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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Keith Kurber II
Antony G. Scott
Daniel A. Sullivan
Janis W. Wilson

In the Matter of the Petition for Approval of the Joint)
Proposal by CHUGACH ELECTRIC)
ASSOCIATION, INC.; GOLDEN VALLEY)
ELECTRIC ASSOCIATION, INC.; HOMER)
ELECTRIC ASSOCIATION, INC.; AND)
MATANUSKA ELECTRIC ASSOCIATION, INC.)

U-21-022

ORDER NO. 2

**ORDER GRANTING, IN PART, PETITION FOR APPROVAL OF TWO-PART
RATE FOR ELECTRIC VEHICLE CHARGING STATIONS; CLARIFYING
REGULATORY STATUS OF ELECTRIC VEHICLE CHARGING STATIONS;
AND ADDRESSING TARIFF REVISIONS IMPLEMENTING TWO-PART
RATE AND ADDRESSING RESALE RESTRICTIONS**

BY THE COMMISSION:

Summary

We grant, in part, the petition for approval of a proposed two-part rate methodology for electric vehicle (EV) charging stations and clarify that EV charging stations are not public utilities or subject to restrictions on the resale of electric service. We allow the filing of tariff revisions (1) implementing a two-part rate for EV DC Fast Charging (DCFC) stations, and (2) clarifying that EV charging stations are not subject to resale restrictions. We establish a deadline for the submission of those tariff revisions.

1 Background

2 On June 9, 2021, we received a petition from the four economically regulated
3 Railbelt electric utilities¹ requesting that we issue a declaratory order adopting a Joint
4 Proposal to (1) declare that privately owned EV charging stations are not public utilities
5 under AS 42.05.990 if the charging station receives electric service from the electric utility
6 in whose service area the charging station is located; (2) require all jurisdictional² electric
7 utilities to revise their tariffs as necessary to exempt private EV charging stations from
8 prohibitions against reselling electricity; and (3) require electric utilities desiring DCFC
9 rates to revise their tariffs to adopt a proposed two-part rate design methodology
10 submitted as an appendix to the Petition.³ We initially issued an order in Docket R-20-005
11

12 ¹Chugach Electric Association, Inc. (Chugach); Golden Valley Electric Association,
13 Inc. (GVEA); Homer Electric Association, Inc. (HEA); and Matanuska Electric Association,
14 Inc. (MEA) (collectively petitioning utilities).

15 ²The petitioning utilities are all economically regulated electric providers serving
16 locations along the Railbelt. The remaining electric utility serving the Railbelt – the City
17 of Seward – is a political subdivision of the State of Alaska exempt from economic
18 regulation under AS 42.05.711(b) and is not subject to the tariffing requirements and rate
19 restrictions applicable to the economically regulated Railbelt electric utilities.

20 ³*Petition for Approval of Joint Proposal*, filed June 9, 2021 (Petition). The Petition
21 was accompanied by Exhibit A (a Joint Proposal and comments from Chugach, GVEA,
22 HEA, and MEA (Joint Proposal)), and Exhibit B (comments of Chugach previously
23 submitted in Docket R-20-005 (Chugach Comments)). The Chugach Comments also
24 included three similarly designated exhibits – (1) Exhibit A, *Impact of Load Factor on*
25 *Average Cost per Kilowatt Hour*; (2) Exhibit B, *Required Standards of Customer’s Wiring,*
26 *Piping, Apparatus, and Equipment*; and (3) Exhibit C, *EV Charging Station Regulatory*
Exemptions in the U.S.

The Joint Proposal was initially submitted in Docket R-20-005. See *Joint Proposal and Comments of Chugach Electric Association, Inc., Golden Valley Electric Association, Inc., Homer Electric Association, Inc., and Matanuska Electric Association, Inc. re: the Amendment of Regulations Addressing Rate Design and Other Barriers to the Installation of Electric Vehicle Charging Infrastructure*, filed May 19, 2021. We discussed the Joint Proposal at our public meeting held May 26, 2021, voting to issue a notice to solicit comments on the Petition and requesting the Petition be filed into an adjudicatory docket to initiate an approval process. See May 26, 2021, public meeting transcript at 20-27.

1 requesting that comments on the Joint Proposal be filed by June 18, 2021.⁴ After
2 receiving the petitioning utilities' Petition and opening Docket U-21-022, we issued
3 another public notice inviting comments on the Petition by June 29, 2021.⁵ We received
4 comments from the Alaska Center for Energy and Power (ACEP);⁶ Alaska Electric Vehicle
5 Association (AKEVA);⁷ Alaska Power & Telephone Company (AP&T);⁸ Ken Castner;⁹
6 ChargePoint, Inc. (ChargePoint) and Tesla, Inc. (Tesla);¹⁰ Daniel Harbison, Lance
7 Hardesty, Matt Kawood;¹¹ Kirk Martakis;¹² Solid Waste Services (SWS);¹³ ReCharge
8 Alaska;¹⁴ and the Office of the Attorney General, Regulatory Affairs and Public Advocacy

9
10 ⁴Order R-20-005(2), *Order Seeking Public Comment*, dated May 27, 2021.

11 ⁵*Notice of Petition for Approval of Joint Proposal*, issued June 15, 2021.

12 ⁶ACEP, an applied energy research program based at the University of Alaska
Fairbanks, filed comments in Docket R-20-005 on June 18, 2021 (ACEP Comments).

13 ⁷AKEVA, an organization dedicated to accelerating EV adoption and the
improvement of EV infrastructure, filed comments in Docket R-20-005 on June 18, 2021
14 (AKEVA Comments).

15 ⁸AP&T, a regulated electric utility providing service in Southeast Alaska and the
Interior, filed comments on June 28, 2021 (AP&T Comments).

16 ⁹Mr. Castner, a private EV owner, filed identical comments on June 10 and 23,
17 2021 (Castner Comments).

18 ¹⁰ChargePoint and Tesla filed joint comments on June 29, 2021
(ChargePoint/Tesla Comments). ChargePoint sells EV charging facilities, while Tesla is
19 a leading EV manufacturer that also owns and operates an extensive network of DCFC
infrastructure.

20 ¹¹Mr. Harbison, Mr. Kawood, and Mr. Hardesty submitted comments using our web
portal's comment function for Docket R-20-005 on June 7 (Harbison Comments), 14, and
21 18 (Hardesty Comments), 2021, respectively.

22 ¹²Mr. Martakis, a private EV owner who also owns an EV charging station in
Cantwell, Alaska, filed comments on June 16, 2021 (Martakis Comments).

23 ¹³SWS, which provides public refuse service on behalf of the Municipality of
24 Anchorage, filed comments on June 18, 2021 (SWS Comments).

25 ¹⁴ReCharge Alaska, a group led by Kris Hall that advocates for the deployment of
DCFC infrastructure, filed comments on June 30 and August 16, 2021 (ReCharge Alaska
26 Comments).

1 (RAPA).¹⁵ The petitioning utilities also filed a response to comments filed on the
2 Petition.¹⁶

3 Discussion

4 We currently have an open rulemaking proceeding to address rate design
5 and other regulatory barriers to the installation of EV charging infrastructure, examining
6 options to address such barriers.¹⁷ The rulemaking proceeding was opened in response
7 to a petition for rulemaking filed by AKEVA proposing a regulation that would require
8 electric utilities to provide a two-part rate for EV DCFC stations.¹⁸ We opted to open a
9 rulemaking proceeding to investigate regulatory barriers impeding the installation of EV
10 fast charging infrastructure, in effect denying the AKEVA petition for rulemaking by
11

12 ¹⁵RAPA filed comments on June 29, 2021 (RAPA Comments).

13 ¹⁶*Joint Reply Comments of Chugach Electric Association, Inc., Golden Valley*
14 *Electric Association, Inc., Homer Electric Association, Inc., and Matanuska Electric*
15 *Association, Inc. re: Comments to Joint Utility Proposal*, filed June 29, 2021 (Reply
Comments).

16 ¹⁷For a discussion of issues under consideration in the rulemaking proceeding, see
17 Order R-20-004(1)/R-20-005(1), *Order Denying Petition for Rulemaking, Opening*
Separate Rulemaking Proceeding, Scheduling Technical Conference, and Closing
18 *Docket*, dated December 4, 2020 (Order R-20-005(1)).

19 ¹⁸There are three levels of EV charging, distinguished by the voltage drawn and
20 the corresponding time it takes to fully charge an EV. Level 1 involves charging an EV
21 using an ordinary 120 volt household outlet, with the charge taking 18-22 hours due to
22 the low voltage draw. Level 2 takes significantly less time to charge an EV as it supplies
23 electricity at 240 volts (approximately 25 miles per hour of charging, although time and
24 range vary by charger and vehicle). Level 3 – also referred to as DCFC - is the fastest
25 EV charging method currently available, with systems typically found in public spaces due
26 to relatively high installation costs and significantly higher voltage draw. Fast charging
capabilities range from 50 kilowatts (kW) to 350 kW or more, with EV charging times
dependent upon the charging capabilities of the charging unit and vehicle.

Level 1 and Level 2 charging are the typical means of charging a vehicle at home,
with Level 2 chargers also used in public locations where an EV driver spends the longer
time necessary to charge an EV utilizing Level 2 charging. Level 3 (DCFC) is preferable
for public charging stations due to the short time period necessary to recharge a vehicle.

1 opening our own investigation.¹⁹ We commenced our investigation by convening a
2 technical conference on December 22, 2020, to discuss regulatory barriers to EV
3 deployment, including considerations related to DCFC stations.

4 The impetus for pursuing the rulemaking proceeding is the difficulty in
5 deploying DCFC stations in Alaska. Two main regulatory impediments identified at our
6 technical conference were (1) high costs incurred by DCFC stations under existing rate
7 structures, and (2) the inability of private EV charging station owners to impose fees for
8 service due to resale restrictions related to electric service.²⁰ Current electric rate
9 structures impede the deployment of DCFC stations by imposing a demand charge based
10 on the peak amount of electricity drawn during any 15-minute period over a billing
11 period.²¹ The fast charging capabilities of DCFC infrastructure exceeds the 20 kWh per
12 month limit stated in 3 AAC 48.550(c)(1), triggering a three-part rate that includes a
13 separate demand charge. Resale restrictions for private EV charging station owners are
14 due to utility tariff provisions that often generally prohibit the resale of electric service the
15 utility furnishes, which has been interpreted to preclude private EV charging station
16 owners from assessing fees for EV charging services.²²

17 ¹⁹Order R-20-005(1) at 2-3.

18 ²⁰See *generally* Docket R-20-005, December 22, 2020, technical conference
19 transcripts.

20 ²¹Our regulations governing public electric service rates allow electric utilities to
21 recover a demand charge through rates, with the means of recovery dependent on the
22 customer's energy consumption. For customers consuming over 7,500 kilowatt hours
23 (kWh) per month or with a maximum demand of over 20 kWh per month for three
24 consecutive months (e.g., large commercial customers), electric utilities may implement
a three-part rate – a customer charge, a demand charge, and an energy charge.
3 AAC 48.550(c)(1). For other customers (e.g., residential and small commercial
customers), demand costs are recoverable by electric utilities through the energy charge.
3 AAC 48.550(c)(2).

25 ²²For the resale restrictions of the petitioning utilities, see Chugach Tariff Sheet
26 No. 41, Section 7.1; GVEA Tariff Sheet No. 16.1, Section 6.10; HEA Tariff Sheet No. 35,
Section 5.6; MEA Tariff Sheet No. 79, Section 12.01.

1 EV advocates in the rulemaking proceeding raised specific concerns with
2 the lack of EV charging station infrastructure (particularly DCFC stations) on the Alaska
3 road system connecting Southcentral and Interior Alaska. While AKEVA's proposed
4 regulations would have had statewide application, AKEVA previously proposed a pilot EV
5 charging rate focused on the highway system connecting locations in Southcentral Alaska
6 to the Interior, where the lack of EV charging facilities create challenges for EV drivers.²³

7 To assist in the resolution of these issues, the petitioning utilities (serving
8 Southcentral and Interior regions) submitted their Joint Proposal and related requests for
9 declaratory rulings. The petitioning utilities requested our approval of a two-part rate
10 methodology for DCFC infrastructure. The petitioning utilities also requested we clarify
11 that compensation received by non-utility EV charging station owners are not sales for
12 resale as anticipated in the tariffs of economically regulated utilities, and EV charging
13 stations are not public utilities if the charging station receives electric service from the
14 electric utility in whose service area the charging station is located. We address these
15 requests below.

16 The Proposed EV Rate Methodology

17 As noted earlier, one impediment to deploying DCFC infrastructure in
18 Alaska is existing utility rate structures that impose a separate demand charge when the
19 customer's consumption exceeds certain levels established by regulation.²⁴ The fast
20 charging capabilities of DCFC infrastructure trigger this demand charge, resulting in
21 significant increases to electric rates when charging an EV using DCFC infrastructure.

25 ²³See AKEVA's letter dated February 21, 2020, regarding *Electric Vehicle Fast
Charger Pilot Rate Discussion*, presented at our February 26, 2020, public meeting.

26 ²⁴See *supra*, footnote 21.

1 The Joint Proposal questioned whether this rate impact is appropriate²⁵ and proposed a
2 DCFC rate formula that melds the demand charge into the energy rate. The petitioning
3 utilities requested we require utilities seeking to implement a DCFC inception rate to
4 revise their tariffs to adopt the following rate methodology:

$$\text{[Demand Charge}/(\text{Assumed Load Factor} \times 730)] + \text{Energy Charge}$$

5
6 Each utility would use the current demand and energy charges approved in its last general
7 rate case and propose and support an assumed load factor as part of its tariff filing
8 proposing a DCFC inception rate for our approval. The filing utility would set a maximum
9 load factor with its DCFC inception rate. Once the DCFC station exceeds the maximum
10 load factor, it would be reclassified to the large general service rate class and would be
11 assessed both energy and demand charges, resulting in a lower average rate than the
12 DCFC inception rate.²⁶

13 The petitioning utilities requested that we approve the DCFC rate
14 methodology under the following conditions:

- 15 • *Inception basis:* The DCFC rate would be implemented on an inception rate for
16 up to a 10-year period or until the utility receives our approval of an alternative
17 rate design for DCFC.²⁷ As an inception rate, the proposal would be supported
18 by the information required under 3 AAC 48.275(b)(3) and the filing utility's

19 ²⁵The petitioning utilities stated the applicable current large general service three-
20 part rate design used by the utilities incorporates demand charges to incentivize
21 customers to manage their maximum demand, and customers that control or manage
22 their maximum demand (in relation to their energy usage) incur a higher load factor that
23 results in a lower overall average rate per kWh. EV charging stations cannot directly
24 control their load factor, with intermittent usage for a short duration resulting in a low load
25 factor and potentially high total cost on a per kWh basis under the existing three-part rate
26 design. Joint Proposal at 3-5.

²⁶Petition, Joint Proposal at 4-5.

²⁷The inception rate would sunset at the end of 10 years, and any utility that has
not established a different DCFC rate structure by that time would reclassify DCFC
customers to the large general service or equivalent rate structure.

1 existing rate structure would be preserved.²⁸ The inception rate would be
2 subject to routine adjustments as part of the Simplified Rate Filing (SRF)
3 process²⁹ or adjusted in a general rate case proceeding.

- 4 • *Voluntary basis*: The customer has the option of taking service under the DCFC
5 rate or the utility’s applicable commercial rate that specifies a separate demand
6 charge.
- 7 • *Incremental load*: The DCFC rate is only applicable to the incremental loads
8 specific to the EV charging station, which would include ancillary loads such as
9 security lighting at the station.
- 10 • *Separately metered*: The charging equipment (EV chargers and associated
11 ancillary station service load) must be separately metered.
- 12 • *Cost basis*: No additional costs may be imposed on the utility, with the customer
13 responsible for the cost of distribution charges (less applicable line extension
14 credits and other allowances provided for in the utility’s tariff).
- 15 • *Other rate elements*: All other large general service and secondary rate
16 components remain the same, including customer charges and cost of power
17 adjustment factors.

18 The petitioning utilities stated the inception DCFC rate approach would provide time to
19 acquire DCFC usage data to support different DCFC rates structures in the future.³⁰
20

21 ²⁸3 AAC 48.275(b)(3) requires the filing utility to submit cost justification for certain
22 rates, including inception rates for a new service. This allows the utility to avoid filing the
23 more exhaustive revenue requirement, cost-of-service study, and rate design supported
24 by the information required under 3 AAC 48.275(a).

25 ²⁹Our regulations allow an electric cooperative to adjust rates up to a certain
26 threshold between general rates cases (as frequently as quarterly) under an SRF
process. See 3 AAC 48.700 – 3 AAC 48.790.

³⁰ Joint Proposal at 5-6.

1 Commenters were generally supportive of the petitioning utilities proposed
2 rate methodology, with some arguing for quick approval of the Joint Proposal.³¹ One
3 shared concern of many commenters was the uncertain impact on rates of the load
4 factor,³² which under the Joint Proposal will be proposed and supported by individual
5 electric utilities when filing a tariff revision seeking to implement a DCFC rate. One
6 commenter requested additional information and the requirement that the load factor be
7 specified in each utility's tariff,³³ while another requested that we maintain oversight of
8 load factor calculations and require the submission of calculations and supporting
9 documentation with each load factor modification.³⁴ Some commenters argued for setting
10 the load factor at a level that would result in rates comparable to other existing rates³⁵ or
11 tied to rates for renewable energy in the Railbelt region.³⁶

12 RAPA's comments highlighted potential impact on rates by varying the load
13 factor by utility, and the uncertainty this creates regarding DCFC rates under the Joint
14 Proposal. RAPA stated that under the proposed two-part rate formula, a one-time fill-up
15 of an EV for 50 kW in one hour (without a markup by the station owner) could range from
16 \$17.01 to \$146.67, depending on the load factor used and the demand charge imposed

18 ³¹Castner Comments at 2; Harbison Comments; Martakis Comments at 1.

19 ³²Load factor measures the relationship between the maximum load or demand on
20 the system as compared to the average energy taken in a given time. See Joint Proposal
21 at 3, note 2.

22 ³³ReCharge Alaska Comments at 2.

23 ³⁴SWS Comments at 2.

24 ³⁵AKEVA suggested the load factor be set at a level that would result in rates equal
25 to the utility's approved residential rate (AKEVA Comments at 2), while ChargePoint and
26 Tesla argued for establishing a load factor that would result in rates similar to commercial
class average for each utility (ChargePoint/Tesla Comments at 4-5). Mr. Castner also
expressed a desire to see EV charging rates close to the utility's tariffed residential rate.
Castner Comments at 2.

³⁶Hardesty Comments.

1 by the utility. RAPA did not believe that the record in this proceeding demonstrates the
2 two-part DCFC rate methodology results in just and reasonable terms.³⁷

3 We decline to modify the proposed DCFC rate methodology by requiring a
4 set load factor rate, or to require further evidence of the reasonableness of the resulting
5 DCFC rate. While we agree with the contention that DCFC rates will be largely driven by
6 the load factor, that factor will be proposed by the utility when submitting a DCFC
7 inception rate for our approval. The tariff review process allows us to require supporting
8 documentation (including information to support the proposed load factor), and to assess
9 the reasonableness of the proposed DCFC rate after considering all relevant facts. The
10 load factor will be specified in the tariff revision proposing the DCFC inception rate and
11 included in the calculation establishing the DCFC inception rate.

12 We approve the proposed DCFC rate methodology on an inception basis
13 for a ten-year period,³⁸ but do not approve the remaining conditions outlined above and
14 stated at pages 5-6 of the Joint Proposal. We will address the other stated conditions at
15 the time an individual utility submits its tariff revision proposing a DCFC inception rate.
16 Interested parties will be able to raise concerns with the proposed DCFC inception rate
17 during the comment period for the tariff revision.

18
19 ³⁷RAPA Comments at 16–18. The petitioning utilities stated that current electric
20 utility demand charges on the Railbelt vary from \$7.70 per kW to 44.53 per kW, and typical
21 EV charging station load factors on the Railbelt range from one to five percent. See Joint
22 Proposal at 5 and 3, note 2. RAPA calculated the rates using the load factor ranges and
demand charges stated in the Joint Proposal. For the highest cost, RAPA used a demand
charge of \$44.53 per kW and a load factor of 3%.

23 ³⁸Our regulations would allow us to approve the above two-part rate methodology
24 for DCFCs. As the petitioning utilities noted, 3 AAC 48.540(d) provides that utilities shall
25 use demand and energy usage characteristics as the method for establishing rate
26 classes. However, we may consider alternative classifications provided appropriate
justification on load research and consumer bill impact analysis is presented. We expect
any tariff proposal to implement a DCFC inception rate will be supported by load research
and consumer bill impact analysis.

1 We also note RAPA questioned the reasonableness of a 10-year inception
2 rate.³⁹ While we indicate above that we approve the DCFC inception rate for a 10-year
3 period, we will monitor the effect of EV charging stations on the utilities and progress in
4 the deployment of EV charging structure during the pendency of the 10 years. We plan
5 to discuss possible data reporting requirements related to the DCFC inception rate at an
6 upcoming public meeting,⁴⁰ and based on the data reported may opt to revisit the DCFC
7 inception rate before the expiration of the 10-year period. We view DCFC inception rates
8 as an interim measure to ensure more affordable charging rates that incentivize EV usage
9 and the deployment of EV fast charging infrastructure, allowing the utilities to gather the
10 usage information necessary to develop rate classes for EV charging infrastructure.

11 EV Charging Stations as Public Utilities/Subject to Resale Restrictions

12 Our decision on whether an EV charging station is a public utility under
13 statute hinges on the nature of the service provided. For the purposes of electric service,
14 a “public utility” is defined as an entity that “owns, operates, manages, or controls any
15 plant, pipeline, or system for (A) furnishing, by generation, transmission, or distribution,

17 ³⁹RAPA Comments at 19. RAPA also cites several reasons the petitioning utilities
18 have not met the standard for a declaratory judgment. RAPA Comments at 21-25.

19 ⁴⁰ACEP requested we require the annual release of certain information related to
20 the deployment of EV charging infrastructure and the associated electric consumption.
21 ACEP Comments at 1-2. The petitioning utilities opposed such data collection
22 requirements, arguing that the data reporting requirements related to the Volkswagen
23 Settlement funds should be sufficient for energy usage tracking purposes related to DCFC
24 stations. Reply Comments at 3.

25 Volkswagen settled a lawsuit brought by the United States Environmental
26 Protection Agency for circumventing emissions testing, settling for \$14.7 billion with \$2.9
billion distributed to all 50 states, the District of Columbia, Puerto Rico, and tribal groups.
States were allowed to use 15% of their allocation to fund EV charging station equipment
for public places, workplaces, or multi-unit dwellings through competitive grant
applications or rebate programs. The Alaska Energy Authority is administering the
allocation to the State of Alaska, including settlement funds dedicated to the deployment
of EV charging infrastructure.

1 electric service to the public for compensation.”⁴¹ An EV charging station that purchases
2 electric service from its local utility clearly does not provide generation or transmission
3 service to the public. We also do not believe the service an EV charging station provides
4 should be considered distribution service and question whether EV charging service is
5 provided to the public as contemplated in statute.⁴²

6 Applicable statutes do not define “distribution”, so we have limited statutory
7 guidance on what constitutes distribution facilities. A statute defining the joint use and
8 interconnection obligations of public utilities provide examples of distribution facilities, and
9 in the context of electric service refer to conduits, utilidor, poles, pole lines, pipes, and
10 mains.⁴³ This statute further provides that the public utility tariff should include rules
11 setting out the terms and conditions under which the public utility will construct, or permit
12 its customers or subscribers to construct, and install lines, cables, radio links, or pipes
13 from its existing facilities to the premises of applicants for service.⁴⁴

14 That statutory language is similar to definitions of distribution facilities at the
15 federal level. Federal regulation defines distribution facilities as all electrical lines and
16 related facilities beginning at the consumer's meter base, and continuing back to and
17

18 ⁴¹AS 42.05.990(6)(A).

19 ⁴²AS 42.05.990(5) defines "public" or "general public" as:

20 (A) a group of 10 or more customers that purchase the service or
commodity furnished by a public utility;

21 (B) one or more customers that purchase electrical service for use
within an area that is certificated to and presently or formerly served by an electric
22 utility if the total annual compensation that the electrical utility receives for sales
of electricity exceeds \$50,000; and

23 (C) a utility purchasing the product or service or paying for the transmission
of electric energy, natural or manufactured gas, or petroleum products that are re-sold to
24 a person or group included in (A) or (B) of this paragraph or that are used to produce the
service or commodity sold to the public by the utility.

25 ⁴³AS 42.05.311(a).

26 ⁴⁴AS 42.05.311(c).

1 including the distribution substation.⁴⁵ The Federal Energy Regulatory Commission
2 defines distribution as the act of distributing electric power using low voltage transmission
3 lines that deliver power to retail customers.⁴⁶ The North American Electric Reliability
4 Corporation defines a distribution provider as an entity that provides and operates the
5 “wires” between the transmission system and the end-use customer.⁴⁷ The United States
6 Environmental Protection Agency notes that the distribution portion of the electric grid
7 comprises lower voltage power lines that deliver electricity to end-users, with distribution
8 networks tending to span shorter distances and involve delivery of electricity that has
9 voltages common to end-user needs (e.g., 120 volts for a typical home).⁴⁸ The United
10 States Department of Energy provided an illustration of the power distribution system that
11 feeds power to customers using a service drop wire to a meter.⁴⁹

12 EV charging stations do not have the distribution system attributes
13 described above. The distribution definitions explicitly incorporate the use of wires for the
14 distribution of power to the customer premise, while EV charging stations do not use drop
15 lines. These definitions also delineate the boundary of the electric distribution system as
16 ending at the customer meter, while the petitioning utilities noted that EV charging stations
17 will be installed behind the utility’s electric meter and have the distinct function of charging
18 the battery of an EV.⁵⁰ RAPA also noted the service provided an EV charging station will
19 be provided on the customer side of the meter, and referenced a Kentucky Public Service
20

21 ⁴⁵7 C.F.R. § 1710.2.

22 ⁴⁶See <https://www.ferc.gov/about/what-ferc/about/glossary>.

23 ⁴⁷https://www.nerc.com/files/glossary_of_terms.pdf.

24 ⁴⁸<https://www.epa.gov/energy/electricity-delivery-and-its-environmental-impacts>.

25 ⁴⁹<https://www.energy.gov/sites/prod/files/2015/12/f28/united-states-electricity-industry-primer.pdf> at 21.

26 ⁵⁰*Joint Proposal* at 6. Level 1 and Level 2 EV chargers are also located behind the electric utility meter.

1 Commission (KPSC) decision that characterized EV charging stations as end users rather
2 distribution facilities.⁵¹

3 We also do not view an EV charging station as providing traditional electric
4 service to the general public as a public utility does. Electric utilities retain a monopoly
5 franchise that entails a duty to serve the public at large, with the utility providing service
6 in a defined service territory and along a fixed transmission and distribution system (with
7 geographically distinct fixed customer premises). An EV charging station's customer is
8 transient and mobile, with no customer agreement, application, termination of service, or
9 monthly bill. A customer of an EV charging station is free to take service from any number
10 of suppliers or supply the service themselves.

11 While RAPA did not believe there is sufficient evidence in the record to
12 conclude a DCFC charging system is included in distribution and/or serves the public,⁵²
13 no commenter (including RAPA) suggested that we should treat EV station owners as
14 public utilities. ChargePoint and Tesla supported a determination that the providers of
15 EV charging services do not deliver or furnish electricity and thus are not public utilities,
16 requesting we require regulated utilities to revise their tariffs to exempt non-utility owners
17 and operators of EV charging stations.⁵³

18 ⁵¹RAPA Comments at 6-7, referencing KPSC Order titled *Electronic Investigation*
19 *of Commission Jurisdiction Over Electric Vehicle Charging Stations*, Case No.
20 2018-00372. The KPSC focused on the fact that the EV charging station provides an
21 electric current – that the charging station does not generate, transmit, or distribute – that
22 passes through a charging port to an EV battery.

23 We note that the KPSC was interpreting a statutory definition of electric utility
24 similar to the statutory definition of public utility at AS 42.05.990(6)(A). Specifically, KRS
25 278.010(3)(a) defines an electric utility as a one “who owns, controls, operates, or
26 manages any facility used or to be used for or in connection with: (a) the generation,
production, transmission, or distribution of electricity to the public, for compensation, for
lights, heat, power, or other uses.”

⁵²RAPA Comments at 4.

⁵³ChargePoint/Tesla Comments at 5.

1 We also note that other jurisdictions have distinguished the two services.
2 The Petition included a list of 32 states that have either excluded EV charging stations
3 from the definition of public utility or exempted EV charging equipment from being
4 regulated as a public utility, with determinations made through either legislative or
5 regulatory action.⁵⁴ Commenters also noted this national trend against regulating EV
6 charging service providers as public utilities.⁵⁵ We similarly do not view an EV charging
7 station as falling within the definition of public utility as the service provided by EV station
8 owners is fundamentally different than the service provided by an electric utility, the
9 inherent economies of scale and scope associated with fixed lines to a fixed customer
10 presence are lacking, and thus the need for economic regulation is also absent.

11 The tariff provisions of the petitioning utilities generally prohibit the resale of
12 electricity furnished by the company, with tariff language implementing the prohibition filed
13 and approved before EV charging became common.⁵⁶ Our view echoes that of some
14 commenters, who requested that we clarify that the resale of electricity by an EV charging
15

16 ⁵⁴Chugach Comments at 17–24 (Exhibit C to *Chugach Comments*, titled *EV*
17 *Charging Station Regulatory Exemptions in the U.S.*).

18 ⁵⁵ChargePoint and Tesla noted 39 states and the District of Columbia have
19 concluded that EV charging is not a public utility function. ChargePoint/Tesla Comments
20 at 5. AP&T noted legislature and regulatory bodies throughout the nation have
21 recognized that entities purchasing electricity at retail to provide EV charging service are
22 not performing public utility functions and should not be subject to regulation. AP&T
23 Comments at 1.

24 ⁵⁶The petitioning utilities note our governing statutes and regulations do not have
25 an express restriction on the resale of electricity by an entity that is not a public utility, but
26 our regulations do require that the tariff of a public utility include rules and regulations
regarding sales for resale. Petition at 3-4, citing 3 AAC 48.370(16). The approval dates
for restrictions on sale for resale in each petitioning utilities' tariff demonstrates that these
provisions were filed and approved before the widespread availability of EVs. See
Chugach Tariff Sheet No. 41, approved August 17, 1987 (TA87-8); GVEA Tariff Sheet
No. 15, approved January 1, 1977 (TA22-13); HEA Tariff Sheet No. 35, approved May 12,
1959 (TA83-32); MEA Tariff Sheet No. 79, approved November 25, 1987 (TA105-18).

1 station should not be a prohibited resale of electric service.⁵⁷ The petitioning utilities may
2 file tariffs for EV charging stations that make an exception for such customers from the
3 tariff terms that more generally prohibit sale for resale.

4 While RAPA stated that resale of electricity by a non-utility raises safety
5 concerns, it did not contend that that EV charging should be considered the resale of
6 electric service. In fact, RAPA noted that other states have determined that providing
7 electricity through a DCFC station is not the resale of electricity. RAPA also stated a
8 concern with the possibility of the lack of regulation leading to high prices in Alaska's
9 noncompetitive EV charging market, expressing uncertainty whether other jurisdictions
10 expected some form of competition to protect the public from high prices.⁵⁸

11 Regarding potential safety concerns with EV charging infrastructure utilizing
12 electricity to power EVs, we note that EV charging infrastructures are subject to state,
13 international, and national standards.⁵⁹ DCFC is a technology that is built to code and
14 follows rigorous safety standards.⁶⁰ In addition, states with far more EV users and related
15 charging infrastructure continue to study the impact of EV charging in the electric grid,

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17 ⁵⁷AP&T requested that we clarify the resale of electricity purchased from regulated
18 utilities at EV charging stations is allowable and not subject to regulation, and this
19 clarification be applicable statewide and inclusive of all charger types statewide (not only
20 to DCFC chargers). AP&T Comments at 1. ChargePoint and Tesla characterized EV
21 charging stations as similar to laundromats, with both services using electricity to provide
22 a value-added service, and should not be viewed as the sale or a resale of electric service.
23 ChargePoint/Tesla Comments at 6.

24 ⁵⁸RAPA Comments at 11–15.

25 ⁵⁹See [https://www.metlabs.com/product-safety/ev-evse-safety-testing-and-](https://www.metlabs.com/product-safety/ev-evse-safety-testing-and-certification-becoming-more-frequent/)
26 [certification-becoming-more-frequent/](https://www.intertek.com/blog/2020-10-02-evse/) and [https://www.intertek.com/blog/2020-10-02-](https://www.intertek.com/blog/2020-10-02-evse/)
[evse/](https://www.intertek.com/blog/2020-10-02-evse/).

27 ⁶⁰These standards include ANSI/UL 2202 Electric Vehicle Charging System
28 Equipment (AC to DC); ANSI/UL 2231-22 Personnel Protection Systems for Electric
29 Vehicle Supply Circuits – Protective Devices for Use in Charging Systems; and ANSI/UL
30 22512 Electric Vehicle Plugs, Receptacles and Couplers. See
<https://www.ul.com/services/electric-vehicle-ev-infrastructure-services>.

1 seeking to ensure reliability of the grid as EV deployment increases.⁶¹ We also note the
2 ongoing efforts of Alaskan electric utilities to maintain the reliability of electric service in
3 their territories.⁶² We have confidence electric utilities will promptly notify us should safety
4 concerns arise as more EV charging infrastructure is integrated into their systems.

5 As for the possibility of high prices due to the absence of competition,⁶³ we
6 note that the DCFC rate methodology discussed above is designed to reduce the costs
7 of electricity for EV station owners who advocate for more affordable EV charging costs
8 using DCFC infrastructure. In this and the related rulemaking proceeding, we have
9 witnessed a common desire to expand EV usage in Alaska by increasing the availability
10 and affordability of EV charging infrastructure (particularly DCFC infrastructure). We
11 would expect some (if not all) EV charging station owners in Alaska to avoid any type of
12 price gauging to incentivize the increased mobilization of EVs. And in any case, having
13 determined that EV charging stations are not engaged in the provision of electric utility
14 service, we lack the statutory authority to economically regulate to prevent the exercise
15 of market power.

16 Before addressing the tariff filings electric utilities may submit to implement
17 the policies stated above, we note one additional aspect of our decision on this issue
18 differs from the requested relief. The Petition requested that we declare that privately

19 ⁶¹For example, the California Division of Measurement Standards adopted rules
20 for measuring and verifying meter tolerance in EVSE. See
21 [https://www.chargepoint.com/blog/new-california-dms-rules-governing-ev-charging-
stations-our-take/](https://www.chargepoint.com/blog/new-california-dms-rules-governing-ev-charging-stations-our-take/).

22 ⁶²While the efforts of the electric utilities serving the interconnected Railbelt grid
23 are most freshly in our minds, we note similar reliability efforts in road-system areas where
EV deployment is likely to occur.

24 ⁶³ChargePoint and Tesla requested that we clarify that EV charging station site
25 hosts and operators have the flexibility to price EV charging services in the manner of
26 their choosing. ChargePoint/Tesla Comments at 5. As RAPA notes, our finding that EV
charging stations are not public utilities means that we will not have regulatory oversight
over the rates charged by EV charging stations.

1 owned EV charging stations are not public utilities or subject to resale restrictions if the
2 charging station receives electric service from the electric utility in whose service area the
3 charging station is located.⁶⁴ Our analysis above does not focus on whether the EV
4 charging station purchases service from the local utility, instead finding the nature of the
5 service provided by an EV charging stations differs from traditional electric service and
6 should not be considered generation, transmission, or distribution to the public within the
7 meaning of AS 42.05.990(6)(A). The advocacy in this proceeding focused on private EV
8 charging station owners purchasing service from an electric utility (as opposed to self-
9 generation or purchases from a nonutility) to provide service to EV owners. In this order,
10 we do not resolve whether an EV charging station owner that generates its own power or
11 purchases power from a nonutility should be considered to provide generation,
12 transmission, or distribution within the meaning of AS 42.05.990(6)(A). The determination
13 in such instances are likely to depend on the facts and circumstances at hand.

14 Related Tariff Filings

15 While we note some commenters have requested we require regulated
16 utilities to implement a DCFC rate,⁶⁵ we will pursue the approach the petitioning utilities
17 requested and allow utilities seeking to implement a DCFC inception rate to revise their
18 tariffs to adopt the DCFC rate methodology approved in this order. We also decline to
19 require that regulated electric utilities modify the resale provisions as requested by the
20 petitioning utilities and others.⁶⁶ Notwithstanding general tariff provisions prohibiting
21 resale of electric service, utilities may treat EV charging stations differently than their other
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24 ⁶⁴See Petition at 6; Joint Proposal at 7-8.

25 ⁶⁵AKEVA requested that we require all regulated utilities to file DCFC rates as soon
as possible. AKEVA Comments at 2.

26 ⁶⁶Petition at 4-5; ChargePoint/Tesla Comments at 5.

1 customers and submit tariff revisions clarifying EV station owners are not subject to resale
2 restrictions.

3 We request that regulated electric utilities seeking to implement a DCFC
4 inception rate or clarify a resale restriction tariff provision submit the appropriate tariff
5 revisions for our approval by January 24, 2022.

6 Final Order

7 This order constitutes the final decision in this proceeding. This decision
8 may be appealed within thirty days of this order in accordance with AS 22.10.020(d) and
9 Alaska Rule of Appellate Procedure 602(a)(2). In addition to the appellate rights afforded
10 by AS 22.10.020(d), a party has the right to file a petition for reconsideration in
11 accordance with 3 AAC 48.105. If such a petition is filed, the time period for filing an
12 appeal is tolled and then recalculated in accordance with Alaska Rule of Appellate
13 Procedure 602(a)(2).

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ORDER

THE COMMISSION FURTHER ORDERS:

1. The *Petition for Approval of Joint Proposal*, filed by Chugach Electric Association, Inc.; Golden Valley Electric Association, Inc.; Homer Electric Association, Inc.; and Matanuska Electric Association, Inc. on June 9, 2021, is approved, in part, as discussed in the body of this order.

2. The request that we find that electric vehicle charging stations are not public utilities subject to resale restrictions filed by Chugach Electric Association, Inc.; Golden Valley Electric Association, Inc.; Homer Electric Association, Inc.; and Matanuska Electric Association, Inc. on June 9, 2021, is granted, in part, as discussed in the body of this order.

3. By 5:00 p.m. January 24, 2022, electric utilities seeking to implement a DC fast charging inception rate should file a tariff revision that complies with the rate methodology approved in this order.

4. By 5:00 p.m. January 24, 2022, electric utilities wishing to clarify that electric vehicle charging stations are not subject to restrictions related to the resale of electric service should file a tariff revision that clarifies the resale provisions of the utility's tariff.

DATED AND EFFECTIVE at Anchorage, Alaska, this 25th day of October 2021.

BY DIRECTION OF THE COMMISSION

