

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.

Rulemaking 09-08-009  
(Filed February 8, 2010)

**BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL AND  
FRIENDS OF THE EARTH ON JURISDICTIONAL ISSUES**

MAX BAUMHEFNER, J.D.  
SIMON MUI, Ph.D.  
Natural Resources Defense Council  
111 Sutter Street 20th Floor  
San Francisco, CA 94104  
(415) 875-6100  
smui@nrdc.org

JODY S. LONDON  
  
Jody London Consulting  
P.O. Box 3629  
Oakland, California 94609  
(510) 459-0667  
jody\_london\_consulting@earthlink.net

DANIELLE FUGERE, J.D.  
Friends of the Earth  
311 California Street, Ste. 510  
San Francisco, CA 94104  
(415) 544-0790 x215  
dfugere@foe.org

February 8, 2010

**TABLE OF CONTENTS**

- I. INTRODUCTION..... 1**
  - A. Background ..... 1
  - B. Summary of NRDC’s and FoE’s Position..... 2
- II. LEGAL ARGUMENT..... 3**
  - A. The Plain Language of the Public Utilities Code Confers Jurisdiction over PEV Charging Companies Sufficient to Fulfill Senate Bill 626’s Goal of Enabling the Successful and Widespread Deployment of PEVs while Retaining a Stable and Clean Grid ..... 3
    - 1. The Plain Language of Code Sections 216, 217, and 218 Confers Jurisdiction over PEV Charging Companies Where Such Entities Provide Charging Services to the Public for Payment..... 3
    - 2. PEV Charging Station Providers Are Not Exempt from Commission Jurisdiction .... 4
    - 3. In directing the Commission via Senate Bill 626 to Develop Rules Governing PEV Infrastructure, the Legislature Reinforced the Commission’s Authority to Regulate Electric Vehicle Fuel Providers and their Equipment. .... 5
  - B. Decision 91-07-018, on which the Scoping Memo relies for its Preliminary Interpretation that Electric Vehicle Charge Providers are not Subject to CPUC Jurisdiction, is Both Unsupported by Law and Factually Distinguishable ..... 6
    - 1. Decision 91-07-018 is Not Supported By Law ..... 6
    - 2. Because CNG and Electricity are Fundamentally Different, Decision 91-07-018 is Not Factually Analogous and Should Not Control in this Case ..... 8
- III. POLICY CONSIDERATIONS AND RECOMMENDATIONS ..... 10**
  - A. Placement of, and Load Growth from, Charging Infrastructure Should be Planned and Coordinated to Avoid Dampening the Market and Acceptance of PEVs ..... 10
  - B. The Commission Should Not Disavow Jurisdiction before Ensuring Cooperation Between PEV Charging Companies and Local Utilities..... 11
  - C. Commission Regulation of PEV Charging Stations Should Be Tailored to Potential Business Models..... 13
    - 1. “Utility Model” PEV charging companies that procure electricity directly act as utilities and should not be exempt from state mandates governing the procurement of electricity ..... 13
    - 2. The Commission should establish its jurisdiction over “Utility Model” companies 14
    - 3. “Utility Customer Model” PEV charging companies that purchase electricity from the local utility and resell it should be subject to less extensive regulation ..... 15
    - 4. The Commission should establish a basic set of requirements governing the “Utility Customer Model” in order to assure the success of the PEV market ..... 15

5. The Commission has successfully established similar requirements for other entities .....	16
<b>IV. CONCLUSION .....</b>	<b>17</b>

**TABLE OF AUTHORITIES**

**CASES**

Richfield Oil Corp. v. PUC (54 Cal.2d 419).....	8
---	---

**CALIFORNIA SENATE BILLS**

Senate Bill 547 .....	5
Senate Bill 626 .....	6

**CALIFORNIA PUBLIC UTILITIES CODE**

PU Code Section 216 .....	4, 5, 6, 18
PU Code Section 217 .....	4, 5, 18
PU Code Section 218 .....	2, 4, 5, 18
PU Code Section 394 .....	20
PU Code Section 451 .....	14, 20
PU Code Section 740.3 .....	6, 7
PU Code Section 740.8 .....	7

**CPUC DECISIONS**

Decision 91-07-018.....	2, 3, 5
Decision 95-11-035.....	13
Decision 97-12-048.....	20

## **I. INTRODUCTION**

The Natural Resources Defense Council (“NRDC”) and Friends of the Earth (“FoE”) respectfully submit these comments in accordance with the Rules of Practice and Procedure of the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure. NRDC is a non-profit membership organization with more than 100,000 members in California and a longstanding interest in minimizing the societal costs of the reliable energy services that Californians demand. FoE is a national, non-profit, environmental group that works to promote energy efficiency, the development of clean energy, and alternative fuel vehicles such as plug-in hybrid and electric vehicles, with over 10,000 members in California. These comments are filed pursuant to the Assigned Commissioner’s January 12, 2010 Scoping Memo.

### **A. Background**

In the Scoping Memo, the Assigned Commissioner made a preliminary interpretation that all providers of plug-in electric vehicle (“PEV”) charging services do not constitute an “electric plant” or an “electric corporation” under Public Utilities Code (“Code”)<sup>1</sup> §218; nor do they constitute a “public utility” under §216.<sup>2</sup> This preliminary interpretation was based on the existing materials submitted in this proceeding and the CPUC’s Decision (D.) 91-07-018 on compressed natural gas (“CNG”) refueling stations. The Assigned Commissioner requested briefs, including both legal and policy analysis, of this preliminary interpretation and the other issues identified in Section 2.1 of the Scoping Memo.

---

<sup>1</sup> Unless otherwise noted, all references are to the California Public Utilities Code.

<sup>2</sup> See *Assigned Commissioner’s Scoping Memo*, Rulemaking 09-08-009, August 20, 2009, p. 4-5.

## **B. Summary of NRDC's and FoE's Position**

Both NRDC and FoE have supported state and federal efforts to advance the commercialization of plug-in electric vehicles (PEVs) since the early 1990s. With appropriate policies on the electricity side, widespread PEV use can yield significant reductions in global warming pollution, oil dependency, and criteria pollutants, particularly in urban areas. We continue to strongly support policies to encourage deployment of, market development for, and the reduction of barriers to PEVs. We are concerned, however, that uncoordinated placement of charging infrastructure and the potential associated negative impacts to the electrical system could dampen both the market and public acceptance of PEVs. All parties are united by a desire to avoid the unfortunate scenario that could result should the risks identified throughout this proceeding materialize. The Commission should not disavow jurisdiction before ensuring that such risks are minimized.

The plain language of the Code provides jurisdiction over most third-party providers (or charging service providers) of electricity for transportation fuel. Although statutory exemptions are provided for certain other transportation-related services, such as CNG refueling stations, no such exemption exists for the provision of electricity to vehicles. This distinction is justified by the potential impact to the electric grid from the fueling of electric vehicles. D.91-07-018, which holds that the Commission does not have jurisdiction over CNG refueling stations, is legally unsupported with respect to the jurisdictional question, factually inapposite, and should not be applied to PEV charging service providers.

Although the Commission has jurisdiction over third party providers of electric vehicle charging, we do not recommend that the Commission exercise its full authority over all such providers. It is not yet fully understood what PEV charging business models will emerge. We recommend, however, that the Commission consider two potential categories of business

models. The first, which we call the “Utility Model,” consists of PEV charging companies that procure electricity directly, instead of purchasing electricity from local utilities. “Utility Model” companies act in the role classically occupied by utilities, and should be required to fully comply with statewide environmental mandates such as the Renewable Portfolio Standard (RPS), the system benefits charge, and greenhouse gas emissions performance standards for procurement. The second category is the “Utility Customer Model” which consists of companies that provide electricity purchased from local utilities. We recommend that the Commission refrain from exercising its full regulatory authority over “Utility Customer Model” companies, but simply require such companies to abide by a limited set of requirements, including coordinating with local utilities to minimize negative impacts. The Commission should also require utilities to cooperate and work with PEV charging companies to manage PEV load. We do not recommend that the Commission engage in price regulation.

At this time, we do not make recommendations as to Electric Tariff Rules.

## **II. LEGAL ARGUMENT**

### **A. The Plain Language of the Public Utilities Code Confers Jurisdiction over PEV Charging Companies Sufficient to Fulfill Senate Bill 626’s Goal of Enabling the Successful and Widespread Deployment of PEVs while Retaining a Stable and Clean Grid**

#### ***1. The Plain Language of Code Sections 216, 217, and 218 Confers Jurisdiction over PEV Charging Companies Where Such Entities Provide Charging Services to the Public for Payment***

A paramount principle of legislative interpretation is that, where the language of a statute is clear, the plain meaning of that statute must control. Here, PEV charging providers fall within the plain meaning of Public Utilities Code §§ 216 through 218 and are not subject to exemption. The Commission therefore has jurisdiction over such companies.

Code § 216 (a)-(b) provides that whenever “an electrical corporation... performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that... electrical corporation... is a public utility...” Section 218(a) provides that an “electrical corporation includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state unless the electricity is [for] its own use or that of its tenants and not for sale or transmission to others.” Section 217 defines an “electric plant” as including all “...fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the . . . furnishing of electricity for...power....”

Providers of publicly available charging systems typically own, control, operate, or manage charging equipment (Code § 218) that facilitates the furnishing of electricity for power to the public (Code § 217), for which compensation or payment is received (Code § 216). Thus, such providers can be regarded as entities subject to the Commission’s jurisdiction. To conclude otherwise contradicts the plain language of the Code.

**2. *PEV Charging Station Providers Are Not Exempt from Commission Jurisdiction***

Section 216 exempts a broad range of entities from Commission jurisdiction, including, but not limited to: cogeneration and landfill gas (§216 (d)); corporations providing heat derived from geothermal, solar, or cogeneration to utilities (§216 (e)); CNG refueling stations (§216 (f)); and wholesale generators (§216(g)). However, no such exemption exists for PEV charging companies.

In Decision 91-07-018, the Commission stated its support for then pending Senate Bill (“SB”) 547, a bill that amended Code § 216 to exempt from regulation as a public utility those

entities selling CNG to the public for use as a motor fuel.<sup>3</sup> Senate Bill 547 and its legislative history demonstrate that, until the bill's passage in October, 1991, providers of CNG transportation fuel were subject to Commission jurisdiction as a matter of state law, notwithstanding D.91-07-018. The Legislative Digest for SB 547 (which provides a summary of the basis for enacting the bill) begins with the premise that existing law (Code § 216) confers jurisdiction over CNG refueling stations as gas corporations: "Existing law defines public utilities to include gas corporations owning or operating facilities...for the furnishing of natural or manufactured gas, except propane, for light, heat, or power."<sup>4</sup> SB 547 amended § 216 such that, "the ownership or operation of a facility which sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from such a facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility."<sup>5</sup> The Legislature deemed it necessary to pass this bill to exempt CNG stations from regulation as public utilities. No such bill has been passed concerning providers of PEV charging services. Given the absence of an exemption for PEV charging companies, and the broad reach of Code § 216, the Code confers Commission jurisdiction over such entities.

**3. *In directing the Commission via Senate Bill 626 to Develop Rules Governing PEV Infrastructure, the Legislature Reinforced the Commission's Authority to Regulate Electric Vehicle Fuel Providers and their Equipment.***

The Legislature's passage of SB 626 in 2009 reinforced the Commission's regulatory authority over providers of electric vehicle charging equipment. The bill added Code Section 740.2 *et seq.*, which requires the Commission, by July 1, 2011, to adopt rules to address, among

---

<sup>3</sup> *Re Pacific Gas and Electric Company*, Decision 91-07-018, 1991 WL 501752 (Cal.P.U.C.) p. 126.

<sup>4</sup> 1991 Cal. Legis. Serv. Ch. 514 (S.B. 547).

<sup>5</sup> *Id.*



other things:

(a) The impacts upon electrical infrastructure... and the role and development of public charging infrastructure.

(b) The impact of plug-in hybrid and electric vehicles on grid stability and the integration of renewable energy resources.

(d) The existing code and permit requirements that will impact the widespread use of plug-in hybrid and electric vehicles. . .

(e) The role the state should take to ensure that technologies employed in plug-in hybrid and electric vehicles work in a harmonious manner and across service territories.

Section 740.3 further requires the Commission to “evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles” and to do so in a way that protects the ratepayer interest (§ 740.3(c)), including the ratepayer’s interest in a safe and reliable grid (§ 740.8). This enactment by the Legislature signals an intent that the Commission use the full extent of its jurisdiction and authority to promote the widespread use of plug-in hybrid and electric vehicles while, at the same time, ensuring the integrity of the electrical infrastructure system. If the Commission were to abdicate authority over providers of electric vehicle charging systems, it would not only hamper the Commission in exercising this clear Legislative mandate, but would likely thwart its goals.

**B. Decision 91-07-018, on which the Scoping Memo relies for its Preliminary Interpretation that Electric Vehicle Charge Providers are not Subject to CPUC Jurisdiction, is Both Unsupported by Law and Factually Distinguishable**

***1. Decision 91-07-018 is Not Supported By Law***

The Scoping Memo relies on Decision 91-07-018 to preliminarily find that:

facilities that are solely used to provide electricity as a transportation fuel do not constitute “electric plant” pursuant to Pub. Util. Code § 218. Thus, an

entity owning, controlling, operating, or managing electric vehicle charging facilities is not an “electric corporation” pursuant to Pub. Util. Code § 218 and not a “public utility” pursuant to Pub. Util. Code § 216, unless an entity falls under § 216 and § 218 for other reasons.<sup>6</sup>

Decision 91-07-018, however, provides no relevant legal precedent supporting its finding that provision of CNG to the public for transportation fuel is outside the scope of CPUC jurisdiction. The main case which the Decision cited, *Richfield Oil Corp. v. PUC*, is inapposite to this issue, addressing whether an oil company providing natural gas to a private entity, through common pipelines, falls within CPUC jurisdiction.<sup>7</sup> *Richfield’s* holding turned on a determination that there was no “dedication” to public service where the transaction was solely between a natural gas producer and a power plant.<sup>8</sup> The issue in Decision 91-07-018, however, was not whether public CNG refueling stations are dedicated to public use, but whether providing transportation fuel exempts an otherwise regulated public utility.

Code § 221 defines “gas plant” as including all “fixtures ... owned, controlled, operated, or managed in connection with or to facilitate the ... delivery, underground storage, or furnishing of gas...for light, heat, or power.” CNG vehicle fueling companies own and operate fixtures that facilitate the delivery, storage, and furnishing of gas for powering vehicles. The Decision’s only attempt to justify why the plain meaning of the statutory language was inapplicable was the simple statement, “we believe it is expanding the meaning of words to an unnecessary degree to equate the word “power” in Section 221 to include CNG which is sold in a manner similar to the retail sale of gasoline for vehicles.”<sup>9</sup> The Commission provided no definitional or factual rationale for this distinction for vehicles, and there is no basis in the plain language of the statute to distinguish the use of CNG for powering homes or businesses, versus

---

<sup>6</sup> *Scoping Memo*, p. 4-5.

<sup>7</sup> *Richfield Oil Corp. v. PUC* (54 Cal.2d 419).

<sup>8</sup> *Richfield*, p. 441.

<sup>9</sup> D.91-07-018, p. 125-26.

providing power to vehicles.

The similarity between CNG refueling points and gasoline stations appears to underpin Decision 91-07-018, which states, “we do not believe anyone would seriously contend that a gas station operator is a ‘pipeline corporation’ subject to our jurisdiction merely because he has pipes in his station which deliver ‘fluid substances except water through pipe lines.’”<sup>10</sup> This statement is correct, in so far as no one would contend that the Commission regulates the provision of gasoline. However, the Commission does regulate the provision of natural gas. The invocation of an irrelevant analogy should not preclude the Commission’s exercise of authority over areas at the core of its mission, including a safe and reliable electrical grid.

**2. *Because CNG and Electricity are Fundamentally Different, Decision 91-07-018 is Not Factually Analogous and Should Not Control in this Case***

Even if the Commission were to determine that Decision 91-07-018 was both legally sound, and sufficient to exempt CNG fueling stations absent a clear legislative exemption, the Decision is factually distinguishable from the instant matter and should not preclude the Commission from exercising its statutory grant of authority over PEV charging companies. Fundamental, physical differences exist between the electrical distribution system and the natural gas distribution system.

First and foremost, electricity consumption and production must be matched on the timescale of a fraction of a second. CNG production must also parallel consumption, but the operative timescale is vastly different. CNG can be stored for months in order to accommodate disparity between supply and demand, whereas power consumption from charging infrastructure has immediate implications on the upstream distribution system.

---

<sup>10</sup> D.91-07-018, p. 126.

In Decision 91-07-018, the Commission stated that its jurisdiction ended at the meter.<sup>11</sup> Once CNG is delivered to a fueling station and placed in a storage tank, it has effectively left the distribution network and is physically separated. However, this is not the case with PEV charging infrastructure, which remains physically connected to the grid and is not separable. The consequences of a mismatch between production and consumption in the two cases are vastly different. When electricity demand exceeds supply for even a second, the lights can go out. A single PEV fast-charging station could overload transformers, causing local system blackouts.<sup>12</sup> This poses a significant challenge, given that an additional 100,000 to 350,000 PEVs are likely to hit California's streets within the next five years.<sup>13</sup> There is no analogous system risk posed by CNG vehicles. The rate of CNG vehicle refueling has little immediate upstream impact in terms of overall system reliability. A CNG fueling station is therefore not analogous to a PEV fueling station.

It is not until the electricity has been transferred to the vehicle battery that it is more analogous to the CNG storage tank. However, even then, there is no expectation that CNG would ever be sent back upstream, as is the case with PEVs that offer vehicle-to-grid or bidirectional capability. Just as the Commission concluded that it should not exercise jurisdiction over CNG storage tanks, we do not suggest that the Commission should directly regulate car batteries. However, until the electricity leaves the grid, the Commission has an important role to play in ensuring that large-scale deployment of charging infrastructure equipment will have minimal impacts to the overall system. A decision concerning CNG

---

<sup>11</sup> *Id.* at 129.

<sup>12</sup> *See, e.g. Presentation: "Effects of Transportation Electrification on the Grid,"* Arindam Maitra, EPRI, Plug-In Conference, August 2009, slides. 22-26.

<sup>13</sup> Based on conservative estimates by Baum and Associates (2010) performed for NRDC on automaker production.

fueling stations should not preclude the Commission from exercising its statutory authority in order to ensure the integrity of the electricity grid.

### **III. POLICY CONSIDERATIONS AND RECOMMENDATIONS**

#### **A. Placement of, and Load Growth from, Charging Infrastructure Should be Planned and Coordinated to Avoid Dampening the Market and Acceptance of PEVs**

NRDC and FoE have each supported the widespread deployment of PEVs. The commercialization of PEVs – with the right set of policies on the electricity side – can significantly reduce oil dependency, cut global warming pollution, and improve air quality. We continue to strongly support policies to encourage deployment of PEVs paired with environmentally responsible electricity sources. We also support the CPUC’s efforts to reduce barriers and encourage market development for PEVs.

At the same time, the uncoordinated placement of charging infrastructure and unmanaged load growth could have negative impacts to the electricity grid. These risks have been enumerated in this proceeding by many stakeholders.<sup>14</sup> Additionally, the Commission has previously identified such risks. In Decision 95-11-035, regarding “Utility Involvement in the Market for Low-emission Vehicles,” the Commission established the following “Findings of Fact”:

8. Unbridled demand for electric current to recharge depleted vehicle batteries could strain the existing system, undermining reliability and hastening the need for new generating resources as well as upgraded substations, distribution lines, and transformers.

---

<sup>14</sup> These negative impacts include effects on distribution system reliability (and the potential for blackouts), increased use of inefficient peaker plants with decreased environmental performance, the building of new capacity to meet peak loads, and potential safety concerns with customers installing and/or modifying charging stations, charging incompatible battery systems, or overloading circuits.

9. The potentially rapid adoption of new electric technologies raises significant safety concerns.

19. Concerns about safety and system impacts dictate that the electric utilities be involved from the outset, to work closely with initial users and to understand how to fully mine the potential for load management and the appropriate use of pricing signals.<sup>15</sup>

It is part of the Commission's obligation to utility customers to ensure that charging points are deployed in a manner that preserves a safe, reliable, and efficient grid and allows for efficient load management.<sup>16</sup> Furthermore, it is imperative that the Commission minimize the risks enumerated above if it is to meet S.B. 626's directive to remove barriers to the successful deployment of PEVs while addressing the impact of plug-in hybrid and electric vehicles on grid stability and the integration of renewable energy resources. We are also concerned that, without CPUC oversight and coordination, a few widely publicized accidents or setbacks resulting from uncoordinated expansion could seriously undermine the nascent PEV market.

**B. The Commission Should Not Disavow Jurisdiction before Ensuring Cooperation Between PEV Charging Companies and Local Utilities**

Utilities must be involved from the outset and work closely with companies operating public charging stations in order to address safety and system impacts. This is not the first time the Commission has required such coordination. In Decision 03-10-086, the Commission invoked Code §451 in requiring cooperation between utilities and CNG stations: "Finding of Fact 11. It is in the ratepayers' interest to authorize the utilities to continue assuming the responsibility of training users at the CNG stations to ensure a safe and reliable natural gas pipeline system."<sup>17</sup> The Commission should likewise require cooperation between PEV

---

<sup>15</sup> *Re Utility Involvement in the Market for Low-emission Vehicles*, Decision 95-11-035, 1995 WL 768974 (Cal.P.U.C.) p. 54.

<sup>16</sup> *See Decision Approving Funding For Low Emission Vehicles*, Decision 03-10-086 October 30, 2003, p. 2.

<sup>17</sup> *Id.* at p. 38.

charging companies and utilities.

The PEV charging companies already recognize the necessity of such coordination. For example, in opening comments, Better Place stated:

The Commission's policies should recognize the value of third party service providers that actively manage the impact and value of EVs to the grid, and consider guidelines and policies that will help ensure that regulated utilities align with third parties to the extent needed to realize the benefits of EV adoption. While this will be partly addressed by tariff structures, additional guidelines may be needed to ensure a consistent platform of collaboration between utilities and third party service providers within and across service territories.<sup>18</sup>

We agree that such "collaboration" will be essential to the success of PEV technology and that both charging service companies and utilities will play a crucial role in this effort. Commission jurisdiction over both utilities and charging service providers can be used to help ensure they are using consistent platforms and collaborating on managing the load. However, we do not believe the Commission should disclaim jurisdiction before ensuring that such collaboration actually occurs. Policies and guidelines cannot be enforced over entities that lay outside of the Commission's jurisdiction. Jurisdiction over utilities alone is not enough to overcome the barriers to PEVs or to ensure collaboration and inter-operability, reliability, and safety.

Looking ahead over the next several years to decade, charging service providers and grid management companies will likely develop business models that provide (1) ancillary services that support the grid, (2) energy storage services that reduce the costs of integrating distributed and utility scale renewable onto the system, and (3) charge-management and vehicle aggregation services. For example, Gridpoint, Austin Energy, A123 Systems, and the Electric Reliability Council of Texas, Inc. have already conducted studies evaluating these types of

---

<sup>18</sup> *Opening Comments of Better Place*, Rulemaking 09-08-009, p. 12.

services.<sup>19</sup> Other charging service providers have also expressed interest in pursuing these opportunities. Absent CPUC jurisdiction, there would be no regulatory oversight over such companies' contribution to grid management and interaction with utilities, opening the door to unintended consequences or impacts. Long-term uncertainty and the lack of basic rules can both deter future innovation.

### **C. Commission Regulation of PEV Charging Stations Should Be Tailored to Potential Business Models**

The PEV market is rapidly developing. It is not fully understood what types of charging infrastructure and charging service models will emerge. Preemptively relinquishing jurisdiction over enterprises that could potentially undermine many of the Commission's core goals is unwise. The CPUC should find that it has jurisdiction over these entities, but should tailor its regulation to different categories of business models so as to not dampen market growth with excessive regulation. With this in mind, we do not recommend that the Commission regulate price. In the following subsections, we address two potential business models over which the Commission is clearly granted jurisdiction by the Code.

#### ***1. "Utility Model" PEV charging companies that procure electricity directly act as utilities and should not be exempt from state mandates governing the procurement of electricity***

Public charging stations are electricity distribution equipment. Companies that own such distribution equipment and procure electricity directly from third party generators or marketers are fulfilling the procurement role usually conducted by a utility. We call this the "Utility Model." Exempting from CPUC jurisdiction charging service providers that directly

---

<sup>19</sup> *Testing of Charge-Management Solutions for Vehicle Interaction with Austin Energy Electric Grid*, February 20, 2009.  
[http://gridpoint.com/Files/Austin%20Energy%20PHEV%20Trial%20%20Final%20Report%20\(Feb%2009\).pdf](http://gridpoint.com/Files/Austin%20Energy%20PHEV%20Trial%20%20Final%20Report%20(Feb%2009).pdf)



procure and source electricity could undermine many goals at the core of the Commission's mission, including providing customers with safe, reliable and environmentally responsible energy services.

Exemption of the "Utility Model" from regulation fails to consider the lessons learned during California's painful re-structuring period, in which Energy Service Providers went bankrupt and utilities, as providers of last resort, were burdened with increased costs that were borne by all utility customers and which contributed to the state's financial crisis.<sup>20</sup>

Additionally, exempting "Utility Model" companies from Commission jurisdiction could create a regulatory loophole that could be used to circumvent core state policies such as the RPS, the system benefits charge, greenhouse gas emission performance standards for long-term procurement, as well as resource adequacy needs and long-term resource planning. While we support efforts by charging service providers to expand the PEV customer base and to help minimize environmental and grid impacts, we believe the Commission should consider the ramifications of creating a regulatory void with respect to "Utility Model" activities.

## ***2. The Commission should establish its jurisdiction over "Utility Model" companies***

The Commission should clearly establish the legal precedent that "Utility Model" companies act in the role traditionally occupied by regulated utilities and will not be exempted from core state policies regulating the procurement of electricity. At this point, we do not make a recommendation as to the full extent of regulation we believe would be appropriate over "Utility Model" PEV charging companies. Nonetheless, the Commission should conclude that, at minimum, environmental performance requirements, the system benefits charge, and RPS

---

<sup>20</sup> See "Returning to Retail Competition for Electricity in California: 'In The Public Interest?'" Jacek Pruski, Natural Resources Defense Council, 2007.

mandates would apply. Given the potential burden of meeting regulations governing electricity procurement, PEV charging companies wishing to offer their customers electricity that is “greener” than that of the local utility might consider simply purchasing Renewable Energy Credits or carbon offsets.

**3. *“Utility Customer Model” PEV charging companies that purchase electricity from the local utility and resell it should be subject to less extensive regulation***

As demonstrated above, public PEV charging companies are subject to Commission jurisdiction. “Utility Customer Model” companies are no exception. They own, control, operate, or manage charging equipment (Code § 217) that facilitates the furnishing of electricity for power to the public (Code § 218), for which compensation or payment is received (Code § 216). Nonetheless, “Utility Customer Model” companies do not pose the same risk to the CPUC’s ability to fulfill its responsibilities as would unregulated “Utility Model” companies, because the utilities from which they purchase their electricity are subject to the state’s and CPUC’s procurement-related mandates. However, as discussed above, unplanned deployment of PEV charging infrastructure, including that portion of it operating under the “Utility Customer Model,” could pose a significant risk to grid stability, raise safety concerns, and result in increased peak demand, pollution, and the need for additional generation capacity. Some minimal regulation is clearly warranted.

**4. *The Commission should establish a basic set of requirements governing the “Utility Customer Model” in order to assure the success of the PEV market***

While multi-national auto manufacturers are now targeting California to launch PEVs, success is far from guaranteed. We support the legislative directive embodied in S.B. 626 to remove barriers to the widespread deployment of PEVs and recognize that regulatory uncertainty can dampen market growth. While the Commission should not disclaim jurisdiction

before the concerns raised above are fully addressed, we do not believe that “Utility Customer Model” PEV charging should be regulated to the full extent permitted under the Code. Again, we do not recommend that the Commission regulate price. Instead, the Commission should establish a limited set of rules and procedures governing the interaction of “Utility Customer Model” companies and the utilities from which they purchase electricity.

The Commission should require “Utility Customer Model” companies and local utilities to communicate to ensure utilities are aware of the presence and location of all charging infrastructure, the size and time of the load. The CPUC should consider requiring that charging service providers put in place mandatory load management policies, and should allow utilities supplying PEV charging companies with electricity to do so with time of use rates. At a minimum, however, “Utility Customer Model” companies should be required to cooperate with utilities in order to minimize grid impacts, and mitigate the concerns raised above. Similarly, utilities should be required to work with “Utility Customer Model” companies and provide them with the information necessary to allow intelligent load management and other innovative services in a manner that supports grid reliability and minimizes negative impacts.

***5. The Commission has successfully established similar requirements for other entities***

In many ways, PEV charging service providers pose a matter of first impression, as this market has yet to be significantly developed. As established above, they are not analogous to CNG fueling stations. However, the Commission has a record of establishing regulations over other novel entities. The CPUC requires Energy Service Providers to register with the Commission (Code § 394(a)), and acts to ensure that there is some level of consumer protection, requiring such companies to “provide the potential customer with a written notice describing the price, terms, and conditions of the service” (Code § 394(b)). Similarly,

Decision 97-12-048 established certification procedures for Meter Service Providers to ensure that only qualified persons install, remove, repair or maintain direct access meters.<sup>21</sup> Likewise the Commission requires “every cable television corporation to construct, maintain, and operate its plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public” (Code § 768.5). In all these instances, the Commission has exercised its jurisdiction without overly burdening companies with full regulation as public utilities. Regulatory flexibility is not unprecedented, and is again called for in order to assure the promise of PEV deployment is realized and its potential pitfalls avoided.

#### **IV. CONCLUSION**

NRDC and FoE fully support the aim of S.B. 626, and the Commission’s efforts to ensure the widespread deployment of PEVs. The electrification of the transportation system could yield tremendous societal and environmental benefits. We believe the parties commenting on this proceeding share a common goal of ensuring that this process is successful. As set forth above, the plain language of the Code controls, and confers Commission jurisdiction over providers of PEV charging services. In order to ensure that the common goal of the parties is realized, the CPUC should not prematurely disavow the jurisdiction granted to it by law. Instead, the Commission should make it clear that “Utility Model” companies will be required to meet core state mandates governing the procurement of electricity, and should establish a minimal set of regulations requiring cooperation between local utilities and “Utility Customer Model” companies in order to assure the successful deployment of electric vehicle

---

<sup>21</sup> *Re Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*, Decision 97-12-048, 1997 WL 809073 (Cal.P.U.C.) p. 14.

charging infrastructure.

Dated: February 8, 2010

Respectfully submitted,

A handwritten signature in blue ink that reads "Jody S. London". The signature is written in a cursive, flowing style.

By: Jody S. London

Jody London Consulting  
P.O. Box 3629  
Oakland, California 94609  
Telephone: (510) 459-0667  
E-mail: [jody\\_london\\_consulting@earthlink.net](mailto:jody_london_consulting@earthlink.net)

For NATURAL RESOURCES DEFENSE  
COUNCIL AND FRIENDS OF THE EARTH

## CERTIFICATE OF SERVICE

---

I, Jody London, certify that I have, on this date, served a copy of “Brief Of The Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues” on all known parties to R.09-08-009 by transmitting an e-mail message with the document attached to each party named in the official service list, and by serving a hard copy on the Administrative Law Judge.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Dated February 8, 2010 in Oakland, California.



---

Jody London

**Proceeding: R0908009 - CPUC - OIR TO CONSID**

**Filer: CPUC**

**List Name: LIST**

**Last changed: February 3, 2010**

fdms@electradrive.net  
pierojd@udel.edu  
angie\_doan@plugsmart.net  
kevin.webber@tema.toyota.com  
mark.aubry@sev-us.com  
cread@ecotality.com  
spatrick@sempra.com  
npedersen@hanmor.com  
david.patterson@na.mitsubishi-  
motors.com  
helsel@avinc.com  
Janet.Combs@sce.com  
Bob@EV-ChargeAmerica.com  
liddell@energyattorney.com  
kwalsh@fiskerautomotive.com  
ek@a-klaw.com  
rpopple@teslamotors.com  
lms@cpuc.ca.gov  
Yulee@theICCT.org  
nsuetake@turn.org  
SSchedler@foe.org  
jay@pluginamerica.org  
ssmyers@att.net  
cjlw5@pge.com  
Ann.Bordetsky@betterplace.com  
Jason.Wolf@betterplace.com  
epetrill@epri.com  
jody\_london\_consulting@earthlink.net  
jharris@volkerlaw.com  
svolker@volkerlaw.com  
jwiedman@keyesandfox.com  
gmorris@emf.net  
richard.lowenthal@coulombtech.com  
pskinner@svlg.net  
shears@ceert.org  
toconnor@edf.org  
wwester@smud.org  
aconway@dmv.ca.gov  
Bob@EV-ChargeAmerica.com  
kleacock@dmcgreen.com  
krose@dmv.ca.gov  
mschreim@core.com  
roberto.bocca@weforum.org  
hugh.mcdermott@betterplace.com  
than.aung@ladwp.com  
GO'neill@energy.state.ca.us  
colleenquin@gmail.com  
AYergin@gridpoint.com  
martin.liptrot@ge.com  
jung.zoltan@epa.gov  
jviera@ford.com  
hillary.dayton@fluor.com  
Douglas.Marx@PacifiCorp.com  
kmorrow@etecevs.com  
Adrene.Briones@ladwp.com  
Leila.Barker@ladwp.com  
Marcelo.DiPaolo@ladwp.com  
Oscar.Alvarez@ladwp.com  
Priscila.Castillo@ladwp.com  
Scott.Briasco@ladwp.com  
david.eaglefan@gmail.com  
leilani.johnson@ladwp.com  
jellman@winnr.com  
tatsuaki.yokoyama@tema.toyota.com  
dsiry@codaautomotive.com  
bock@avinc.com  
dickinson@avin.com  
klynch@cityofpasadena.net  
cjuennen@ci.glendale.us  
dave.barthmuss@gm.com  
ffletcher@ci.burbank.ca.us  
flangit@ci.azusa.ca.us  
andrea.moreno@sce.com  
base.admin@sce.com  
Case.Admin@sce.com  
mpswweeney@earthlink.net  
ygross@sempra.com  
julian.durand@qualcomm.com  
vsmith@qualcomm.com  
dniehaus@semprautilities.com  
mike.ferry@energycenter.org  
sephra.ninow@energycenter.org  
siobhan.foley@energycneter.org  
sbadgett@riversideca.gov  
jlehman@anaheim.net  
coutwater@libertyplugins.com  
trae@kpcb.com  
lburrows@vpvp.com  
diarmuid@teslamotors.com  
mdjoseph@adamsbroadwell.com  
edwin.lee@sfgov.com  
johanna.partin@sfgov.com  
dfugere@foe.org  
eric@ethree.com  
jheibult@nrdc.org  
smui@nrdc.org  
BWT4@pge.com  
ELL5@pge.com  
filings@a-klaw.com  
tjl@a-klaw.com  
bcragg@gmssr.com  
cassandra.sweet@dowjones.com  
jguzman@nossaman.com  
mgo@goodinmacbride.com  
mmattes@nossaman.com  
bobgex@dwt.com  
cem@newsdata.com  
axtw@pge.com  
regrelcpuccases@pge.com  
1hg@pge.com  
SAZ1@pge.com  
sfr2@pge.com  
aaron.singer@bmw.com  
saluja@capricornllc.com  
a.vogel@sap.com  
Sven.Thesen@betterplace.com  
xingxin.liu@sap.com  
Sean.Beatty@mirant.com  
dietrichlaw2@earthlink.net  
Karin.Corfee@kema.com  
michael.schmitz@iclei.org  
mrw@mrwassoc.com  
kfox@keyesandfox.com  
jhall@calstart.org  
philm@scdenergy.com  
slsarris@greenfuseenergy.com  
dgrandy@caonsitegen.com  
jamie@jknappcommunications.com  
jme@pge.com  
bdicapo@caiso.com  
e-recipient@caiso.com  
cchilder@arb.ca.gov  
ekeddie@arb.ca.gov  
marcreheis@wspa.org  
dmodisette@cmua.org  
EGrizard@deweysquare.com

gina@wspa.org  
jluckhardt@downeybrand.com  
Julee@ppallc.com  
Ralph.Moran@bp.com  
lmh@eslawfirm.com  
abb@eslawfirm.com  
ttutt@smud.org  
atrowbridge@daycartermurphy.com  
sas@a-klaw.com  
kyle.l.davis@pacificorp.com  
californiadockets@pacificorp.com  
michelle.mishoe@pacificorp.com  
carmine.marcello@hydroone.com  
ahl@cpuc.ca.gov  
agc@cpuc.ca.gov  
clu@cpuc.ca.gov  
crv@cpuc.ca.gov  
eks@cpuc.ca.gov  
fxg@cpuc.ca.gov  
fcc@cpuc.ca.gov  
gtd@cpuc.ca.gov  
jw2@cpuc.ca.gov  
lau@cpuc.ca.gov  
mc4@cpuc.ca.gov  
mwt@cpuc.ca.gov  
mc3@cpuc.ca.gov  
ska@cpuc.ca.gov  
pva@cpuc.ca.gov  
rmd@cpuc.ca.gov  
smk@cpuc.ca.gov  
scr@cpuc.ca.gov