

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application)	
of Union Electric Company)	File No. ET-2016-0246
d/b/a Ameren Missouri for Approval)	
of a Tariff Setting a Rate for)	
Electric Vehicle Charging Stations)	

OFFICE OF THE PUBLIC COUNSEL’S

BRIEF IN REPLY

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) and in Reply to initial Briefs filed in this matter states:

I. Introduction

Ameren Missouri (“Ameren” or “Company”) urges the Commission to “ignore the noise.” (Ameren Br. p. 1) In doing so, Ameren recommends the Commission pay no attention to the fact that: 1) installation of electric vehicle charging stations (“EVCS”) is not in the public interest because it provides no value to Ameren’s ratepayers; 2) all customers subsidize activity that benefits very few, mostly affluent Ameren customers; 3) there is competition for EVCS installation; and 4) Ameren’s proposal is anti-competitive.

Ameren proposes a highly speculative, ratepayer funded program that expands its rate base. Commission approval ensures that Ameren will benefit regardless if its experiment fails because Ameren gets a return on its investment in infrastructure, even if no one uses the facility. Moreover, it is impossible to predict the future of EV adoption or of other EV charging options. (Exh. 202, Marke Reb. 10:1-12:21).

II. Background

In California, where half of all EVs in the country are owned, it is the state government that has decided to promote all types of alternate-fuel vehicles with funding from a variety of sources. (Tr. Vol. 2, p. 225: 19- 226:14). Dr. Sheehy testified Southern California Edison's program is structured so that the company builds infrastructure to the EVCS, but the actual charging station is owned by customers, who "are allowed to select, own, and maintain charging stations." (Sheehy Surreb. 6:12-19). Public Counsel is able to support this type of program. However, Ameren's proposal is very different.

In its Application, Ameren proposes to own the EVCS. Even a small construction project ("Pilot") must meet certain criteria, discussed below, before the Commission should decide to make all customers responsible for paying a return of and *on* investment for many years. The Commission must consider whether Ameren's experiment in promoting the purchase of a certain vehicle is something for which all Ameren's customers should pay, when few, if any, will use it. As also discussed more fully below, when faced with that question, the Kansas Corporation Commission ("KCC") said customers should not pay for EVCS. The KCC reasoned that customers should not pay for promotion of EV purchases because promoting EV is an activity best left to EV car dealers.

Public Counsel does not agree with Staff's argument electric vehicle charging is a regulated service. Should the Commission determine that EV charging is a regulated service, OPC agrees with Staff's recommendation to the Commission to impute revenues in Ameren's rate cases. This will protect Ameren's customers from the risk the Pilot will

never be economical, when there is no proof any Ameren customer will make popular use of EVCS or that an EVCS have a net benefit to Ameren customers.

Ameren has many ways to promote EV adoption other than entering a competitive field to install EVCS based on the theory that “if you build it they will come.” (Tr. Vol. 2, 46:). Ameren will profit regardless of the success or failure of the project because its customers will be paying a return of and a return *on* investment for the life of this equipment, even if it is made obsolete due to rapidly changing technology.

Below, Public Counsel discusses the many reasons the Commission should encourage Ameren to pursue options, other than construction, to promote EV adoption. In contrast to EVCS installation, all of these options benefit all Ameren’s customers - residential, businesses and even industrial customers.

In response to Commissioner Kenney’s comments, OPC does not believe this project involves the regulable resale of electricity. Instead, this project involves incidental resale of electricity as a part of a bundled service. (Tr. 130:1-3). As support for its position, OPC turns to the New York Commission’s decision in a similar case in which it determined EVCS provided a bundled service, and the sale of electricity was merely incidental. (<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=13-E-0199>).

Additionally, this Commission has declined to take jurisdiction over RV parks or state parks that provide electricity to RV’s for light, heat, and power to what could truly be considered a “mobile premises.” RV drivers plug in to an electric outlet similar to those customers use when charging their cell phone battery at an airport. The PSC has

declined to regulate these businesses because the resale of electricity is part of a bundled service which includes the land on which the RV is parked, and equipment to provide water and electricity. Consistent with New York and the Commission's previous rulings, EVCS should be treated as a bundled service which incidentally provides electric transportation fuel. (Tr. Vol. 2, 17-10; 134:19-135:1; 187: 13-17.)

The Commission does not decide issues before it by Parties voting on the issues as Ameren suggests. (Ameren Br. p. 3.) Instead the PSC must act in accord with legislative direction and relevant case law. Public Counsel recommends the Commission deny Ameren's application to build EVCS and encourage Ameren to use the many other options available to it to educate its customers and promote efficient use of its system.

Proponents of this Pilot ignore the fact Ameren proposes its customers pay for construction, which is unnecessary to provide safe and adequate service. After considering the legal and policy issues presented, the ultimate decision the PSC must make is who should pay for this experiment? If Ameren pursues this experiment should shareholders and EV drivers pay or should captive ratepayers?

It is important to consider that if the Commission approves this project, Ameren benefits even if the project is a total failure. Ameren gets to increase rate base, and customers will be paying a return of and *on* investment long after the three-year Pilot ends. First, Public Counsel responds to the legal issues.

I. Commission jurisdiction over non-essential competitive services.

A. The Commission lacks statutory authority to exercise jurisdiction

As a creature of statute, the PSC’s “powers are limited to those conferred by statute, either expressly, or by clear implication, as necessary to carry out the powers specifically granted.” Accordingly, whether the Commission’s actions are lawful “depends directly on whether it has statutory power and authority to act.” *Mo. PSC v. ONEOK, Inc.*, 318 S.W.3d 134, 137 (Mo. Ct. App. W.D. 2009). The Commission should decline to take jurisdiction for several reasons. The first reason is the lack of a public interest.

1. This project does not serve the public interest.

In its Brief, Ameren admits that in order to be considered “electric plant” any construction “must . . . be coupled with a public interest; otherwise the Commission can have no authority whatsoever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.” (Ameren Br. at 8) (quoting *State ex rel. M. O. Danciger & Co. v. Public Serv. Comm’n.*, 205 S.W. 36 (Mo.1918)).

The *Danciger* Court found: “[t]he nature of the business and of the service rendered is the decisive test and must control.” *Id.* at 38. The EVCS pilot is not designed to serve a “considerable portion of the public,” or even a small portion of the public and it is not providing a public necessity as required by *Danciger*. *Id.* In the nation, there are only about 540,000 EV owners. (Tr. Vol. 2, 256: 18-20). In Ameren’s territory, only one half of one percent of its customers own EVs. (Tr. Vol. 2, 188:20-23).

Danciger does not require all customers to be able to take service, but it does require that a significant portion of the public be served. The EVCS Pilot is not “coupled

with a public interest” and the Commission “can have no authority whatsoever over it.” *Hurricane Deck Holding Co. v. PSC of Mo.*, 289 S.W.3d 260, 264 (Mo. Ct. App. 2009)

The Commission should decline jurisdiction because the EVCS pilot does not serve the public . In addition, other reasons the PSC should decline jurisdiction include the lack of customer benefits.

2. Ameren’s claims of customer benefits are “mere projections made from educated guesses.”

Ameren’s EVCS installation does not provide additional value to customers and does not improve the safety or adequacy of Ameren’s service. (§ 393.170 RSMo).

There is no identifiable public interest to demonstrate customer value in Ameren’s promotion of EV purchases. Staff correctly observes: “[u]nfortunately EV charging stations are relatively new technology and any benefits proposed by this program are mere projections made from educated guesses.” Staff Initial Brief (“Staff Br.”) at 7). In contrast to mere projections about public benefits, there is a measurable and known public detriment associated with the cost to building the EVCS Pilot. Specifically, there is no foundation for Ameren’s claim: “[e]ven if the only outcome is that the pilot continues past the five-year mark, the Company’s customers will benefit from reduced rates.” It strains the imagination to think how Ameren charging customers for unnecessary plant could ever result in reduced rates.

The fact Ameren’s benefits are mere projections is exemplified in its statement: “Ameren Missouri is *hopeful* that if it can fill this significant gap, electric vehicle adoption in the state will increase . . .” There is no competent and substantial evidence

EV adoption will occur as a result of Ameren installing three EVCS on I-70 West of Wentzville.

Ameren can only engage in guesswork because it did not do any research to try to find out what motivates an EV buyer. (Ex. Tr. Vol. 2 167: 13-25.) Instead of doing research, Ameren proposes to build EVCS to see what it can learn, if anything. (Tr. Vol. 2 42:20-21; 46: 2-6; 55:9-13)

Instead of exploring cost-effective options such as customer education on the benefits of off-peak electric usage and the ability to lower rates by charging an EV off-peak, Ameren seeks to build EVCS on the off chance it could gather data regarding long-distance electric vehicle charging needs. Ameren “believes this pilot project will help it gather data relevant to electric vehicle adoption” not only for its own use but also for the Commission. It is not clear what type of information Ameren would provide, when it would provide the information, and how it would make that information available to the PSC or any other interested party.

For information relevant to electric vehicle adoption, Ameren does not need to gather the data itself, it can look to KCP&L to see how its Clean Charge Network has influenced EV adoption. While KCP&L has been providing free EVCS services, it likely has gathered relevant data that could be made available to the Commission or other interested parties.

Ameren witness Sheehy promotes the California model as an indication this Commission should approve Ameren’s proposal. That comparison cannot assure Ameren’s efforts will succeed. Notably, Ameren ignores KCP&L’s efforts to “prime the

pump.” (Tr. Vol. 2, 56:25.) Despite KCP&L’s effort, ownership of EVs in KCP&L’s territory is insignificant and there is no indication that will change as a result of EVCS. (Exh. No. 203).

3. There is a low probability of substantial EV adoption in Missouri.

The Department of Revenue official record of electric vehicles registered in the state shows a “grand total” of 1,577 vehicles (Exh. 203). It is an inescapable fact that broad EV adoption will only occur when battery charging can fully mimic the gasoline station experience, where stations are widely available and customers can do the following: fuel-up in a few minutes, do not have to leave their vehicles unattended, and have access to amenities on site. (Tr. Vol. 2, 162:20-23) (EV charging is “certainly not as fast as liquid fuel charging.”) Gasoline station attendants monitoring the sites also provide a measure of personal safety not available at EVCS. (Tr. Vol. 2, 161:24 -162:4.)

Contrary to Ameren’s assertion that it intends to install charging islands in an area along the part of the interstate that “currently does not have a kind of DCFC fast charging for long distance vehicle owners who need and want that capability,” (Tr p. 6-1-5) Ameren has not done the homework necessary for it to know what, if anything, EV owners want. For example, Ameren has not discussed with EV car dealerships how [the dealerships] would promote EV purchases. (Tr. Vol. 2, 169:23-25.)

4. EVCS provides electricity for transportation service, not for light, heat or power.

Ameren witnesses continually refer to EVCS as an alternate vehicle fuel. As part of its pleadings to the KCC, KCP&L described the issue as: “should the Commission

determine that promoting and provisioning electric service for transportation purposes is necessary” . . . “it should become a service a public utility offers to Kansas customers. (See KCC Order, p.3, pp. 4). The KCC said EVCS should not be a service offered by KCP&L. Kansas Commission Staff (“Kansas Staff”) testified KCP&L had not shown a demand for EVCS. (*Id.* at p.4, para. 7.) Similar to PSC Staff, Kansas Staff described the proposal as a speculative investment, and they stated KCP&L is already providing reasonably sufficient and efficient service, which is the Kansas counterpart to Missouri’s “safe and adequate” service statute. § 393.130 RSMo. Kansas Staff also raised the issue that technological advances will make EVCS obsolete. (*Id.*) Ultimately the KCC issued its Order denying KCP&L’s Application based on the Company’s failure to meet its burden of proof and a finding that installation of EVCS is not within the scope of KCP&L providing sufficient and efficient service.

5. The EVCS is a competitive service.

In addressing the question of its jurisdiction, the PSC must consider whether the proposed EVCS service should be provided by a regulated monopoly. Under Chapters 386 and 393, the PSC regulates natural monopolies, and does not regulate competition. EVCS are not an inherent or natural monopoly. Customers may choose between a number of EVCS including those providing service for free. As a competitor to Ameren’s proposed EVCS installations in St. Louis and St Charles, ChargePoint already operates stations in the St. Louis and St. Charles areas. (Exh. No. 302).

6. No level of customer subsidy is reasonable.

Ameren portrays this as a “very small, low cost” . . . “pilot project” that is harmless. Ameren reasons the Commission should approve the project regardless of the lack of any benefit to Ameren’s ratepayers. (Ameren Br. p. 4). Importantly, the real beneficiary isn’t the public; it’s the shareholders of Ameren. Ameren shareholders benefit and customers are harmed from this project whether or not EV adoption occurs.

Instead of ordering customers to pay for unnecessary infrastructure, the Commission should leave it to Ameren shareholders or private business to fund EVCS. ChargePoint’s Exhibit No. 302 shows private businesses, colleges, EV dealers and landowners are willing to install EVCS to promote their private interests.

Close to 0.00% of Ameren’s ratepayers actually own EVs. (Tr. Vol. 2, 188:14-23) There is no analysis to indicate that will change if Ameren installs EV charging along the I-70. No consumer value is added when Ameren builds its rate base with construction customers neither want or need.

7. The Pilot Project is anti-competitive.

In determining whether the service is a monopoly service or a competitive service, one question the PSC should ask is does it meet a need not being met by non-utility providers. The demand for EVCS is primarily met with home charging. (Tr. Vol 2., 156:12-19).

In its Initial Brief, despite ChargePoint’s testimony to the contrary, Ameren tells the PSC it, “can hardly be accused of stifling competition where there are no known existing or potential competitors.” (citing to the Tr. Vol. 2, p. 184.) It is impossible to

ignore the elephant in the room: ChargePoint testified it is currently interested in and is in the process of “deploying a long distance charging network” (Tr. p. 184: 15-17) at the exact location Ameren proposes to install a competitive service.

Anne Smart, ChargePoint’s witness, testified that Ameren proposes to charge its rate base, and not the EV site owner for installation of the EVCS. There is no denying Ms. Smart’s testimony that if Ameren provides an EVCS charging island free of charge “it would be very difficult for [ChargePoint] to sell a fast charger to a site if they could receive a fast charger installed on that property free of charge from Ameren.” (Tr. Vol. 4, p. 319:15-25). Charge Point clarified: “We're concerned with the -- the model that [Ameren has] proposed and the fact that this particular highway corridor connects many states across a national network of charging stations that we're trying to create.” (Tr. Vol. 2, 325:21-25).

Curiously in its brief, Ameren overlooks this testimony. Instead, Ameren claims it has structured this pilot to encourage electric vehicle adoption within its service territory by filling a gap in the vehicle charging infrastructure that no other entity – business or government – has expressed a near-term willingness to fill.” (Ameren Br. 5). Ms. Smart testified, “While it may appear to fill a hole (in availability of EVCS), it also creates a hole because we can’t compete with it.” (Tr. Vol. 2. 321:1-8).

In addressing the Commission’s approval of a tariffed rate for EVCS, Ms. Smart testified ChargePoint’s customers need flexible pricing in order to realize the benefits of “actually hosting a charging station are realized.” (Tr. Vol. 2, 326:23-25). In discussion with Commissioner Kenney, Ms. Smart testified that in KCP&L’s territory, site hosts in

the Kansas City area no longer buy EVCS from ChargePoint because the sites can get EVCS installed for free. (Tr. 328: 2- 329:16). When site hosts can get an EVCS from Ameren for free, those hosts are unwilling to pay for EVCS installation, eliminating competitors ability to sell EVCS to potential site hosts. (Tr. Vol. 2, 2-8). In addition to the Pilot being anti-competitive, the PSC’s jurisdiction is limited with respect to the type of monopoly activity it can regulate.

8. There are limits on the PSC jurisdiction to regulate competition.

The purpose of Chapters 386 and 393 RSMo is protection of the public safety and health. The purpose of the public service commission law is also “to protect the consumer against the natural monopoly of a public utility, as provider of a public necessity. . . .” *State ex rel. Util. Consumers Council, Inc. v. Pub. Serv. Com.*, 585 S.W.2d 41 (Mo. 1979). “This court also said that the Public Service Law recognized ‘certain generally accepted economic principles and conditions, to wit, that a public utility . . . is in its nature a monopoly; that competition is inadequate to protect the public, and, if it exists, is likely to become an economic waste; that state regulation takes the place of and stands for competition.’” *Id.* at 48.

In this case, the Commission need not “stand for competition.” Competition already exists for installation and service of EVCS. The Commission’s recognition of that competition is what will protect the public in this instance. It is important to note existing and future competition makes EVCS a service in which the market will set the cost of EVCS. There is no need for the PSC to substitute for competition.

WHEREFORE, the Office of Public Counsel respectfully recommends the Commission decline jurisdiction over regulation of charging stations, deny Ameren's request to approve its tariff, and grant such other relief as the Commission deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 28th day of February, 2017.

/s/ Lera L. Shemwell