

February 10, 2020

**VIA ELECTRONIC DELIVERY**

Honorable Michelle L. Phillips  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza, 19<sup>th</sup> Floor  
Albany, New York 12223-1350

**RE: Case 18-E-0138 – Proceeding on Motion of the Commission Regarding  
Electric Vehicle Supply Equipment and Infrastructure**

**JOINT UTILITIES’ COMMENTS RESPONDING TO TESLA’S  
PETITION FOR CLARIFICATION AND MODIFICATION**

Dear Secretary Phillips:

In regard to the December 11, 2019 notice published in the New York State Register regarding the Petition for Program Clarification and Modification filed by Tesla, Inc. on November 22, 2019 in the subject proceeding, enclosed please find the comments of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, “Joint Utilities”).

Respectfully submitted on behalf of  
the Joint Utilities,

*/s/ Janet M. Audunson*

Janet M. Audunson  
Assistant General Counsel

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission )  
Regarding Electric Vehicle Supply )  
Equipment and Infrastructure )

Case 18-E-0138

**JOINT UTILITIES' COMMENTS RESPONDING TO  
TESLA'S PETITION FOR CLARIFICATION AND MODIFICATION**

In February 2019, the Public Service Commission (Commission) adopted<sup>1</sup> the Joint Utilities'<sup>2</sup> and five New York state agencies'<sup>3</sup> proposal<sup>4</sup> to promote electric vehicles and achieve the State's goal of deploying 850,000 zero-emission vehicles (ZEVs) by 2025. The Commission directed incentives to deploy infrastructure to support direct current fast-charging (DCFC) facilities for vehicle owners on New York roads and highways. In response to Tesla, Inc.'s first petition<sup>5</sup> challenging the Commission's decision, the Commission granted limited relief addressing the definition of public accessibility and adopting a technology-neutral approach to charging programs.<sup>6</sup>

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<sup>1</sup> Case 18-E-0138, *Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure* (EV Proceeding), Order Establishing Framework for Direct Current Fast Charging Infrastructure Program (issued February 7, 2019) (Initial DCFC Order).

<sup>2</sup> The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>3</sup> The agencies are the New York Power Authority, the New York State Department of Environmental Conservation, the New York State Department of Transportation, the New York State Thruway Authority, and the New York State Energy Research and Development Authority.

<sup>4</sup> EV Proceeding, Proposal to Encourage Statewide Deployment of Direct Current Fast Charging Facilities for Electric Vehicles (filed November 21, 2018) (Proposal).

<sup>5</sup> EV Proceeding, [Tesla] Petition for Rehearing (filed February 28, 2019).

<sup>6</sup> EV Proceeding, Order Modifying Incentive Program and Granting, in Part, Petition for Rehearing (issued July 12, 2019) (Second DCFC Order).

Tesla then filed this second petition seeking additional relief.<sup>7</sup> As discussed below, the Joint Utilities urge the Commission to deny the requested “mixed-tier” approach and a hard cap on plug types given Tesla’s failure to offer any new support.<sup>8</sup> In addition, the Joint Utilities provide a proposal for addressing first-year incentive amounts. Finally, the Joint Utilities note their agreement with Tesla’s request regarding payment options for its superchargers.

Tesla first asks the Commission to modify its program by tying incentives to the capability of each individual plug at a site, using what Tesla terms a “mixed tier” approach.<sup>9</sup> Tesla refers to the range of DCFC equipment specifications from a variety of manufacturers and states that this “power sharing” across charging stalls can facilitate simultaneous charging and limit the total power requirements for a given site.<sup>10</sup> Tesla proposes to tie incentives to the capability of each individual plug at the site.<sup>11</sup> Under this proposal, a station with two plugs where each plug could independently charge one vehicle at a rate over 75 kW but when used simultaneously only one of which is capable of charging above 75 kW, both plugs would be eligible for the full incentive available for plugs capable of charging above 75 kW. This request represents a departure from the Commission’s rationale for co-located, non-proprietary plug types setting the incentive level for the proprietary plugs because Tesla’s approach provides a

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<sup>7</sup> EV Proceeding, [Tesla] Petition for Program Clarification and Modification (filed November 22, 2019) (Second Petition). Pursuant to the NYS Register (December 11, 2019), p. 8, comments are due February 10, 2020. I.D. No. PSC-50-19-00005-P.

<sup>8</sup> Regarding Tesla’s requests about utilities’ maintaining the confidentiality of information requested by the Commission, the Commission has addressed customer data privacy issues in other proceedings, including the need for utilities to protect customer privacy. The Joint Utilities will comply with the Commission’s directives related to these issues and remain committed to protection of customer data privacy.

<sup>9</sup> EV Proceeding, Second Petition, p. 6.

<sup>10</sup> *Id.*

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

greater opportunity for two plugs to receive incentives for charging capabilities that cannot be provided simultaneously to two vehicles.

Tesla's approach challenges the Commission's policy to assign incentive levels based on *simultaneous* charging capability. The Commission specifically ordered that plugs "capable of simultaneous charging at or above 50 kilowatts (kW), but less than 75 kW, will be eligible for a 60 percent incentive payment; and, plugs capable of simultaneous charging at or above 75 kW will be eligible for a full incentive payment."<sup>12</sup> Further, the Commission directed that the non-proprietary standardized plug must be "of the same or greater kW level as the other plugs being installed."<sup>13</sup> The Commission also expressly found that "this approach will better achieve the intended goal of promoting broader utilization of public EV charging stations and will further the State's ZEV goals."<sup>14</sup> Therefore, the Commission should deny this request as contravening its decision to base incentives on simultaneous charging so as to increase charging availability and encourage use of electric vehicles in furtherance of the State's clean energy goals. Granting Tesla's request will result in spending more customer funds on incentives without commensurate increases in the ability to charge (and use) electric vehicles.

Tesla also asks the Commission to add a program cap to limit charging operators to no more than 50 percent of participating plugs.<sup>15</sup> The Joint Utilities urge the Commission to reject such a broad programmatic restriction as premature. Such a programmatic change should be examined in the Commission-specified mid-term review of the DCFC Per Plug Incentive

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<sup>12</sup> EV Proceeding, Second DCFC Order, p. 3.

<sup>13</sup> *Id.*, p. 3.

<sup>14</sup> *Id.*, p. 23.

<sup>15</sup> EV Proceeding, Second Petition, p. 7.

Program. The Joint Utilities believe that programmatic changes are best developed based on program implementation experience.

The Joint Utilities agree with Tesla's recommendation that first-year incentive amounts, originally only available to plugs that qualified in 2019, should be extended.<sup>16</sup> The Joint Utilities propose to extend the availability of the first-year incentives through 2021. This extension recognizes the likelihood that many developers are likely to wait for Commission adoption of the recommended statewide Make-Ready Program that would provide incentives to infrastructure for both Level 2 and DCFC stations.<sup>17</sup> The Joint Utilities' proposal is set forth for each utility in Attachment A. As depicted in Attachment A, the incentive program would remain in effect through 2025 regardless of the year in which a participant enters the program. The Joint Utilities believe that this incentive progression will encourage DCFC facilities to include different plug sizes to capture more incentive dollars through the program's planned end in 2025.

Finally, Tesla asks the Commission to clarify that Tesla's Supercharger payment options conform to the DCFC program, and that Tesla's systems are therefore eligible for the program.<sup>18</sup> The Joint Utilities agree that Tesla's available methods for receipt of customer payment conform to the DCFC program.

In conclusion, the Joint Utilities (1) oppose Tesla's request to change the Commission's established policies related to simultaneous charging and charging operator program cap of per plug incentive levels; (2) propose to extend the availability of the first-year incentives through

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<sup>16</sup> EV Proceeding, Second Petition, pp. 5-6.

<sup>17</sup> As a result, it is likely that the pace of installations will remain low throughout 2020. *See* EV Proceeding, Department of Public Service Staff Whitepaper Regarding Electric Vehicle Supply Equipment and Infrastructure Deployment (Staff EVSE&I Whitepaper) (filed January 13, 2020).

<sup>18</sup> EV Proceeding, Second Petition, p. 9.

2021; and (3) agree that Tesla's Supercharger payment methods should conform to the DCFC program. The Joint Utilities continue to support the DCFC incentive program and will continue to seek opportunities when appropriate to modify the program to encourage participation and increase the volume of electric vehicles on the roads throughout New York State.

Dated: February 10, 2020

Respectfully submitted,

**CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC. and ORANGE AND  
ROCKLAND UTILITIES, INC.**

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## Attachment A: Proposed Per Plug DCFC Incentive Schedules

	2019	2020	2021	2022	2023	2024	2025	
<i>Central Hudson Gas &amp; Electric</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 11,000	\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 3,143	\$ 1,571	\$ 44,000
Fixed annual incentive (First year: 2020)		\$ 11,000	\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 3,143	\$ 42,429
Fixed annual incentive (First year: 2021)			\$ 11,000	\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 39,286
Fixed annual incentive (First year: 2022)				\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 28,286
Fixed annual incentive (First year: 2023)					\$ 7,857	\$ 6,286	\$ 4,714	\$ 18,857
Fixed annual incentive (First year: 2024)						\$ 6,286	\$ 4,714	\$ 11,000
Fixed annual incentive (First year: 2025)							\$ 4,714	\$ 4,714
<i>Con Edison</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 4,000	\$ 3,429	\$ 2,857	\$ 2,286	\$ 1,714	\$ 1,143	\$ 571	\$ 16,000
Fixed annual incentive (First year: 2020)		\$ 4,000	\$ 3,429	\$ 2,857	\$ 2,286	\$ 1,714	\$ 1,143	\$ 15,429
Fixed annual incentive (First year: 2021)			\$ 4,000	\$ 3,429	\$ 2,857	\$ 2,286	\$ 1,714	\$ 14,286
Fixed annual incentive (First year: 2022)				\$ 3,429	\$ 2,857	\$ 2,286	\$ 1,714	\$ 10,286
Fixed annual incentive (First year: 2023)					\$ 2,857	\$ 2,286	\$ 1,714	\$ 6,857
Fixed annual incentive (First year: 2024)						\$ 2,286	\$ 1,714	\$ 4,000
Fixed annual incentive (First year: 2025)							\$ 1,714	\$ 1,714
<i>National Grid</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 7,500	\$ 6,428.57	\$ 5,357.14	\$ 4,286	\$ 3,214.29	\$ 2,142.86	\$ 1,071	\$ 30,000
Fixed annual incentive (First year: 2020)		\$ 7,500	\$ 6,429	\$ 5,357	\$ 4,286	\$ 3,214	\$ 2,143	\$ 28,929
Fixed annual incentive (First year: 2021)			\$ 7,500	\$ 6,429	\$ 5,357	\$ 4,286	\$ 3,214	\$ 26,786
Fixed annual incentive (First year: 2022)				\$ 6,429	\$ 5,357	\$ 4,286	\$ 3,214	\$ 19,286
Fixed annual incentive (First year: 2023)					\$ 5,357	\$ 4,286	\$ 3,214	\$ 12,857
Fixed annual incentive (First year: 2024)						\$ 4,286	\$ 3,214	\$ 7,500
Fixed annual incentive (First year: 2025)							\$ 3,214	\$ 3,214
<i>New York State Electric and Gas</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 8,000	\$ 6,857	\$ 5,714	\$ 4,571	\$ 3,429	\$ 2,286	\$ 1,143	\$ 32,000
Fixed annual incentive (First year: 2020)		\$ 8,000	\$ 6,857	\$ 5,714	\$ 4,571	\$ 3,429	\$ 2,286	\$ 30,857
Fixed annual incentive (First year: 2021)			\$ 8,000	\$ 6,857	\$ 5,714	\$ 4,571	\$ 3,429	\$ 28,571
Fixed annual incentive (First year: 2022)				\$ 6,857	\$ 5,714	\$ 4,571	\$ 3,429	\$ 20,571
Fixed annual incentive (First year: 2023)					\$ 5,714	\$ 4,571	\$ 3,429	\$ 13,714
Fixed annual incentive (First year: 2024)						\$ 4,571	\$ 3,429	\$ 8,000
Fixed annual incentive (First year: 2025)							\$ 3,429	\$ 3,429
<i>Orange &amp; Rockland Utilities</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 11,000	\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 3,143	\$ 1,571	\$ 44,000
Fixed annual incentive (First year: 2020)			\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 3,143	\$ 31,429
Fixed annual incentive (First year: 2021)				\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 28,286
Fixed annual incentive (First year: 2022)				\$ 9,429	\$ 7,857	\$ 6,286	\$ 4,714	\$ 28,286
Fixed annual incentive (First year: 2023)					\$ 7,857	\$ 6,286	\$ 4,714	\$ 18,857
Fixed annual incentive (First year: 2024)						\$ 6,286	\$ 4,714	\$ 11,000
Fixed annual incentive (First year: 2025)							\$ 4,714	\$ 4,714
<i>Rochester Gas &amp; Electric</i>								
								<i>total incentive</i>
Fixed annual incentive (First year: 2019)	\$ 17,000	\$ 14,571	\$ 12,143	\$ 9,714	\$ 7,286	\$ 4,857	\$ 2,429	\$ 68,000
Fixed annual incentive (First year: 2020)		\$ 17,000	\$ 14,571	\$ 12,143	\$ 9,714	\$ 7,286	\$ 4,857	\$ 65,571
Fixed annual incentive (First year: 2021)			\$ 17,000	\$ 14,571	\$ 12,143	\$ 9,714	\$ 7,286	\$ 60,714
Fixed annual incentive (First year: 2022)				\$ 14,571	\$ 12,143	\$ 9,714	\$ 7,286	\$ 43,714
Fixed annual incentive (First year: 2023)					\$ 12,143	\$ 9,714	\$ 7,286	\$ 29,143
Fixed annual incentive (First year: 2024)						\$ 9,714	\$ 7,286	\$ 17,000
Fixed annual incentive (First year: 2025)							\$ 7,286	\$ 7,286