessible for commercial use by

the public, or similar vehicle charging equipment capable of delivering electricity into an electric vehicle faster than a level two charging station. The term does not include vehicle charging equipment that is:

(A) used by an electric utility, a transmission and distribution utility, or an affiliate to charge:

(i) an electric vehicle owned by the utility or affiliate; or

(ii) as an incident of employment, an electric vehicle owned by an employee of the utility or affiliate; or

(B) located on the premises of a customer of an electric utility, a transmission and distribution utility, or an affiliate and:

(i) used by the customer or the customer's tenants, affiliates, or guests; and

(ii) not used commercially for electric vehicle charging service.

Added by Acts 2023, 88th Leg., R.S., Ch. 53 (S.B. [1002](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE OF ERCOT. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility:

(1) may not provide electric vehicle charging service directly to a customer except as provided by this section;

(2) may be affiliated with an entity that provides electric vehicle charging service from a public electric vehicle charging station if the affiliate:

(A) is not subject to regulation by the commission; and

(B) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section [39.157](#)(d); and

(3) consistent with the requirements of Subchapter B,

Chapter 38, and Section 39.157(d)(3), shall offer the same nondiscriminatory rates, terms, and conditions offered to an affiliate described by Subdivision (2) to other electric vehicle charging providers in the utility's service area for the operation of public electric vehicle charging stations.

(c) An affiliate of an electric utility that provides electric vehicle charging service and is not subject to regulation by the commission is subject to the same tariffs of the electric utility that apply to any other entity receiving from the utility electric service that is used to provide electric vehicle charging service.

(d) This section does not prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the electric utility's regulated services.

(e) An electric utility may provide electric vehicle charging service directly to a customer only if:

(1) the public electric vehicle charging station used to provide electric vehicle charging service is constructed in compliance with the requirements of this section; and

(2) the rates charged by the utility for electric vehicle charging service are set by the commission under Subsection (m).

(f) An electric utility seeking to provide electric vehicle charging service directly to a customer shall:

(1) file with the commission a proposal identifying the specific location at which the utility seeks to provide electric vehicle charging service and a general description of the public electric vehicle charging station the utility proposes to construct at the location; and

(2) provide notice of the filing made under Subdivision (1):

(A) on the utility's Internet website; and

(B) to each dealer to which Chapter 2310, Occupations Code, applies who offers for retail sale motor fuel at a site that is located not more than 15 miles from the proposed location of the public electric vehicle charging station.

(g) A notice provided under Subsection (f)(2) must include:

(1) the date the electric utility filed a proposal to provide electric vehicle charging service under Subsection (f)(1); and

(2) the date by which a person may file a proposal to provide reasonably comparable electric vehicle charging service under Subsection (h).

(h) The commission shall determine whether the provision of electric vehicle charging service under a proposal submitted under Subsection (f)(1) is in the public interest because the service is adequate for the needs of the area. Not later than the 90th day after the date the commission determines that the provision of the proposed electric vehicle charging service is in the public interest, a person other than the electric utility may notify the commission that:

(1) the person:

(A) intends to provide electric vehicle charging service that is adequate for the needs of the area in reasonable proximity to the proposed location of the public electric vehicle charging station and request the necessary make-ready infrastructure from the electric utility; and

(B) is firmly committed to placing into service equipment necessary to provide the electric vehicle charging service before the later of:

(i) 18 months after the date the person submits the notice to the commission; or

(ii) the date of completion of the installation of the necessary make-ready infrastructure to provide the electric vehicle charging service; and

(2) the person is capable of:

(A) acquiring the right to use the property at which the electric vehicle charging service will be provided; and

(B) financing the cost of the equipment described by Subdivision (1)(B).

(i) The commission shall issue a determination regarding each notice received under Subsection (h) of whether:

(1) the proposed electric vehicle charging service is

adequate for the needs of the area; and

(2) the person has made the commitment and has the capabilities described by that subsection.

(j) The commission by rule may establish a distance that constitutes reasonable proximity to a type of location for the purposes of Subsection (h). The commission may also issue an order establishing a distance other than one authorized by rule that constitutes reasonable proximity to a location for purposes of Subsection (h) for a specific electric utility. In establishing distances that constitute reasonable proximity to a location, the commission shall:

(1) consider population density and site access;

(2) establish the reasonable proximity between two locations on an interstate highway for the purposes of Subsection (h) as not more than 10 miles; and

(3) consider the Texas Department of Transportation's designation by category of nearby roads other than interstate highways when establishing the reasonable proximity between two locations at which electric vehicle charging service will be provided on roads other than interstate highways.

(k) An electric utility that files a proposal under Subsection (f) may proceed with construction of the public electric vehicle charging station and the provision of electric vehicle charging service unless the commission determines, based on the information submitted under Subsection (h), that:

(1) the electric vehicle charging service proposed under Subsection (h) in response to the utility's proposal is adequate for the needs of the area and that the person who submitted the notice under Subsection (h) has made the commitment and has the capabilities described by that subsection; or

(2) the electric vehicle charging service proposed under Subsection (f) by the utility unreasonably duplicates:

(A) electric vehicle charging service provided by another person; or

(B) a facility under construction that another person will use to provide electric vehicle charging service.

(1) An electric utility authorized to proceed with the

construction of a public electric vehicle charging station under Subsection (k) shall notify the commission that the utility intends to proceed with the construction and may construct and operate the proposed public electric vehicle charging station after the 120th day after the date the utility files the notice of intent under this subsection.

(m) On application by an electric utility, the commission shall set in a manner authorized under Chapter 36 the rates the utility may charge for electric vehicle charging service. The rates must be reasonable and ensure that competition is not impaired. The commission may set rates differently for different locations and times of day and for different types of electric vehicle charging service.

(n) The commission shall permit an electric utility authorized to construct and operate a public electric vehicle charging station under this section to recover, using the rate of return on investment established in the commission's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction, financing, operation, and maintenance of that public electric vehicle charging station.

(o) This section does not prohibit a person who is not an electric utility or an affiliate of an electric utility from entering into an agreement with an electric utility for the utility to own or operate a public electric vehicle charging station on the person's property if:

(1) the utility does not:

(A) provide electric vehicle charging service using the public electric vehicle charging station; or

(B) brand or market the public electric vehicle charging station as owned or operated by the utility, including by presenting the utility's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the public electric vehicle charging station;

(2) the person solely determines:

(A) physical access to and use of the public electric vehicle charging station necessary to carry out

responsibilities associated with ownership and operation of the public electric vehicle charging station; and

(B) prices for the electric vehicle charging service; and

(3) the person pays for all electric utility-related costs under a tariff approved by the commission that provides for full recovery of the costs of the public electric vehicle charging station from the person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service.

(p) The commission shall:

(1) require each electric utility for which the commission has approved a tariff under Subsection (o) to offer service under the terms of the tariff to other persons seeking agreements in the utility's service area on a nondiscriminatory basis; and

(2) ensure that revenue collected by an electric utility under an agreement under Subsection (o) allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station from the person and not the utility's other customers.

(q) A public electric vehicle charging station operated under an agreement under Subsection (o) is not subject to the requirements of Subsections (f)-(l).

(r) Notwithstanding any other provision of this section, a municipality that is a customer of an electric utility may enter into an agreement with the utility under which:

(1) the utility owns and operates a public electric vehicle charging station and provides electric vehicle charging service on the municipality's property; and

(2) none of the costs of constructing, financing, operating, or maintaining the public electric vehicle charging station described by Subdivision (1) are recovered from the other customers of the utility.

Added by Acts 2023, 88th Leg., R.S., Ch. 53 (S.B. [1002](#)), Sec. 1, eff. September 1, 2023.

Sec. 42.0104. PUBLIC CHARGING OF ELECTRIC VEHICLES INSIDE ERCOT. (a) A transmission and distribution utility:

(1) may not directly own, operate, or provide electric vehicle charging service from a public electric vehicle charging station;

(2) may not include costs of a public electric vehicle charging station for recovery through rates approved by the commission;

(3) may be affiliated with a competitive affiliate that provides electric vehicle charging service from a public electric vehicle charging station through a separate entity or third party only if:

(A) the affiliate:

(i) is not subject to regulation by the commission; and

(ii) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section 39.157(d); and

(B) the alternative fuels data center map maintained by the United States Department of Energy does not show that a public electric vehicle charging station owned or operated by an electric vehicle charging provider and used to provide electric vehicle charging service is located less than 50 miles from the location where the affiliate proposes to provide electric vehicle charging service; and

(4) consistent with the requirements of Subchapter B, Chapter 38, and Section 39.157(d)(3), shall offer the same nondiscriminatory rates, terms, and conditions offered to the affiliate described by Subdivision (3) to other electric vehicle charging providers in the transmission and distribution utility's service area for the operation of public electric vehicle charging stations.

(b) An affiliate described by Subsection (a)(3) shall maintain for at least two years documentation of the alternative fuels data center map that is available on the date on which the installation of the public electric vehicle charging station

begins.

(c) An affiliate of a transmission and distribution utility that provides, owns, operates, or maintains public electric vehicle charging stations and is not subject to regulation by the commission may not be subsidized by any rate or charge for any regulated services provided by the transmission and distribution utility.

(d) This section does not prohibit a transmission and distribution utility from constructing, owning, or operating make-ready infrastructure on the transmission and distribution utility's side of the point of delivery that is funded through rates or charges for services under the transmission and distribution utility's tariffs.

(e) Notwithstanding Subsection (a), a transmission and distribution utility may own, operate, lease, install, or otherwise procure service from a public electric vehicle charging station on the utility's premises for the sole purpose of serving the utility's vehicles.

(f) The commission shall permit a transmission and distribution utility to recover, using the rate of return on investment established in the commission's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction or installation of make-ready infrastructure on the utility's side of the point of delivery.

Added by Acts 2023, 88th Leg., R.S., Ch. 53 (S.B. [1002](#)), Sec. 1, eff. September 1, 2023.