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January 21, 2011

Via Mail

**The Honorable Manuel Flores
Acting Chairman
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60101**

**The Honorable Erin O'Connell-Diaz
Commissioner
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60101**

Re: PEV Comments

Dear Acting Chairman Flores and Commissioner O'Connell-Diaz,

BlueStar Energy Solutions welcomes and appreciates the opportunity to comment on the impact Plug-in Vehicles may have on the electricity market in Illinois. The Commission is correct in seeking early input into determining opportunities and challenges related to widespread PEV deployment for utilities, retail electric suppliers, entities participating in this market, investors and customers.

BlueStar thanks the Commission for this opportunity to offer its perspective and looks forward to continued participation in the Commission's PEV process.

Please contact me if I can be of further assistance.

Regards,

BLUESTAR ENERGY SERVICES, INC.

A handwritten signature in cursive script that reads "Madelon Kuchera".

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ILLINOIS COMMERCE COMMISSION
Initiative on Plug-in Electric Vehicles
BlueStar Energy Solutions
Response to Initial Assessment of the Impact
Of the Introduction of
Plug-in Electric Vehicles on the Distribution System
January 21, 2010

I. Introduction

BlueStar Energy Solutions ("BlueStar") welcomes and appreciates the opportunity to comment on the Illinois Commerce Commission ("ICC" or "Commission") assessment of potential impacts of the introduction of Plug-in Electric Vehicles ("PEV") within the State of Illinois. The Commission is to be congratulated on its forward-thinking efforts to reach out to plug-in electric vehicle (PEV) stakeholders as it considers developing PEV-related policies for the benefit of all Illinois residents.

Retail Electric Suppliers ("RES") should be valued contributors to this Commission's PEV evaluation. The competitive suppliers can ensure that a diverse and valuable array of smart-grid enabled products and services such as PEV can be brought to consumers. Moreover, as the utilities deploy smart grid infrastructure to support the PEV market in the coming years, competitive suppliers can play a pivotal role in the development of this market as long as they are provided open, non-discriminatory and real-time access to the meters and the customer data it generates.

Competitive retail electric suppliers have and will play a critical role in implementing and providing innovative energy solutions. BlueStar has long advocated competition in electricity and recognizes the link between competition, technology innovation and environmental benefits. Any discussion of PEV, smart grid and smart meters should not be viewed from the traditional monopoly perspective; but, rather from the perspective that competition will provide desired environmental, economic and technological benefits.

II. Regulation of PEV Charging Infrastructure and Services

The Commission is correct in seeking early input in the determination as to whether the legislature intended the Commission to regulate providers of electric vehicle charging infrastructure and services. Early determination will provide regulatory certainty for utilities, RES', entities participating in the electric vehicle markets, investors, and customers. Removing regulatory uncertainty advances the objective to remove barriers to the widespread deployment and use of electric vehicles by informing planning prior to the introduction of significant electric vehicles in the market, and mitigating related potential risk factors associated with investment opportunities in this market.

From a policy perspective, over-reaching regulation will stifle competition, innovation and investment in the industry. Below, BlueStar provides its initial assessment of the Commission's jurisdiction and role over the development of electric vehicle charging infrastructure and the provision of PEV, including a discussion of the legal status of the entities that offer such services. From initial blush, it appears that the

emergence of PEV technology does not alter the Commission's jurisdiction or need for legislative changes.

The regulation of PEV charging infrastructure for the general use, whether for public or private use, revolves around the question of whether PEV charging services is regulated as a public utility, RES, or a competitive service. This analysis largely depends on whether such services are considered merely a sale of energy or is a broader service as to which energy is but one input. "Public utility" is defined in 220 ILSC 5/3-105 of the Act which generally defines a public utility as being an entity that owns or controls facilities used for the "sale, delivery or furnishing of . . . electricity. . . ." Similarly, the Public Utility Act ("PUA") 220 ILCS 5/16-102 generally defines a RES to be an entity that "offers electric power or energy for sale . . . to . . . retail customers, . . . or that engages in the delivery or furnishing of electric power or energy to such retail customers[.]" Given these definitions, it is important to note the Commission has not traditionally regulated entities involved in the transference of energy that is used by the customers' appliances or technology applications. As a starting point, PEVs appear to fall into the same category as other customer appliances or applications, which are tied to the consumer's use of energy.

Although it is possible public charging station operators may be considered public utilities if the definition is read broadly, a rigorous analysis as well as numerous exceptions to that definition would not likely support such an interpretation. BlueStar agrees that a charging station is similar to a laundromat, a gas station or propane distributor – all purveyors of energy commodities that draw electricity from the outlet/charging station; none of which are considered public utilities in the State of Illinois.

On the other hand, the 1997 Restructuring Law defines a competitive service as a service that "includes (i) any service that has been declared to be competitive pursuant to Section 16-113 of this Act, (ii) contract service, and (iii) services, other than tariff services, that are related to, but not necessary for, the provision of electric power and energy or delivery services." In BlueStar's opinion, charging infrastructure is related to, but is not necessary for, the provision of electric power and energy delivery service. Furthermore, PEV charging service providers do not appear to be engaged in the sale of electricity to retail customers and therefore should not be subject to regulation as an electric utility or a RES.

Given that electricity is only an input into the charging service that is provided, it most likely falls into the definition of a competitive service rather than a sale of energy. "Charging service" includes both the provision of charging to the PEV, as well as the charging infrastructure itself. Moreover, charging service also does not include the provision, or metering, of electric service to the charging station. BlueStar agrees with ComEd that charging stations should not be considered part of the utility's distribution

system. The infrastructure located on the customer's side of the meter, where charging infrastructure will be located, has traditionally not been considered part of the utility's distribution system.

Existing laws clearly permits the sale of electricity for use by a RES' PEV customers, including residential, commercial and industrial customers. The easiest part of the evaluation deals with many instances of private electric vehicle charging stations whereby the charging provider would clearly not be a public utility. Given that most PEVs that initially come to market will be capable of charging at the 120 volt level, which is the standard electrical outlet in homes and business, no special PEV charging infrastructure will need to be deployed. Obvious examples would include a homeowner that charges his/her vehicle in the garage and does not offer charging services to others. Clearly, the homeowner's charging equipment is not dedicated to public use and the homeowner would not be found to be a public utility. Other examples could include commercial and residential landlords that provide electric vehicle charging as a service on the premises to tenants, condominium associations or employers that provide access to recharging facilities as a service to condominium owners or employees. As discussed above, charging infrastructure in the private setting falls within the definition of a competitive service, i.e., is a service "related to, but not necessary for, the provision of electric power and energy or delivery service." The sale of electricity in these private settings for charging purposes would still be provided by the utility or RES and regulated under existing laws.

Perhaps the more complex legal analysis deals with instances in which electric vehicle charging services are offered to the public. Although the Commission regulates public utilities, the emergence of electric vehicle charging service provided to the public does not automatically extend its authority over these new entities or services. Under the Illinois Constitution, only the legislature can confer new powers on the Commission. The legislature only granted limited, if any, authority to the Commission to set rules related to electric charging providers or stations. BlueStar finds nothing in the law that directs the commission to explicitly or implicitly to regulate electric vehicle charging service providers. Under existing laws, BlueStar believes the Commission does not have jurisdictions to broadly regulate electric vehicle charging service or providers as public utilities. Based on the preliminary analysis above, it is unlikely that the Commission has authority over consumers, PEV manufacturers, owners and operators of charging equipment (for public or private use) because these entities are not engaged in the production, transmission, or distribution of power.

As noted above, however, sales of electricity to the residential or business customer for charging purposes would continue to be provided by either a utility or a RES, and would be regulated under existing laws. In terms of underlying infrastructure concerns, it is also important to emphasize that the Commission has other sources of

regulatory authority that it can apply to ensure electric vehicle charging infrastructure is properly integrated into the electric grid, without the specific need to regulate charging stations. For example, the Commission has authority to adopt rules to address impacts upon electrical infrastructure, including infrastructure upgrades which should include PEV. The Commission will also remain active in the development of PEV as it relates to the electric delivery systems of the utilities subject to its authority as the sole providers of infrastructure that enable PEV technology. The Commission will also retain jurisdiction to enforce many other aspects of the electric market such as procurement requirements and Renewable Portfolio Standards, to name only a few.

As a guidepost, the Commission should err on the side of facilitating the development of robust and vibrant competition in the PEV marketplace. Therefore, by treating a charging infrastructure as competitive service to the grid as opposed to being a regulated utility or a RES, the Commission can best foster competition in the nascent infrastructure marketplace and help facilitate rapid deployment. BlueStar looks forward to participating in the Commission's workshop process to work through all of the considerations and implications.

III. Properly Structured Rate Options are Key to Successful PEV Deployment

A key element to the success of the PEV market will be the introduction of innovative rate designs that transcend monopoly rate structures. Competitive suppliers will be in the best position to provide consumers with an array of different price structures that includes time and usage-differentiated product options.

Rate design has a significant impact on how much electricity consumer's use, and when, which in turn has a direct impact on future infrastructure requirements. Rather than relying on a monopoly rate-based regulatory structure, a vibrant and sustainable competitive electric market relies upon the competitive forces to arrive at the most efficient market prices. Monopoly bundled service rates are not sustainable and stand in stark contrast to the basic tenants of market-based rates. It will be the competitive suppliers that will steadily expand and experiment with creative hourly-priced service offerings and/or a combination of fixed and indexed offerings that best meet the needs of the consumer while also reflecting the underlying cost of providing such services.

For example, existing utility flat rate offerings that differentiates only between the summer and non-summer periods is not reflective of underlying costs nor provides any incentive for customers to shift their electrical usage to off-peak periods. On the other hand, competitive retail electric suppliers that actively respond to customer needs will provide a wide array pricing options. This may include a combination of structured rates, including flat as well as time of use (TOU) and/or real-time prices that will appropriately signal customers to switch usage to lower-priced, lower-demand, off-peak

periods. Appropriately structured rate structures will incent customers to shift incremental usage to off-peak periods. Prices reflective of the competitive market place will allow for greater use of existing resources by limiting additional distribution investment, which has the potential of lowering the rates for all customers including lower off-peak rates for PEV customers.

If PEVs are charged during the day, such as at plug-in stations at retail establishments during the afternoon, when grid demand is highest, not only will it exert upward pressure on day ahead hourly and real time price signals in the wholesale market, but it will further constrain the grid, taking up existing electricity “bandwidth.” On the other hand, if PEVs are charged in homes during off-hours when demand is low, it will have a stabilizing effect, not decreasing demand during day time peaks, but increasing demand, and thus prices, during hours when prices have historically been cheapest, and existing coal and nuclear base load, which cannot ramp up or down appreciably like gas plants, needs “somewhere to go.”

Additionally, many envision using PEVs to provide power when congestion is highest by discharging power to the grid. This would enhance grid reliability and lead to lower prices during peak demand hours. Additionally, PEVs should lower long-term transportation costs, since they are cheaper to operate per mile, and increase national security by decreasing America’s dependence on foreign oil. One way the ICC could allow customers greater access to the market is by working with utilities, suppliers and MISO and PJM to create a PEV day ahead hourly charging rate. The day-ahead market fluctuates hourly, and its hourly price signals are known from 6-30 hours in advance, as opposed to the real time market which is much more volatile and whose signals fluctuate every 5 minutes.

A customer on a day-ahead PEV rate could see when he or she came home from work how much electricity would cost that evening and the following day. They could then decide when to charge their PEV based on price. Furthermore, they might be able to use their PEV to return power to the grid during demand spikes. This would help them and their neighbors: they would get paid for selling their power when prices are high; their neighbors would benefit from a more stable grid and any, such as a growing number of businesses, who buy their power in the day- ahead market, would also gain from lower prices.

IV. Public Policy Concerns - Consumer Data Privacy/Access

The Commission's PEV plan should make clear from the onset that communications must be made on a competitively neutral basis and that no market participant is favored over the other. RES will be key contributors to creating awareness of the potential of the PEV market. Requiring access to real-time customer

information, competitive suppliers can play a key role in educating consumers about their energy usage.

Access to the smart grid infrastructure must be provided in a manner that avoids the creation of new information and/or PEV-related monopolies. Open, non-discriminatory access to the smart grid and related PEV infrastructure and smart meters must be provided to competitive retail electric suppliers authorized by consumers to receive and manage their energy usage information. This data should be provided to market participants on a real-time basis. By prohibiting the creation of utility information monopolies, the Commission will do much to ensure a competitively neutral playing field when PEV and other smart grid technologies are deployed.

In fact, the Federal Communications Commission recently recommended that,

*"Consumers, and their authorized third parties, must be able to get secure, non-discriminatory access to energy data in standardized, machine-readable formats. Customers should have access to their data in the same granular form in which it is collected, and in as close to real-time as possible."*¹

BlueStar also agrees with the FCC's further suggestion that,

*"PUCs should mandate data accessibility as a part of Smart Grid rate cases, especially smart meter deployments. Consistent with EISA [The Energy Independence and Security Act], these policies should mandate secure consumer accessibility to real-time energy consumption data, time-series consumption and billing data and dynamic pricing data."*²

In this vein, BlueStar urges the Commission not to allow the utilities to monopolize the smart grid or smart meters as it relates to the PEV market. In particular, the meter is the gateway to the consumer's home - appliances, in-home displays as well as PEV charging stations. These are all integral components that could determine the success or failure of smart grid initiatives as well as the PEV market in general. By allowing the smart meter a utility-only program, the Commission would discourage the very innovation and new competitive entry in this field that smart grid and PEV charging stations are intended to yield. Behind-the meter competition must be allowed to flourish.

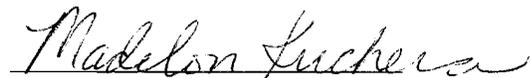
¹ FCC, National Broadband Plan, Energy and the Environment, Chapter 12, at page 274.

² Id.

V. Conclusion

BlueStar thanks the ICC for opportunity to offer its perspective in this important area and looks forward to continued participation in the process.

Respectfully Submitted,



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