NP

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

In accordance with the Missouri Public Service Commission's January 17, 2017, *Order Amending Procedural Schedule*, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") files the following reply brief.

INTRODUCTION

As noted in the Company's initial brief, and as affirmed by the other parties' initial briefs, three parties in addition to Ameren Missouri – the Missouri Division of Energy ("DOE"), Kansas City Power & Light Company/KCP&L Greater Missouri Operations ("KCPL/GMO"), and Sierra Club/Natural Resources Defense Council ("Sierra Club/NRDC") – all support Missouri Public Service Commission ("Commission") approval of the electric vehicle charging pilot program as proposed by the Company, and all agree that the Commission has jurisdiction over the services to be provided by the Company through that program. Of those parties, only one suggests a condition on that jurisdiction. Although the Commission Staff ("Staff") supports approval over the pilot program and agrees the Commission has jurisdiction, Staff proposes that the Commission: (1) modify the proposed rates so customers are billed for both fast charging and regular charging services on either a time or kWh basis, but not both; and (2) impute additional revenue to the charging pilot so that general electric service customers are not required to provide any subsidy for the program. Only two parties – the Office of the Public Counsel ("OPC") and ChargePoint, Inc. ("ChargePoint") – oppose approval of the Company's

application, with each arguing, among other things, that the Commission's jurisdiction does not extend to either the proposed pilot program or the electric vehicle charging service that the program would provide.

Just as in its initial brief, Ameren Missouri's reply brief addresses the three main issues to be decided in this case, but this time focuses specifically on the erroneous positions taken by other parties:

- Commission Jurisdiction: The Company disputes the arguments presented by OPC and ChargePoint that the Commission does not have jurisdiction over the Company's proposed pilot program or the electric vehicle charging services that the program would provide;
- Public Policy: The Company disagrees with OPC's and ChargePoint's concerns that the pilot program, if adopted, will adversely affect development of a private, unregulated infrastructure and market for electric vehicle charging services; and
- The Company opposes Staff's proposal to impute revenues to the pilot project for ratemaking purposes, and also the recommendation that rates be set on a time-on-charger or kWh basis, but not both.

THE NEW YORK ORDER IS NOT DISPOSITIVE OF JURISDICTION

Perhaps the most important question to be decided in this case is whether the Commission has jurisdiction over the electric vehicle charging islands that Ameren Missouri wants to own and operate and the charging services it wants to provide. All parties who filed initial briefs, except two, agree that the Commission has jurisdiction over utility-owned electric vehicle charging services and facilities and therefore is required by law to regulate the equipment and services included in the Company's proposed pilot, including rates charged for those services. Ameren Missouri believes that the arguments the various parties make in support of Commission jurisdiction speak for themselves, and will not repeat those arguments here, except to note they all are grounded in interpretations and applications of various inter-related statutory

definitions found in Section 386.020, RSMo,[1] and Section 386.250, which define the scope of the Commission's jurisdiction over the sale of electricity for light, heat or power.

Both OPC and ChargePoint argue that the Commission has no jurisdiction over Ameren Missouri's proposed pilot program – or over electric vehicle charging more generally, whether provided by utilities or third-parties – and in making this argument, each cites as support the New York Public Service Commission's ("New York Commission") November 2013 *Declaratory Ruling on Jurisdiction Over Publicly Available Electric Vehicle Charging Stations* ("Declaratory Ruling"). Reliance on this decision, however, is misplaced. The reliance on the New York Commission's order appears to be based solely on the fact that in 1913, Missouri used the New York statutes related to the regulation of electric services as a model for its own statutes.

There are several obvious flaws with OPC's and ChargePoint's reliance on the New York Commission's decision. First, there is the general, albeit significant, difference in how New York and Missouri have exercised their respective jurisdictions. Although regulatory history has provided both states with much of the same statutory language, the regulatory evolution in the two states has played out quite differently. For example, New York has made a steady push to move from the public utility monopoly structure to a competitive electric market, beginning in the mid-1990s.[2] More recently, the New York Commission issued an order in 2015 adopting a regulatory policy framework to implement the governor's "Reforming the Energy Vision"

[1] All references to Missouri statutes are to the Revised Statutes of Missouri unless otherwise indicated.
[2] New York Public Service Commission, Case 94-E-0952, *Opinion and Order Regarding Proposed Principles to Guide the Transition to Competition*, Dec. 22, 1994; Case 93-M-0229, *Order Instituting Phase II of Proceeding*, Aug. 9, 1994; Cases 94-E-0952 *et al*, *Opinion and Order Regarding Competitive Opportunities for Electric Service*, May 20, 1996.

initiative ("REV").[3] In 2016, the New York Commission adopted a regulatory ratemaking framework specifically designed to further push regulated distribution utilities towards the facilitation of small-scale energy markets.[4] The State of Missouri has obviously not followed the New York model in the 100-plus years since their adoption of the statutory language, since it has not used the available statutory language to either enable competition or increase the role of a public utility from distribution to mini-energy market facilitation.

More specifically, as the discussion that follows shows, the scope and legal questions considered and decided in the New York case cited by OPC and ChargePoint differ significantly from the limited legal question presented by Ameren Missouri's proposed pilot program. In addition, the guidance interested parties provided to the New York Commission as to how it should decide the legal questions it confronted are remarkably dissimilar to the legal opinions expressed by interested parties in this case. As such, there is no true credibility for the New York order in Missouri, and Commission should either discount the New York order or ignore it altogether.

Further, in its May 2013 *Notice of New Proceeding and Seeking Comments*[5] (“Notice”), the New York Commission stated that the purpose of the case was “to review policies that may impact consumer acceptance and the use of electric vehicles and to further develop the Commission’s policies regarding electric vehicles and the services and infrastructure that they require.” Based on its framing of the jurisdictional issues related to that purpose, it is clear that

---

[3] New York Public Service Commission, Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan,* Feb. 26, 2015.
[4] New York Public Service Commission, Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework,* May 19, 2016.
[5] Copies of the Notice initiating New York Public Service Commission Case No. 13-E-0199 and the New York Commission’s final order in that matter are attached to this brief as Appendix A and Appendix B, respectively.

the New York Commission was looking for a single, one-size-fits-all answer to the question of whether it had jurisdiction over electric vehicle charging facilities and services. Nothing in the order suggests the commission considered, asked, or wished interested parties to comment on the possibility that New York law mandated – or even allowed – a bifurcated response to the question of jurisdiction (i.e., one that applied to regulated utilities and another to non-utilities). Rather, the overall tenor of the Notice suggests that the New York Commission was biased toward an outcome that found electric vehicle charging services were outside of its jurisdiction, and was signaling interested parties to provide arguments supporting that bias.

For example, in discussing issues related to jurisdiction, the New York Commission asked interested parties to consider whether "transactions between the operator of publicly available Charging Stations and members of the public could be differentiated from traditional sales of electricity." This distinction, it reasoned, could be seen as providing "additional support" for concluding that vehicle charging services are not the sale of electricity. Later, the Notice suggests that understanding vehicle charging as a service and not the sale of electricity could lead to a conclusion that the charging station's owner is not an electric corporation subject to regulation. Further still, the Notice notes the commission "could also observe" that, unlike electric utilities subject to its jurisdiction, charging stations are not an inherent monopoly.

But, the aspect of the Notice that most clearly signaled the New York Commission's bias was the way in which it phrased the jurisdictional issues it wanted interested parties to address in their written comments. The following two issues, which appear at page 4 of the Notice, illustrate the point:

1. To what extent, and in what ways, would the development of consumer acceptance and use of electric vehicles and of the supporting services for electric vehicles be affected by the Commission's determination that it does or

does not have direct jurisdiction over publicly available Charging Station operators and members of the public?

2. In determining whether the provisions of the Public Service Law provide it with jurisdiction, should the Commission consider the manner in which a customer is billed for electric vehicle charging services, e.g., per kWh, per hour, day, month, etc.

With due respect to the New York Commission, considerations of how the public would accept a commission's decision or how a provider of vehicle charging services bills for such services are not relevant to a determination of whether governing statutes confer jurisdiction over those services. That is a legal question, which should be decided based solely on applicable law.

Another shortcoming of New York's approach is that it focused exclusively on the question of whether the *charging stations* themselves are subject to the New York Commission's jurisdiction. As with other aspects of the Notice, limiting the focus in this way subtly biased the inquiry toward the conclusion that the New York Commission ultimately reached regarding jurisdiction. This is true for at least two reasons. First, by focusing on a single piece of specialized equipment, it was much easier for the New York Commission to conclude that that piece of equipment did not fall within the statutory definition of "electric plant," which under both New York and Missouri law is limited to equipment "used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power." Second, focusing *only* on the charging station obscures the importance of who owns, operates or controls the elements of electric plant used to provide light, heat or power on the determination of whether governing statutes confer jurisdiction.

In both New York and Missouri, "electric plant" is defined as "*all* real estate, *fixtures and personal property operated, controlled, owned,* used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat

or power....[emphasis added].” The aspects of that definition emphasized in the preceding sentence are important because, in the electric vehicle charging context, only a public utility operates, controls, owns and uses all elements of the chain of fixtures and facilities – beginning at a generating plant and ending at the plug connecting an electric vehicle to a charging station – used to generate, transmit and distribute electricity for sale and use for light, heat or power. In contrast, non-utilities own only the charging station. They also do not generate, transmit or distribute electricity; instead, they buy electricity from a public utility and then use that electricity to provide charging services. This distinction is critical because it provides a rational basis, grounded in the language of a governing statute, for concluding a regulator, subject to the statutory definition described above, has jurisdiction over charging stations owned and operated by a public utility but lacks jurisdiction over the same or similar stations owned and operated by a non-utility.

While its importance in New York is uncertain, in Missouri, the identity of the party who owns, operates and controls facilities in the electricity generation/transmission/distribution chain is often – if not always – dispositive of the question of whether the Commission has jurisdiction over those facilities. In testimony provided at the evidentiary hearing in this case, Ameren Missouri’s witness Thomas Byrne described situations where facilities owned and operated by the Company – such as transformers – ceased being regulated when they were sold or otherwise transferred to a customer. Ameren Missouri’s outside lighting service tariff is another example. If poles and fixtures used to provide such service are owned by the Company, the Commission’s jurisdiction extends to both the service and the facilities used to provide that service. But, if the poles and fixtures are owned by an entity other than Ameren Missouri, the Commission’s

jurisdiction is limited to regulating rates for electricity supplied to the owner/operator of the outside lighting facilities.

In light of the biases reflected in the Notice, it is not surprising that the New York Commission was able to note at page 2 of its Declaratory Ruling that "[t]he commenters generally agreed that this Commission should not assert jurisdiction over Charging Stations, the owners or operators of Charging Stations, or the transaction between Charging Station owners or operators and members of the public." Based on those comments, it is also not surprising that the New York Commission concluded its jurisdiction did not extend to charging stations or to transactions between the owners and operators of those stations.

But, at least three aspects of the Declaratory Ruling are surprising – or at least puzzling – because they imply some of the conclusions regarding jurisdiction stated there may not be as broad or permanent as OPC's and ChargePoint's interpretations suggest. First, the findings and conclusions section of the Declaratory Ruling states, "[t]he Public Service Law does not provide the Commission with jurisdiction over . . . (2) the owners or operators of such charging stations, *so long as the owners or operators do not otherwise fall within the Public Service Law's (PSL) definition of "electric corporation"*.... [emphasis added]." Second, in the same section, the New York Commission states, "(3) the transactions between the owners or operators of publicly available electric vehicle charging stations, *which do not otherwise fall within the PSL's definition of "electric corporation"* .... [emphasis added]." Finally, the paragraph immediately preceding the findings and conclusions section states, "[w]e share the concerns of NRDC-Pace, that this Commission should maintain its ability to respond to the market as it evolves. *Our determination here does not diminish our ability to respond to changes in the market* in which Charging Stations operate [emphasis added]." It is unclear whether any or all of those statements

mean a different conclusion regarding jurisdiction may be warranted (1) where an electric corporation is providing, or seeks authority to provide, vehicle charging services, or (2) if market conditions related to vehicle charging change. Since either of those interpretations is plausible, the Declaratory Ruling may not represent the New York Commission's final decision regarding its jurisdiction over vehicle charging stations and services under all circumstances.

An August 2014 order of the Massachusetts Department of Public Utilities ("MDPU")[6] reached an alternate – and, in Ameren Missouri's view, more appropriate – conclusion regarding whether facilities-based statutory definitions, similar to those in Missouri, should be interpreted to confer state regulatory commission jurisdiction over vehicle charging stations owned and operated by a public utility. The MDPU's Order concluded interrelated statutory definitions of "electric company,"[7] "distribution company,"[8] and "distribution,"[9] vested it with jurisdiction over vehicle charging stations and services provided by public utilities, but not over similar services provided by non-utilities. The MDPU based its distinction on the fact that when providing vehicle charging services, an electric utility transmits electricity using "lines," as that term is used in the definition of "distribution" while non-utilities, which own and operate only the charging station, do not. In addition, the MDPU found that while a regulated electric distribution company delivers electricity over its lines at alternating current, a non-utility

[6] *Investigation by the Department of Public Utilities Upon Its Own Motion Into Electric Vehicles and Electric Vehicle Charging* (D.P.U. 13-182-A), 2014 Mass. PUC Lexis 173, 315 P.U.R.4th 139 (August 4, 2014)("MDPU Order"). A copy of the order is attached to this brief as Appendix C.
[7] Mass. G.L. Ch. 164, § 1 defines "electric company," in relevant part, as "a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and for selling, transmitting, distributing, transmitting and selling, or distributing and selling, electricity within the commonwealth...."
[8] Mass. G.L. Ch. 164, § 1 defines "distribution company," in relevant part, as "a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities...."
[9] Mass. G.L. Ch. 164, § 1 defines "distribution," in relevant part, as "the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end user customer within the commonwealth..."

typically converts alternating current it purchases from its serving utility to direct current for delivery to an electric vehicle.

Although neither the New York decision nor the Massachusetts decision is binding, if the Commission is looking for guidance from outside of Missouri regarding the scope of its jurisdiction over electric vehicle charging services, it would be better served following the MDPU Order. The New York Commission's Declaratory Ruling is full of conclusory statements regarding jurisdiction but woefully short on analysis as to how or why those conclusions comport with applicable law. In contrast, the MDPU Order fully explains the basis for its decisions regarding jurisdiction. The MDPU Order parses controlling statutory definitions and explains how and why those definitions, when applied to relevant facts, mandate the conclusion that its regulatory jurisdiction over vehicle charging includes services provided by public utilities. The Order also explains why those same definitions and facts mandate the opposite conclusion when vehicle charging services are provided by non-utilities.

The legal analyses found in the initial briefs filed by Ameren Missouri, Staff, the DOE, Sierra Club/NRDC, and KCPL/GMO confirm Missouri law vests the Commission with jurisdiction over the electric vehicle charging services the Company proposes to provide through its pilot program. When connected to generation, transmission, and distribution equipment owned and operated by Ameren Missouri, an electric vehicle charging island or station becomes another link in the chain of facilities necessary to sell or furnish electricity for light, heat or power to the public, and thus becomes part of the "electric plant" the Company uses to serve customers. As the owner and operator of that electric plant, Ameren Missouri is both an "electrical corporation" and a "public utility," as those terms are defined in Section 386.020, and

is therefore subject to the entire range of regulatory authority conferred on the Commission by Section 386.250.

As for whether the Commission also has jurisdiction over electric vehicle charging services provided by non-utilities (all parties except Staff appear to believe the Commission lacks such jurisdiction), that issue *does not* have to be decided in this case. The records in this and other cases[10] establish that private businesses currently are providing charging services at dozens of locations throughout Missouri. If the Commission believes inquiry into whether those services should be regulated is warranted, it can convene a proceeding for that purpose.

Regardless of the action the Commission ultimately decides to take, during the evidentiary hearing in the case it became clear a provision in Ameren Missouri's tariff, which prohibits re-sale of electricity under certain circumstances, must be modified to allow non-utilities to provide charging services for gain within the Company's service area. During that hearing, Mr. Byrne testified that if Ameren Missouri's proposed pilot program is approved, the Company would be willing to modify its tariff to exempt private vehicle charging services from the re-sale prohibition. To follow through on its commitment, Ameren Missouri has prepared an exemplar tariff sheet with proposed language to effectuate that exemption, a copy of which is attached to this brief as Appendix D.

THE PROPOSED PILOT PROGRAM WILL NOT ADVERSELY IMPACT COMPETITION

In addition to the jurisdictional question discussed above, the other major issue in this case appears to be what effect Ameren Missouri's proposed pilot program will have on the development of a competitive, private sector market for vehicle charging services. The majority of the parties to the case either express no position on that issue or believe the proposed pilot

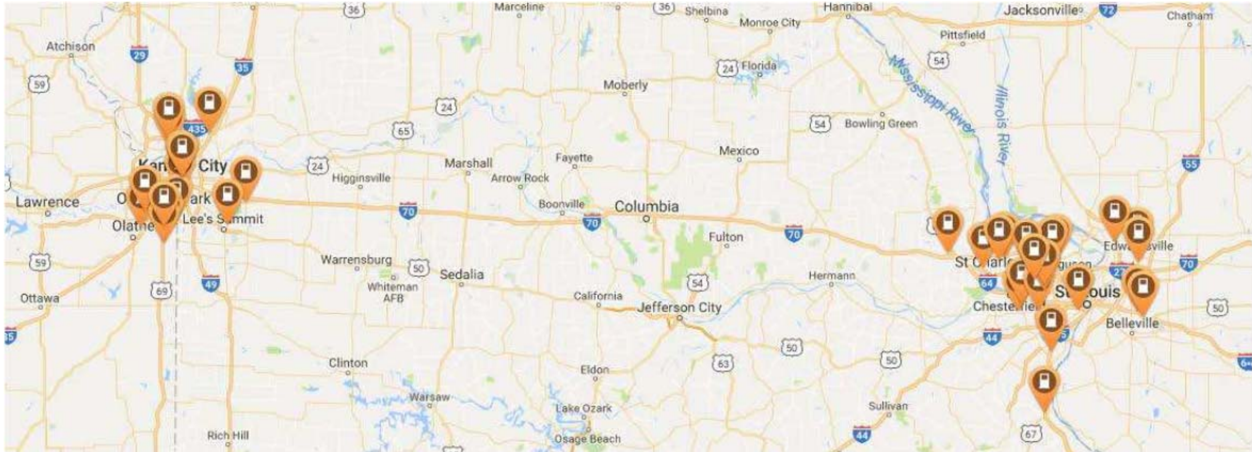
[10] Including, but not limited to, File No. EW-2016-0123.

project will positively affect competition because it will promote adoption and use of electric vehicles in Missouri. In contrast, OPC and ChargePoint argue that authorizing the Company's proposal will negatively affect development of a private sector market. The discussion that follows will show most, if not all, of OPC's and ChargePoint's arguments regarding the competitive effects of Ameren Missouri's proposal are either unfounded, self-serving or both.

As Ameren Missouri's witness Mark Nealon explained in both his direct and surrebuttal testimonies, the pilot was developed to address a very specific gap in the existing electric vehicle charging infrastructure – the lack of fast, publicly-available vehicle charging locations along the Interstate 70 ("I-70") corridor between St. Louis and Kansas City. Mr. Nealon testified that although there are 37 fast, publicly-available charging stations within Missouri currently, those stations are clustered in metropolitan areas around either St. Louis or Kansas City, and only a handful are closely proximate to I-70.[11] He further testified that over the entire 190 miles between Wentzville and Blue Springs – respectively, the easternmost and westernmost fast-charging locations in the metropolitan St. Louis and Kansas City areas – there is not a single, publicly-available fast charging station along the I-70 corridor.[12] This "vehicle charging desert" is illustrated by the following map reproduced from page 12 of Mr. Nealon's surrebuttal testimony. The map shows that it is impossible for an electric vehicle owner to drive one-way or round-trip between St. Louis or Wentzville and Columbia, Jefferson City or Boonville because the battery ranges for most electric vehicles currently on the road today – primarily Chevrolet Volts and Nissan Leafs – are insufficient to traverse those distances without needing to re-charge

[11] Exhibit 2, p. 12, l. 10 – p. 13, l. 12.
[12] *Id*. p. 12, l. 8 – p. 13, l. 2.

en route.[13]



Ameren Missouri's proposed pilot will eliminate this problem by installing five charging islands between St. Louis and Boonville – each of which will include two fast vehicle chargers – in close proximity to I-70, and a sixth charging island in Jefferson City.

Although OPC's and ChargePoint's initial briefs each contend that the Company's proposal will stifle development of a network of privately-owned charging stations along the I-70 corridor, the record evidence in this case does not support that contention. Neither party presented any evidence in their respective pre-filed testimonies specifically identifying any person or company who is ready, willing, and able to install either a single public, fast-charging station or a network of such stations in the area Ameren Missouri proposes to serve. Indeed, as the following excerpt from the hearing transcript makes clear, OPC has no knowledge of any private person or company who has even expressed interest in installing a fast-charging network along the I-70 corridor over the entire three-year duration of the proposed pilot program. Moreover, Dr. Marke testified that, with the exception of ChargePoint (whose objections are

[13] During cross examination, OPC's witness Geoff Marke confirmed the one-way and round-trip distances between Wentzville and Columbia are 84 and 168 miles, respectively; between Wentzville and Jefferson City are 92 and 184 miles, respectively; and between Wentzville and Boonville are 107 and 214 miles, respectively. Transcript p. 529, l. 15 – p. 530, l. 21.

discussed below), OPC could not identify a single private entity who has indicated authorizing Ameren Missouri's proposed pilot program will make that entity less likely to install similar charging stations along the I-70 corridor:

> Q. Are you personally aware of any private person or company that plans to install one or more publicly available DCFC fast electric vehicle charging stations along the I-70 corridor between the City of St. Louis and Boonville within the next 12 months?
>
> A. I have not personally spoken to anyone.
>
> Q. How about within the next 24 months?
>
> A. I have not personally spoken to anyone.
>
> Q. Are you aware of any private person or company who has expressed interest in installing a DCFC fast-charging network along the I-70 corridor similar to the one proposed by Ameren Missouri at any time during the next three years?
>
> A. I am not aware of anybody.
>
> Q. Has any private person or company told you or anyone else at the Office of the Public Counsel that granting Ameren Missouri's application in this case would make that private person or company less likely to install publicly available DCFC fast-chargers along the I-70 corridor?
>
> A. The only entity that I'm aware of is the testimony that was given by ChargePoint's witness, Anne Smart.
>
> Q. But other than that, you're not aware of anybody?
>
> A. No.[14]

As noted earlier, ChargePoint has also expressed concerns about how the proposed pilot program will affect competition. However, in evaluating those concerns, the Commission must keep in mind what ChargePoint means when it uses the term "competition," and the motivations for its concerns. In addition, the Commission should carefully consider whether the record evidence in this case supports claims by both ChargePoint and OPC that granting Ameren

[14] Tr. p. 505, l. 21 – p. 506, l. 24.

Missouri's application in this case will adversely affect ChargePoint's plans to invest in charging facilities along the I-70 corridor.

In her rebuttal testimony, ChargePoint's witness, Anne Smart, described her company's business model as "to engineer, manufacture, and sell the equipment and network services necessary for EV charging station owners to effectively provide charging services to drivers who visit their properties. *In almost all cases, ChargePoint does not own the hardware* [emphasis added]."[15] Based on that testimony, ChargePoint's concerns about competition do not relate to the willingness of private providers to enter the market for vehicle charging services and compete with Ameren Missouri for that business. Instead, ChargePoint's concerns are limited to its ability to sell charging equipment and related network services to those private providers. The basis for, and limited nature of, ChargePoint's concerns about the competitive threats Ameren Missouri's proposal represents were confirmed in Ms. Smart's surrebuttal testimony, where she stated:

> If Ameren is given the ability to develop this charging station project and offer charging stations free of charge to site hosts who would otherwise need to purchase those stations from a vendor like ChargePoint at full cost, this pilot will block competition in the market. It will become very difficult, if not impossible, for ChargePoint and any other vendor not chosen by Ameren in its RFP process, to sell any charging stations between Columbia and St. Louis . . ..[16]

ChargePoint's concerns about competition are completely motivated by, and rooted in, its own economic self-interest. That self-interest must not be confused with the public interest with which the Commission is charged, by law, to represent in this case. ChargePoint is not concerned whether Ameren Missouri's proposed pilot project will retard or delay installation of privately-owned and operated charging stations that would compete for vehicle charging business. Instead,

[15] Exh. 300, p. 2, l. 11-14.
[16] Exh. 301 p. 3, l. 11-17.

it is only concerned that those private owner/operators will not buy their equipment from ChargePoint. But, even that concern seems overblown. It is hard to take ChargePoint's claim seriously that the five charging islands Ameren Missouri proposes to install along I-70 represent a significant threat to the market for charging equipment along a 190-mile highway corridor, stretching from Wentzville to Blue Springs, where no public, fast-charging stations currently exist.

But, beyond its own self-interest, there appears to be another factor motivating ChargePoint's purported concerns about competition – **

**

Finally, both OPC's and ChargePoint's initial briefs allege ChargePoint has plans to install, own and operate a network of public, fast-charging stations along the I-70 corridor, which would be delayed or interrupted if the Commission approves Ameren Missouri's proposed pilot project.[19] But, a careful reading of relevant testimony shows both briefs grossly distort the evidentiary record regarding those plans.

17

18

19 OPC's Initial Brief, p. 10; ChargePoint's Initial Brief, p. 11.

NP

As noted earlier in this brief, the ChargePoint business model is to engineer, manufacture and sell equipment and related network services to persons and entities who want to own and operate electric vehicle charging stations. In almost all cases, ChargePoint does not own or operate the charging equipment it sells. Yet, despite these clear and unambiguous statements that ChargePoint is in the business of selling – not owning and operating – vehicle charging equipment, both OPC and ChargePoint rely on statements that Ms. Smart made during the evidentiary hearing to suggest that the company has plans to "invest in charging facilities along the I-70 corridor in Missouri," which would be abandoned if the Commission approves Ameren Missouri's pilot program.[20] But does Ms. Smart's testimony really support that conclusion?

Although she answered "yes" when asked if ChargePoint is "willing to invest capital to install fast-charging infrastructure along the I-70 corridor,"[21] her answers were much more vague and equivocal when she was pressed for specifics. For example, when asked if ChargePoint itself would invest its own capital in a fast-charging infrastructure, she responded ChargePoint's plans called for either the investment of its own capital or in partnering with third parties that would finance charging stations themselves.[22] But she refused to provide any details regarding ChargePoint's plans – even when offered protections afforded by the Commission's rules governing highly confidential information. More specifically, she refused to provide a timeline for the planned investment in charging infrastructure or examples of a business model ChargePoint would follow to make that investment.[23] However, she was willing to say ChargePoint's plans for Missouri were similar to the strategy her company employed in 2016 on

[20] ChargePoint's Initial Brief, p. 11.
[21] Tr. p. 331, l. 5-11.
[22] *Id.* p. 331, l. 12-17.
[23] *Id.* p. 332, l. 13 – p. 333, l. 2.

the East and West coasts.[24] But, her description of those activities made clear that all charging infrastructure installations involving ChargePoint in 2016 were financed, in whole or large part, by private capital from Volkswagen and BMW.[25] She further testified that ChargePoint has been in discussions with third parties with which the company has "national relationships," but was unable to specify what plans, if any, or timetable ChargePoint or those third parties had for installing charging stations or a charging infrastructure along the portion of the I-70 corridor that runs through Missouri.[26]

Putting aside the serious questions Ms. Smart's testimony raises about ChargePoint's plans, concerns about profitability are the real reason no private person or business has expressed interest in, or willingness to make, even the modest infrastructure additions Ameren Missouri proposes in this case. In his surrebuttal testimony, Mr. Nealon described those concerns as follows:

> As a direct result of the financial analysis Ameren Missouri performed as part of this pilot project proposal, it became clear why the private sector – despite all its urban-based marketing activity to date – hasn't made the move to deploying EV charging infrastructure that tailors to the long-distance traveler. Deploying DCFC facilities is an expensive undertaking relative to Level 2 AC, and given the relative infrequency of medium to long-range trips for the average driver – one-way trips greater than 30 miles constitute only 5% of all trips taken per the 2009 National Household Travel Survey – the business case is bleak for any free market entity expecting corridor charging revenues to garner a quick return on investment.[27]

Even OPC's witness agreed that if he were a private sector business, concerns about profitability would affect his willingness to make an investment in a charging station network

---

[24] *Id.* p. 333, l. 3-16.
[25] *Id.*
[26] *Id.* p. 333, l. 17 – p. 334, l. 12.
[27] Exh. 2 p. 13, l. 16 – p. 14, l. 2.

similar to the one proposed by Ameren Missouri.[28] He also admitted that in his experience, private sector businesses do not often invest capital in business ventures they expect will lose money, as the Company's charging program is projected to do over its three-year term.[29]

Mr. Nealon further testified that Ameren Missouri is both willing and able to help fill the infrastructure void created by the private sector's reluctance to enter the corridor-charging market at this point in its development:

> On the other hand, Missouri's 2015 State Energy Plan offers "electric utilities are uniquely positioned to help support electric vehicle infrastructure and charging station networks." This is very true for several reasons. Ameren Missouri is, by its nature, an infrastructure company and has been providing safe and reliable energy for over a century. As a direct consequence of the essential service we provide Missouri customers, the electric grid is quite literally everywhere civilization exists, and is already adjacent to remotest of locations where EV fueling would be necessary. Providing dependable and affordable EV charging infrastructure virtually anywhere and for the long haul is well within Ameren Missouri's natural capabilities.[30]

Mr. Nealon's facts and explanations cannot be ignored, and they lead inevitably to the conclusion that Ameren Missouri's proposal represents the only real prospect for a short-term solution to the electric vehicle charging infrastructure gap that exists along the I-70 corridor. At least in the short term (i.e., the three-year duration of the proposed pilot program), and perhaps longer, there is no evidence any private sector entity is willing to make the investment the Company proposes in this case in the hope that by filling a significant gap in the developing charging infrastructure more Missourians will be encouraged to purchase and use electric vehicles. That is why partial solutions tried in other states to fill gaps in the charging infrastructure – like the "make-ready" program currently being tested in California, which would allow a public utility to provide facilities necessary to connect a charging station to the grid but

[28] Tr. p. 507, l. 18-23.
[29] *Id*. p. 507, l. 24 – p. 508, l. 2.
[30] Exh. 2 p. 14, l. 3-11.

would not allow the utility to provide regulated charging services – will not work here. If the Commission shares Ameren Missouri's belief that providing a means for electric vehicles to re-charge along the I-70 corridor is key to increasing the use of such vehicles, the only short-term solution is to approve the Company's proposed pilot program:

> Consumer adoption of EVs in Missouri may someday be substantial enough to create a more viable business case for the private sector in the travel corridor setting, though we feel this will take many years, if it's possible at all. But Ameren Missouri is staunch in its conviction that our "unique positioning" compels us to begin leading the corridor charging transformation, lest the type of consumer adoption necessary to create more market-competitive business cases is never revealed.[31]

STAFF'S PROPOSED REGULATORY CONSTRUCT IS INAPPROPRIATE

As noted elsewhere in this brief, Staff agrees with the majority of the parties to this case that Missouri law vests the Commission with both the authority and duty to regulate the electric vehicle charging services Ameren Missouri proposes to provide. In a change from positions stated in the respective direct testimonies of its witnesses Natelle Dietrich and Byron Murray,[32] Staff now agrees with all parties except OPC that all costs associated with, and all revenue derived from, vehicle charging services should be booked above-the-line.[33] However, Staff also proposes that in all future rate cases in which, during the test year, revenue from the pilot is less than costs recorded for the project,[34] the Commission should impute additional revenue so that the net of program costs and revenue is no less than zero.[35] The rationale for Staff's proposal appears to be its desire to avoid providing any subsidy to the pilot project from retail electric

---

[31] *Id*. p. 14, l. 20 – p. 15, l. 2.

[32] Direct testimony filed by both Ms. Dietrich and Mr. Murray advocated booking costs and revenue associated with the pilot project below-the-line, which would have taken them out of the calculation of the revenue requirement used to set the Company's retail electric rates.

[33] Staff's Initial Brief p. 16.

[34] As described by Ms. Dietrich, project costs would consist of operating costs, taxes, depreciation expense, and a return on invested capital. Tr. p. 380, l. 14-18.

[35] See Tr. p. 380, l. 19 – p. 382, l.19.

rates, even though evidence in this case conclusively establishes: (1) no subsidy would occur until rates set in the Company's pending general rate case – File No. ER-2016-0179 – are changed in a subsequent case; and (2) the amount of any subsidy would be less than one cent per retail electric customer per year.

While Ameren Missouri agrees with Staff that all costs and revenue associated with the pilot program should be booked above-the-line, for the reasons stated below, the Company believes Staff's proposal to impute revenue when project costs exceed project revenue represents a radical departure from regulatory principles the Commission has consistently followed in the past. Moreover, absent a showing of imprudence by Ameren Missouri in the way the Company constructed the proposed charging facilities or managed the program, Staff's proposal probably is unlawful.

Although it always has believed the proposed pilot program should be regulated, Staff originally proposed to book all costs and revenue associated with the project below-the-line, which would have eliminated them from calculation of the revenue requirement used to set the Company's retail electric rates. Following – and perhaps prompted by – the filing of Mr. Byrne's surrebuttal testimony that it was improper and probably unprecedented to require costs and revenue of a regulated service to be booked below-the-line,[36] Staff changed its position. But, the change merely elevated form over substance, because the effect of Staff's new proposal is effectively the same – Ameren Missouri would be denied the opportunity to have the costs of the pilot program considered for ratemaking purposes.

During the evidentiary hearing, Ms. Dietrich agreed that, generally speaking, rates set by the Commission are supposed to provide recovery of a utility's prudently-incurred operating

[36] Exh. 3 p. 6, l. 18 – p. 7, l. 11.

costs and a reasonable opportunity to earn a fair return on its invested capital.[37] However, during years when pilot-project revenues are less than costs, Staff's proposal, if adopted, would result in retail electric rates that satisfy neither of those requirements.

During the evidentiary hearing, Mr. Byrne explained that it would represent a distinct and substantial departure from past practice if the Commission were to adopt Staff's proposal in this case, and he provided a common example – a new electric substation – to illustrate why Ameren Missouri should not be required to show revenue equals or exceeds costs before it is allowed to recover costs and investment of its proposed pilot program:

> For example . . . if there's expansion in west St. Louis County and you build a substation, maybe on the first day that substation goes into service or the first year, you're not recovering the cost of that substation from the people who are served by that substation.
>
> But that's – that's normal. That's a – normal thing that happens in the course of utility regulation. There's [sic.] all kinds of subsidies, temporary and permanent. A person who lives closest to the generating plant is subsidizing the person that lives further away from the generating plant.
>
> So the mere fact that there's a small subsidy here doesn't strike me as anything unusual or anything that's really very different....[38]

Mr. Byrne also explained other effects of Staff's proposal to further show why that proposal should be rejected:

> [A]s I understand Staff's position . . . it is that revenues should be imputed equal to the cost. And so, effectively, what would happen is the shareholders of Ameren Missouri would pay for the cost of the project when . . . the revenues were not sufficient to pay the costs.
>
> But then later, if the revenues became high enough that they were more than the cost, the – customers would get the benefit of that extra money.[39]

---

[37] Tr. p. 384, l. 7-12.
[38] *Id*. p. 248, l. 2-18.
[39] *Id*. p. 214, l. 15-25.

And although he did not specifically mention it, Mr. Byrne's reference to subsequent benefits customers would receive when pilot-project revenue equaled or exceeded costs; those would be gained without any ratepayer contribution toward a return on, or return of, past capital costs Ameren Missouri incurred to provide those benefits.

In addition to denying Ameren Missouri its right to recover costs and investment associated with regulated electric vehicle charging services, Staff's proposal represents a radical departure from regulatory principles governing when the Commission should impute revenue for ratemaking purposes. Historically, the Commission has required a party who proposes to impute additional revenue for ratemaking purposes to present evidence showing a utility acted imprudently. But, under Staff's proposal, no such showing would be required. As explained by Ms. Dietrich, the only showing required to trigger Staff's proposed revenue imputation would be a mathematical calculation showing that project costs exceeded revenue.[40] The fact that Ameren Missouri's costs of providing vehicle charging services exceed revenue derived from those services is not evidence of imprudence. That is especially true in this instance because throughout this proceeding the Company has explained that it expects costs will exceed revenue throughout the three years the pilot program will operate. But, that shortfall is attributable to the limited number of electric vehicles operating in Missouri who will use charging stations along the I-70 corridor. Ameren Missouri hopes the pilot program will increase that number, and projects revenue will equal or exceed its cost of providing charging services in the fifth year of operation, assuming the project operates that long.[41] Staff's proposal also ignores ancillary

---

[40] *Id.* p. 385, l. 14-25.

[41] Mr. Byrne testified Ameren Missouri realizes that if its proposed pilot program is to extend beyond the three years proposed in its application, the Company will be required to obtain additional Commission authority to do so. Tr. p. 244, l. 23 – p. 245, l. 21.

benefits all the Company's customers – including those who do not own or operate an electric vehicle – would receive from the proposed pilot.

If, as the Company projects, the pilot program stimulates the growth of electric vehicles in its service area, owners of those vehicles who rely on the proposed charging stations for long distance travel will also need to charge their vehicles for the ninety-five percent of vehicle trips that are less than thirty miles one way. This demand for vehicle charging, whether done at home, work, or at a charger operated by Ameren Missouri or some other company, will increase the demand for electricity. As pointed out earlier in this brief, increased revenue acts to reduce the revenue requirement the Company's rates will be required to cover in future rate cases. A reduced revenue requirement benefits all retail customers.

CONCLUSION

Ameren Missouri proposes approval of a pilot program to address an unserved gap in the developing electric vehicle charging infrastructure. No evidence has been presented in this case that even suggests that one or more private businesses have concrete plans to step forward in the near term future to meet the need for charging services along the I-70 corridor. If the Company's proposal is not approved, that need will continue to be unserved. Even if a private business plans to enter the market and compete against Ameren Missouri for corridor-charging business, the Company has agreed to amend its tariff to remove provisions that currently prohibit re-sale of electricity, thus removing a bar to competitive entry. As Mr. Byrne made clear during the evidentiary hearing, through this application, Ameren Missouri is not seeking a monopoly on charging services along I-70, and the Company does not intend to challenge any party who may

want to offer the same or similar charging services as a competitor.[42] Instead, Ameren Missouri filed this application because it believes current Missouri law requires such services, when offered by a public utility, to be fully regulated by the Commission. The Company also believes full regulation includes prescribing rates to be charged to customers for electricity they use to re-charge their vehicles.

The pilot program Ameren Missouri proposes was intentionally limited in both size and duration. Capital costs of all six charging islands the Company proposes to install are estimated to be less than $600,000 – truly a modest addition to rate base for a company Ameren Missouri's size. Although charging revenues are not expected to cover all costs of the program over its three-year term, during the period rates set in the Company's pending general rate case remain in effect, 100 percent of those costs will be borne by shareholders. Thereafter, any subsidy sought from retail electric customers will be miniscule – less than one cent per customer per month. No one can seriously argue a subsidy of that size would – or could – cause a hardship for any customer.

Whatever subsidy may be required in the future, the potential benefits of the proposed pilot will be more than worth it. If, as Ameren Missouri predicts, its pilot project helps increase electric vehicle usage in Missouri, increases in revenue attributable to increased demand for electricity for vehicle charging will produce gains to all the Company's retail customers that far exceed any subsidy that might be required in the short term. In addition, data Ameren Missouri will be able to gain from the project – which will be shared with all interested stakeholders – will enable both the Company and the Commission to better understand and predict demands that increased use of electric vehicles will place on the electric grid in the future. In turn, this

[42] Tr. p. 233, l. 1-22.

information and knowledge will allow for better and more informed planning decisions, including planning for changes in laws and rules governing electric regulation.

For all the reasons expressed by all parties to this proceeding that support the Company's proposal, the Commission should issue an order granting Ameren Missouri authority to move forward with the electric vehicle charging pilot program proposed in this case.

Respectfully submitted,

By: /s/ *Paula N. Johnson*______
Paula N. Johnson, #68963
Senior Corporate Counsel
Wendy Tatro, #60261
Director – Assistant General Counsel
Ameren Missouri
1901 Chouteau Avenue
St. Louis, MO 63103
(314) 554-3484 (telephone)
(314) 554-4014 (facsimile)
AmerenMOService@ameren.com

L. Russell Mitten, #27881
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 (telephone)
(573) 634-7431 (facsimile)
rmitten@brydonlaw.com

ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 28th day of February, 2017.

/s/ *Paula N. Johnson*
Paula N. Johnson

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 13-E-0199 - In the Matter of Electric Vehicle Policies.

NOTICE OF NEW PROCEEDING AND SEEKING COMMENTS

(Issued May 22, 2013)

To support consumer acceptance and use of plug-in electric vehicles (PEVs), the Commission seeks to ensure that its regulations and policies promote the continuing evolution of the market for PEVs and for supporting services, while maintaining the safety and reliability of New York's electric grid. PEVs occupy an increasing share of the automobile market. As noted by Governor Andrew M. Cuomo in his 2013 State of the State, "[i]t is projected that with the adoption of a supportive set of policies, the number of plug-in electric vehicles on the road in New York State could increase from less than 3,000 today to 30,000 - 40,000 in 2018 and one million in 2025." The above captioned proceeding is instituted to review policies that may impact consumer acceptance and use of electric vehicles and to further develop the Commission's policies regarding electric vehicles and the services and infrastructure that they require.

Background

Among the issues that may be addressed in this proceeding are the Commission's policies regarding Electric Vehicle Charging Equipment (EVCE), both at publicly available Charging Stations and at PEV owners' premises; policies regarding metering and rates, *e.g.*, time of use (TOU) rates for PEV charging and the use of single or dual meters for a house with EVCE; the impact the PEVs may have on the electric grid in New York and how the electric grid may have to be modified to support PEVs; and outreach and education concerning PEVs.

The initial inquiry in this proceeding will focus on the Commission's jurisdiction over public Charging Stations. It will also seek comments regarding other Commission actions which may affect consumer acceptance and use of PEVs. Depending on the nature and extent of the comments submitted, this proceeding may require multiple phases.

Commission Jurisdiction over Charging Stations

The availability of Charging Stations is vitally important to increased customer acceptance and use of PEVs. Public Charging Stations may be installed in garages, parking lots, or next to parking spaces along public streets. The availability of public Charging Stations at numerous locations will allow customers to charge vehicles while parked overnight (e.g., at or near residences and hotels), at work, conducting errands, or at shopping, eating and entertainment venues (e.g., at or near shopping malls, arenas and stadia, or in commercial or entertainment districts).

As an initial matter, the Commission must determine whether it will assert or disclaim jurisdiction over publicly available Charging Stations, over their operators, or over the transaction between their operators and members of the public.[1] Public Service Law Sections 2, 5, and 64 provide guidance on this issue.[2] Based on these statutory provisions, the Commission

---

[1] Whether or not the Commission has jurisdiction over Charging Stations, the Commission does have jurisdiction over the sale of electric delivery service or commodity to Charging Stations by the distribution utilities operating in the State.

[2] PSL §5 provides that the Commission's jurisdiction extends "to the manufacture, conveying, transportation, sale or distribution of … electricity for light, heat or power, to … electric plants and to the persons or corporations owning, leasing or operating the same." Additionally, PSL §64 states that Article 4 of the PSL "shall apply to the … generation, furnishing and transmission of electricity for light, heat or power." Also relevant to understanding the

could conclude that the operator of a publicly available Charging Station is engaged in the provision of an unregulated service (*e.g.*, car charging service)or car charging equipment, and the provision of electricity is merely incidental. In that event, such an operator is not engaged in the "manufacture, conveying, transportation, sale or distribution of … electricity for light, heat or power."[3] In this view, the fact that electricity is used in the provision of the car charging service is merely incidental and not determinative for jurisdiction.

Indeed, the transactions between the operator of publicly available Charging Stations and members of the public could be differentiated from traditional sales of electricity. In a traditional sale of electricity the purchaser uses the acquired electricity for myriad purposes, including, for example, lighting, refrigeration or powering electronic devices. The member of the public engaged in a transaction with the operator of a publicly available Charging Station, however, is only able to charge their PEV, while making use of specialized equipment supplied by the publicly available Charging Station. Indeed, the electricity used by the Charging Station is useless to the customer without the Charging Station's equipment. This distinction could be seen as providing additional support for concluding that the transaction is one for "charging services," and not a sale of electricity.

The understanding that the transaction is one for a service and not for the sale of electricity could lead to a conclusion that the Charging Station's operator would not be an electric corporation and that the Charging Station's EVCE would not be electric plant. Thus, if this view is adopted, neither

---

Commission's jurisdiction are the definitions of the terms "electric plant" and "electric corporation" contained in PSL §§2(12) and (13).

[3] PSL §5(1)(b).

the operator, nor the Charging Station, nor the transaction between the customer and the Charging Station operator would be subject to the Commission's jurisdiction.

In considering Charging Stations, the Commission could also observe that, unlike the electric utilities subject to our jurisdiction, Charging Stations are not an inherent monopoly. Potential customers could choose whether or not to use a particular Charging Station or a different Charging Station located at a different site. As a result of this competitive market for Charging Stations, the regulation of Charging Station rates and practices could be characterized as unnecessary.

Request for Comments

Interested parties are encouraged to submit comments addressing the statements, above, regarding the Commission's jurisdiction over Charging Stations and the following questions:

Jurisdiction over Charging Stations:

1. To what extent and in what ways would the development of consumer acceptance and use of electric vehicles and of the supporting services for electric vehicles be affected by the Commission's determination that it does or does not have direct jurisdiction over publicly available Charging Stations, their operators or the transaction between publicly available Charging Station operators and members of the public?
2. In determining whether the provisions of the Public Service Law provide it with jurisdiction, should the Commission consider the manner in which a customer is billed for electric vehicle charging services, e.g., per kWh, per hour, day, month, etc?
3. If the commenter argues that the Commission should assert jurisdiction over publicly available Charging Stations and

their operators, how should the Commission exercise that jurisdiction? For example, should public Charging Stations and their operators be subject to rate regulation?

Utilities as Owners or Operators of Charging Stations:

4. Should the Commission allow electric distribution utilities operating in New York State to own or operate Charging Stations:
   a. as part of their regulated operations?
   b. segregated from their regulated operations, treating Charging Station assets as nonutility property and revenues and expenses related to Charging Station operations as revenues and expenses from nonutility operations?
5. Should unregulated affiliates of electric distribution utilities operating in New York State own or operate Charging Stations?

Impact of PEV charging on Electric Infrastructure:

6. State-wide, the number of PEVs has increased from 962 in May 2012 to 3,931 in April 2013. Based on Department of Motor Vehicle Records,[4] the concentration of PEVs by zip code can be ascertained.

---

[4] See, for instance, the Transportation & Climate Initiative Of the Northeastern and Mid-Atlantic States "Assessment of Current EVSE and EV Deployment." Prepared for the New York State Energy Research and Development Authority and the Transportation and Climate Initiative. Published in November 2012. Available for download at: http://www.transportationandclimate.org/sites/default/files/Assessment of EVSE and EV Deployment.pdf (accessed on April 30, 2013).

a. What steps can be taken to ensure that utilities are aware of new EVCE locations so they can proactively address any necessary distribution facility upgrades?

b. What customer privacy concerns need to be addressed?

c. If distribution facility upgrades are necessary to accommodate PEV charging, should such costs be shared among all customers (*i.e.*, rate-based), or allocated in some other way?

d. At what level of PEV use would there be transmission level performance impacts? Are there any strategies that could minimize such impacts?

e. To what extent can the State's solar photovoltaic (PV) policies, under the NY Sun initiative, be utilized to offset potential increases in peak demand that may result from the expanded use of EVCE, particularly at publicly available charging stations?

Utility Metering and Rate Issues:

7. How should the Commission exercise its regulatory authority to ensure that PEV charging, both at Charging Stations and in private locations, occurs in a manner that is consistent with grid capabilities, *e.g.*, through time of use (TOU) or other rate structures?

8. Do existing rate structures need to be modified to accommodate the evolution of the PEV market? Are additional measures needed to increase the use of TOU rates for EVCE?

9. What additional metering policies or protocols (*e.g.*, dual metering, submetering) may be needed to accommodate various EVCE options?

Consumer Issues:

10. What risks face consumers in the market for EV charging services and how does, or should the market or other entities address those risks?
11. To what extent should outreach efforts integrate PEV and solar PV information?

Interested parties may submit comments addressing the above questions no later than Monday, July 8, 2013. Comments should be submitted electronically, by e-filing through the Department's Document Matter and Management System (DMM)[5], or to the Secretary at secretary@dps.ny.gov. Those unable to submit comments electronically may mail or deliver them to Hon. Jeffrey C. Cohen, Acting Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350. All comments submitted will be posted to the Commission's Web site and become part of the official case record.

Those who would like to subscribe to the Service List or request Party Status for Case 13-E-0199 should do so through the Commission's Web site at www.dps.ny.gov. At the left side of the home screen, click on "Commission Documents," then "Search by Case Number" for "13-E-0199." When the case page appears, click on the "Subscribe to Service List" or "Request for Party Status" box in the upper right corner, and follow the instructions in the column headed "Parties" or "Service List."

(SIGNED) JEFFREY C. COHEN
Acting Secretary

[5] Why Register with DMM, http://www.dps.ny.gov/DMM Registration.html
How to Register with DMM, http://www.dps.ny.gov/e-file/registration.html

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 14, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 13-E-0199 - In the Matter of Electric Vehicle Policies.

DECLARATORY RULING ON JURISDICTION OVER PUBLICLY AVAILABLE ELECTRIC VEHICLE CHARGING STATIONS

(Issued and Effective November 22, 2013)

BY THE COMMISSION:

BACKGROUND

A Notice of New Proceeding and Seeking Comments (Notice) was issued in this case on May 22, 2013. The Notice discussed the need to ensure that this Commission's "regulations and policies promote the continuing evolution of the market for [plug-in electric vehicles] PEVs and for supporting services, while maintaining the safety and reliability of New York's electric grid." The Notice sought comment on an argument, set forth in the Notice, which concluded that this Commission does not have jurisdiction over Publicly Available Charging Stations (Charging Stations), their owners or operators, or the transaction between the operators and members of the public. In addition, the Notice sought comment on the potential impact of this Commission's determination that it does or does not have

jurisdiction in this area.[1] In this Declaratory Ruling, we find that this Commission does not have jurisdiction[2] over (1) Charging Stations; (2) the owners or operators of Charging Stations, so long as the owners or operators do not otherwise fall within the Public Service Law's (PSL) definition of "electric corporation;" or (3) the transaction between such owners or operators of Charging Stations and members of the public.

COMMENTS

In response to the above referenced Notice, nine parties submitted comments.[3] The commenters generally agreed that this Commission should not assert jurisdiction over Charging Stations, the owners or operators of Charging Stations, or the transaction between Charging Station owners or operators and members of the public.

NRDC-Pace, RESA and CNY explain that Charging Stations are not a natural monopoly. NRDC-Pace cautions, however, that this Commission "should take care to maintain its ability to respond to a market that is likely to evolve in ways that cannot be anticipated." NYSERDA notes that Charging Stations may be owned or operated by the entity that owns a parking lot or structure, such as a municipality or a private business such as

---

[1] The Notice also sought comment on other issues related to electric vehicles, which are not addressed in this Declaratory Ruling.

[2] We retain jurisdiction over the services provided by electric distribution utilities to the owners or operators of Charging Stations.

[3] NYS Department of Environmental Conservation (DEC); Natural Resource Defense Council and Pace (NRDC-Pace); ChargePoint, Inc.; the New York State Energy Research and Development Authority (NYSERDA); The City of New York (CNY); the Joint Utilities; NRG Retail Affiliates (NRG); the Retail Energy Supply Association (RESA); and the New York Power Authority (NYPA).

a store. ChargePoint, Inc. agrees with the proposition stated in the Notice, that the operator of a Charging Station is not selling electricity, but rather providing car charging services and/or equipment to the public. RESA states that "[i]n many key areas this market is analogous to the exercise of Commission jurisdiction over electric appliances such as refrigerators, washing machines and other domestic appliances."

Additionally, the commenters generally state that the Commission should not assert jurisdiction solely because the operator of the Charging Station calculates the fee on a per kWh basis, as opposed to a per hour, per minute or other rate unrelated to the measurement of electricity used.

DISCUSSION AND CONCLUSION

Under the Public Service Law (PSL), this Commission's jurisdiction extends to the manufacture, conveying, transportation, sale or distribution of electricity for light, heat or power, to electric plant and to the entities owning, leasing or operating electric plant.[4] The PSL specifically defines the terms "electric plant" and "electric corporation." "Electric plant" means "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power."[5] "Electric corporation" means an entity "owning, operating or managing any electric plant... ."[6] Accordingly, in determining whether our jurisdiction extends to Charging Stations, their owners and/or operators and the transaction between the owners/operators of Charging Stations and members of

[4] PSL §5(1)(b).

[5] PSL §2(12).

[6] PSL §2(13).

the public, we must determine whether a Charging Station is included in the definition of "electric plant."

Charging Stations do not fall within the definition of "electric plant" because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power. Instead, and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services. This service requires the use of specialized equipment and allows the customer to do only one thing, charge a PEV's battery. The primary purpose of the transaction between Charging Station owners/operators and members of the public is the purchase of this service and the use of this specialized equipment. While the customer is using electricity, this is incidental to the transaction.

Since a Charging Station is not electric plant, the owners or operators of Charging Stations do not fall within the definition of electric corporation.[7] Additionally, the method of calculating the transaction fee, specifically, the use of a per kWh price, will not confer jurisdiction where none otherwise exists. We note that the owners and operators of Charging Stations may decide that a time based fee or kWh based fee, or other fee structure is appropriate.[8]

We share the concerns of NRDC-Pace, that this Commission should maintain its ability to respond to the market

---

[7] We do have jurisdiction over the owner or operator of a Charging Station, where that owner or operator otherwise falls within the PSL §2(13) definition of "electric corporation."

[8] The Joint Utilities stated that some of the electric distribution utilities may need to modify existing tariff language to accommodate Charging Station owners or operators who would utilize a per kWh fee structure. Utilities that need to modify their existing tariff language should file such tariff revisions.

as it evolves.[9] Our determination here does not diminish our ability to respond to changes in the market in which Charging Stations operate.[10] We maintain continuing jurisdiction over the transactions between electric distribution utilities and the owners and operators of Charging Stations.

The Commission finds and declares:

1. The Public Service Law does not provide the Commission with jurisdiction over (1) publicly available electric vehicle charging stations; (2) the owners or operators of such charging stations, so long as the owners or operators do not otherwise fall within the Public Service Law's (PSL) definition of "electric corporation;" or, (3) the transactions between the owners or operators of publicly available electric vehicle charging stations, which do not otherwise fall within the PSL's definition of "electric corporation," and members of the public.

[9] With regard to the safe installation of electric vehicle charging equipment, we understand that NYC, for example, relies on the National Electric Code's requirements. NYC requires a permit for the installation of charging equipment, as well as an inspection of the installation by a NYC electrical inspector. We also note that the National Institute of Standards and Technology, a bureau of the U.S. Department of Commerce, has been developing guidelines for oversight of the devices used in the provision of charging services (http://www.nist.gov/pml/wmd/usnwg-evfs.cfm). We understand that staff from New York State's Department of Agriculture & Markets, Bureau of Weights and Measures, have been involved in this working group.

[10] This declaratory ruling is based on our understanding of the current market in which Charging Stations operate.

2. This proceeding is continued.

By the Commission,

Kathleen H. Burgess

Digitally Signed by Secretary
New York Public Service Commission

KATHLEEN H. BURGESS
Secretary

2014 Mass. PUC LEXIS 173; 315 P.U.R.4th 139

Massachusetts Department of Public Utilities

August 04, 2014

D.P.U. 13-182-A

Reporter
2014 Mass. PUC LEXIS 173 *; 315 P.U.R.4th 139

Investigation by the Department of Public Utilities upon its own Motion into Electric Vehicles and Electric Vehicle Charging

Core Terms

electricity, distribution company, electric company, grid, northeast, reply, doer, ownership, owner and operator, customer, consumer, ownership and operation, infrastructure, deployment, station, distribution facilities, pertinent part, cost recovery, volumetric, affiliate, voltage, energy, resale, fuel

Panel: **[*1]** Ann G. Berwick, Chair; Jolette A. Westbrook, Commissioner; Kate McKeever, Commissioner

Opinion

ORDER ON DEPARTMENT JURISDICTION OVER ELECTRIC VEHICLES, THE ROLE OF DISTRIBUTION COMPANIES IN ELECTRIC VEHICLE CHARGING AND OTHER MATTERS

I. INTRODUCTION

On December 23, 2014, the Department of Public Utilities ("Department") issued an Order opening an investigation into electric vehicles ("EVs") and electric vehicle charging. Electric Vehicles, D.P.U. 13-182. In that Order, the Department sought comments relating to: (a) the Department's jurisdiction over EV charging; (b) electric distribution company involvement in EV charging; (c) EV charging and the electric distribution system; (d) residential metering and rate structures for EVs; and (e) consumer issues. D.P.U. 13-182, at 7-8. The Department received initial comments from the Attorney General of the Commonwealth of Massachusetts ("Attorney General"); ChargePoint, Inc. ("ChargePoint"); the Conservation Law Foundation ("CLF"); the Motorcycle Industry Council; the Natural Resources Defense Council ("NRDC"); Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid ("National Grid"); NSTAR Electric Company **[*2]** and Western Massachusetts Electric Company (together "Northeast Utilities"); TechNet; Zero Motorcycles, Inc.; joint comments from the Commonwealth of Massachusetts Department of Energy Resources and Department of Environmental Protection (together "DOER/DEP"); and joint comments from Environment Northeast, ChargePoint, CLF, New England Clean Energy Council, and Plug In America (together "Joint Commenters"). The Department received reply comments from ChargePoint, Jerome Edington, National Grid, Northeast Utilities, NRDC, joint reply comments from DOER/DEP, and the Joint Commenters. Comments and reply comments addressed all issues posed in D.P.U. 13-182. In this Order, we address the Department's jurisdiction over EV charging and electric distribution company [1] involvement in EV charging.

[1] Electric distribution companies subject to the Department's jurisdiction are: Fitchburg Gas and Electric Light Company d/b/a Unitil; Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid; NSTAR Electric Company; and Western Massachusetts Electric Company.

[*3]

II. DEPARTMENT JURISDICTION OVER ELECTRIC VEHICLE CHARGING

A. Introduction

An EV requires the use of electricity as a fuel. [2] For electricity to become a reliable source of fuel for EVs, charging infrastructure (electric vehicle supply equipment, hereinafter "EVSE") must become widely available in homes, businesses, and public places. In D.P.U. 13-182, the Department identified different categories of EV charging (e.g., public charging that is open to all EV drivers for a fee; private charging at residences and businesses; semi-private charging for visitors to a store, parking garage, or other facility, whether for a fee or for free; and charging at home for residents of multi-unit buildings, such as apartments and condominiums). D.P.U. 13-182, at 4. The Department sought comments regarding its jurisdiction over these different charging categories. D.P.U. 13-182, at 7. Comments relating to the Department's jurisdiction are summarized below.

[*4]

B. Summary of Comments

The Attorney General acknowledges that the Department has broad jurisdiction over companies that sell or distribute electricity, but asserts that EV charging stations do not involve either activity (Attorney General Comments at 2). Rather, the Attorney General argues that EV charging stations provide a specialized battery charging service for EVs, comparable to public cellular phone charging services (Attorney General Comments at 3). The Attorney General therefore concludes that the Department has no jurisdiction to regulate EV charging service or the EVSE used to provide it (Attorney General Comments at 2). TechNet and the Joint Commenters agree with the Attorney General's position (TechNet Comments at 2; Joint Commenters Comments at 3-8). DOER/DEP, ChargePoint, and NRDC also support this position, with the caveat that the Department has jurisdiction over any EV charging service provided by a regulated electric distribution company (DOER/DEP Comments at 8; ChargePoint Comments at 6-8; NRDC Comments at 5). The Joint Commenters add that the Department should determine that EVSE ownership or operation alone does not constitute supply of generation services [*5] (Joint Commenters Comments at 7-8).

National Grid and Northeast Utilities similarly agree that EV charging should be exempt from Department regulation, except if provided by an electric distribution company (National Grid Comments at 3; Northeast Utilities Comments at 6). They caution that potential, but unspecified, models for EV charging service could constitute "sale for a resale" of electricity and thus trigger regulatory jurisdiction in line with Department precedent (National Grid Comments at 2-7; Northeast Utilities Comments at 4-6). Other commenters argue that the pricing or billing structure of public EV charging service providers should be irrelevant to the Department's determination of whether to assert jurisdiction over EV charging. NRDC and Environment Northeast argue that EV charging companies should be allowed to bill volumetrically for electricity to encourage energy efficiency and to promote the comparison of the cost of electricity to alternative transportation fuels (NRDC Comments at 5; Environment Northeast Reply Comments at 4). Environment Northeast adds that a volumetric fee is fair given different charging speeds for different EVs (Environment Northeast Reply [*6] Comments at 4). NRDC, ChargePoint, and the Joint Commenters urge the Department to reject the idea that the method of pricing for EV charging service, specifically a volumetric fee for delivered electricity, might trigger a jurisdictional "sale for resale" (NRDC Comments at 5; ChargePoint Comments at 8-10; ChargePoint Reply Comments at 3; Joint Commenters Comments at 6; Joint Commenters Reply Comments at 2).

C. ANALYSIS AND FINDINGS

1. Introduction

---

[2] A plug-in hybrid vehicle is a type of EV that can use charging infrastructure to provide its fuel but also can generate electricity on board through the consumption of gasoline or diesel fuel.

Pursuant to G.L. c. 164 ("Chapter 164"), the Department has jurisdiction over "distribution companies" [3] and "electric companies." [4] As discussed below, a close reading of the applicable statutory definitions in conjunction with Department precedent shows that owners and operators of EVSE are not subject to the Department's jurisdiction under the current statutory structure either as distribution companies, electric companies, or otherwise.

[*7]

2. Jurisdiction over Distribution Companies

Chapter 164 defines distribution company, in pertinent part, as:

> a company engaging in the distribution of electricity or owning, [*8] operating or controlling distribution facilities. . . .

G.L. c. 164, § 1. The term "distribution of electricity" and the definition of "distribution facility" [5] both rely on the definition of "distribution." Chapter 164 defines distribution, in pertinent part as:

> the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer within the commonwealth. . . .

G.L. c. 164, § 1.

From the beginning of the Department's regulation of electric utilities, the term "lines" has meant the overhead wires owned by a utility to deliver electricity to its retail customers. [*9] [6] With advances in technology, lines also mean the underground cables owned by a utility to deliver electricity to its retail customers. [7]

The voltage used by EVSE typically falls within the 110-69,000 volt range. Although this is the same voltage range used to define lines in Chapter 164, the term "over lines" within the context of Chapter 164 does not correspond to any of the components of EVSE used to provide electricity to an EV in the charging function. The equipment component of EVSE used to supply the electricity is in the nature of a connector or cord, not a line. [8] Within the meanings of Chapter 164, EVSE is not a distribution facility, and the EVSE does not distribute electricity. Therefore, the ownership or operation of EVSE does not transform an entity that otherwise [*10] is not a distribution company into a distribution company.

3. Jurisdiction over Electric Companies

Chapter 164 defines electric company, in pertinent part, as:

> a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and for selling, transmitting, distributing, transmitting and selling, or distributing and selling, electricity within the commonwealth. . . .

G.L. c. 164, § 1.

---

[3] Chapter 164 defines "distribution company" in pertinent part as: "a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities,..." G.L. c. 164, § 1.

[4] Chapter 164 defines "electric company" in pertinent part as: "a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and for selling, transmitting, distributing, transmitting and selling, or distributing and selling, electricity within the commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that electric company shall not mean an alternative energy producer; ...and provided further, that electric company shall not mean a corporation only transmitting and selling, or only transmitting, electricity unless such corporation is affiliated with an electric company organized under the laws of the commonwealth for the purpose of distributing and selling, or distributing only, electricity within the commonwealth." G.L. c. 164, § 1.

[5] Chapter 164 defines "distribution facility" as: "a plant or equipment used for the distribution of electricity and which is not a transmission facility, a cogeneration facility or a small power production facility." G.L. c. 164, § 1.

[6] See, e.g., Uniform System of Accounts for Electric Companies, Account E125, "Poles, Fixtures and Overhead Conductors."

[7] See, e.g., Uniform System of Accounts for Electric Companies, Account E127, "Underground Conductors."

[8] It is also instructive that a distribution company delivers electricity over its lines at alternating current, while EVSE typically converts the alternating current from the utility to direct current for delivery to an EV.

As explained above, owners and operators of EVSE are not distributing electricity, nor are they transmitting electricity. [9] Thus, to determine whether EVSE owners or operators who charge a fee (either volumetric or otherwise) are "electric companies," we must determine whether they are "selling [*11] electricity" within the meaning of Chapter 164.

4. EVSE and the Sale of Electricity

We find that an EVSE owner or operator is not selling electricity within the meaning of Chapter 164. Rather, the EVSE owner or operator is selling EV charging services, i.e., the use of specialized equipment -- EVSE -- for the purpose of charging an EV battery. [10] EVSE allows the customer do to only one thing, charge an EV battery. This result is true regardless of the business model the EVSE owner/operator uses to charge customers for charging services, even if the charge is by a per-kilowatt hour basis or other volumetric energy basis.

[*12]

While the Department has held that entities engaged in the resale of electricity to retail customers -- a practice known as submetering -- are electric companies subject to the jurisdiction of the Department, [11] our submetering cases apply to the resale of electricity, not the sale of a service. Thus, they are not applicable to the EV charging service transaction. [12]

[*13]

Because we find that an owner or operator of EVSE is providing EV charging services and not "selling electricity, " EVSE owners and operators are not electric companies within the meaning of Chapter 164.

5. Other Issues Related to Jurisdiction

In determining that owners and operators of EVSE are not subject to the Department's jurisdiction as a distribution company or an electric company, there are no other provisions of Chapter 164 under which the Department could assert authority over owners and operators of EVSE or EV charging service. The Department does regulate suppliers (competitive suppliers of electricity and electricity brokers) as that term is used in G.L. c. 164, § 1. See 220 C.M.R. §§ 11.05, 11.06, 11.07 (the Department licenses competitive suppliers and electricity brokers and regulates certain of their business relationships with customers and the public). However, for the same reason that an owner or an operator of EVSE is not an electric company (i.e., it is selling a service, not electricity) , an owner or operator of EVSE is not a competitive supplier or an electricity broker. [*14] Thus, under Chapter 164, there is no basis for the Department to assert jurisdiction over owners and operators of EVSE or EV charging service.

There are reasons that some government entity should regulate owners and operators of EVSE and EV charging service for purposes of public safety and consumer protection. However, there appear to be existing avenues to assert authority in these

---

[9] Chapter 164 defines "transmission" as: "the delivery of power over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system. " G.L. c. 164, § 1.

[10] The New York Public Service Commission reached this conclusion. "Charging Stations do not fall within the definition of "electric plant" because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power. Instead, and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services." See In the Matter of Electric Vehicle Policies, N.Y.P.S.C. 13-E-1099, at 4 (November 14, 2013).

[11] See A.W. Perry, Inc., D.P.U. 7697 (1947); Boston Edison Company, D.P.U. 8862 (1953) (involving a residential landlord buying electricity from Boston Edison Company and re-selling that electricity to its tenants, and in A.W. Perry's case, selling electricity to adjacent residents as well). The Supreme Judicial Court has upheld the Department's interpretation that the unregulated "sale for resale" is not permitted. See Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 477, 490-492 (1956).

[12] Even if these cases were relevant, many factors distinguish EVSE from prior Department orders involving the resale of electricity. Unlike the submetering circumstance, where a tenant is the captive customer of an unregulated landlord, an EV driver has many potential options for charging her/his vehicle, including residential charging, workplace charging, free public charging, and various private, fee-based charging options. In addition, charging an EV battery requires more than just electricity; it requires, at a minimum, specialized charging equipment and parking for the vehicle while it is charging.

areas, such as by building codes, zoning, and permitting, and through the Attorney General's consumer protection authority. We suggest that the ongoing collaboration between the Massachusetts Electric Vehicle Initiative task force and the Commonwealth of Massachusetts Division of Standards address public safety and consumer protection issues, as appropriate.

In conclusion, an owner/operator of EVSE that provides EV charging service is not a distribution company or an electric company within the meaning of G.L. c. 164, § 1; an EVSE owner/operator is selling a service and not electricity within the meaning of G.L. c. 164; and the provision of EV charging service is not within the Department's jurisdiction under G.L. c. 164.

III. ELECTRIC DISTRIBUTION COMPANY INVOLVEMENT [*15] IN ELECTRIC VEHICLE CHARGING

A. Introduction

In D.P.U. 13-182, the Department asked if electric distribution companies may or should own and operate charging infrastructure and, if so, how this activity should be treated in their business operations. D.P.U. 13-182, at 5. The Department sought comments related to these questions. D.P.U. 13-182, at 7-8. Comments related to distribution company involvement with charging infrastructure are summarized below.

B. Summary of Comments

A number of commenters oppose electric distribution company ownership of EVSE arguing that electric distribution companies have a competitive advantage due to, among other factors, name recognition and a better understating of their systems, and that the Commonwealth should rely on the competitive market to provide EV charging service to consumers (ENE Comments at 5; Attorney General Comments at 4-5; DOER/DEP Reply Comments at 9). Further, the Attorney General argues that EV charging is not a distribution service and therefore should not be a distribution company activity (Attorney General Comments at 4). However, she and others support EVSE ownership and operation by unregulated affiliates of the distribution [*16] companies (Attorney General Comments at 4; ENE Comments at 5; DOER/DEP Reply Comments at 10). ENE and DOER/DEP support ownership and operation by distribution companies themselves, with cost recovery in specific situations, namely: service for underserved areas, company vehicle fleets, company employee charging, operations and maintenance costs for existing company owned EVSE, and for pilots of advanced technologies (ENE Comments at 5; DOER/DEP Reply Comments at 10).

Alternatively, other commenters argue that the Department should consider distribution company proposals for EVSE ownership, subject to provisions that protect competition and lead to the deployment of advanced technologies (ChargePoint Comments at 10; NRDC Comments at 9; CLF Comments at 6). These provisions would include, for example, a demonstration that distribution company ownership passes a net benefit test for ratepayers, is essential infrastructure that will not be provided by a third party or distribution company affiliate, will not interfere with the competitive market, will not preclude consumer choice, will evaluate advanced technologies, and will allow third parties access to provide services on distribution [*17] company owned EVSE (ChargePoint Comments at 10; NRDC Comments at 9; CLF Comments at 6).

Similarly, both Northeast Utilities and National Grid suggest that distribution companies should not be restricted from EVSE ownership in the appropriate situation and that the Department should allow cost recovery on EVSE investment (Northeast Utilities Reply Comments at 4; National Grid Comments at 9). Northeast Utilities contends that precluding ownership is inappropriate at this time due to the emerging nature of the EV market and unknown future customer interest, suggesting instead that the Department consider specific proposals by a distribution company for company-owned EV charging service (Northeast Utilities Comments at 6). National Grid highlights its leadership in the EV market with ownership of 36 EV charging stations in the Commonwealth, and suggests that distribution companies can maximize the benefits of grid modernization and other policies, accelerating the development of the EV and EVSE markets, while focusing on grid management issues and providing EV charging service to underserved areas to avoid conflicts with third-party providers (National Grid Comments at 7-10). National [*18] Grid further contends that distribution companies can provide benefits of innovation through research, development, and deployment efforts ("RD&D"), especially related to the complex interplay of EVSE with the grid as the installation of distributed generation and grid modernization takes place (National Grid Comments at 7; National Grid Reply Comments at 5). Both Northeast Utilities and National Grid argue that there should be appropriate cost recovery for any distribution company operations that are consistent with Department direction and that support EV deployment (Northeast Utilities Comments at 7; National Grid Reply Comments at 5).

Regardless of distribution company ownership of EVSE, commenters encourage distribution company efforts to support ratepayers and third parties who install EVSE, and to mitigate system impacts resulting from the deployment of charging infrastructure. The Attorney General argues that distribution companies must meet their franchise obligations, allowing non-discriminatory interconnection at just and reasonable rates (Attorney General Comments at 5). Further, commenters contend that distribution companies should attempt to minimize system impacts of [*19] EVSE deployment by identifying areas of concern through sharing data on EVSE installations and should use load management strategies and planning to avoid system issues (Attorney General Comments at 7; DOER/DEP Comments at 8; ENE Comments at 7, CLF Comments at 10). Commenters also suggest that distribution companies should help third parties identify locations where no system constraints exist and where EVSE deployment would minimize system impacts (Attorney General Comments at 7; CLF Comments at 14; DOER/DEP Reply Comments at 10). Last, DOER/DEP and Northeast Utilities maintain that distribution companies should provide information and education to ratepayers to support the development of EVs in the state (DOER/DEP Reply Comments at 10; Northeast Utilities Comments at 6).

C. Analysis and Findings

The Department agrees with commenters that distribution companies may have a competitive advantage in owning and operating EVSE that may adversely affect the development of a competitive market for EV charging. Further, the primary responsibility of distribution companies is to provide safe and reliable distribution service; EVSE ownership and operation is not required to serve this [*20] obligation. As a result, in general, the Department will not allow recovery of costs for distribution company ownership or operation of EVSE for new investments going forward, with the following exceptions.

First, we will permit distribution companies to recover the cost of EVSE ownership and operation for their own vehicle fleet charging and employee vehicle charging. Further, the Department will allow -- and, in fact, encourages -- investment in and cost recovery for RD&D related to EVs, EVSE, and EV charging as part of a distribution company's RD&D proposal in its grid modernization plan, or as a separate, approved pilot. See Modernization of the Electric Grid , D.P.U. 12-76-B at 27-30 (June 12, 2014). Finally, the Department may grant cost recovery for distribution company EVSE ownership and operation in response to a company proposal. For Department approval and allowance of cost recovery, any proposal must: be in the public interest; meet a need regarding the advancement of EVs in the Commonwealth that is not likely to be met by the competitive EV charging market; and not hinder the development of the competitive EV charging market.

The Department finds that affiliates may [*21] own and operate EVSE, but subject to Department regulations on standards of conduct. See Standards of Conduct for Distribution Companies and their Affiliates, 220 C.M.R. § 12.00 et seq.

IV. ADDITIONAL ISSUES

As noted above, the Department also sought comments relating to: (1) residential rate structures and metering for EVs; (2) EV charging and the electric distribution system; and (3) consumer issues. D.P.U. 13-182, at 7-8. Upon review and consideration of the comments, the Department has determined that distribution companies should offer rate structures designed to allow EV charging to take advantage of lower wholesale market electricity prices during off-peak periods. Such rates would provide an appropriate and meaningful economic incentive in support of the Department's objective to promote the development of an EV market in Massachusetts, and would support the Commonwealth's broader clean energy policies as described in the Notice of Investigation. D.P.U. 13-182, at 1-2. At this time, however, the Department concludes that it is appropriate to engage stakeholders further to develop sufficient information regarding the design and implementation of appropriate rate [*22] structures to encourage off-peak EV charging and associated metering. Therefore, the Department will convene a technical conference (or possibly more than one) to address these and other issues, including the impact of EV charging on the distribution system and consumer protection.

V. ORDER

Accordingly, after notice, opportunity for comment, and due consideration it is

ORDERED: That owners and operators of electric vehicle supply equipment that provide electric vehicle charging service are not distribution companies within the meaning of G.L. c. 164, § 1; owners and operators of electric vehicle supply equipment that provide electric vehicle charging service are not electric companies within the meaning of G.L. c. 164, § 1; electric

vehicle charging is a service and not the sale of electricity within the meaning of G.L. c. 164; and the provision of electric vehicle charging service is not within the Department's jurisdiction under G.L. c. 164; and it is further

ORDERED: That distribution companies subject to the Department's jurisdiction may recover costs associated with ownership and operation [*23] of electric vehicle supply equipment only as provided herein; and it is further

ORDERED: That distribution companies subject to the Department's jurisdiction shall comply will all directives contained herein.

By Order of the Department,

Ann G. Berwick, Chair

Jolette A. Westbrook, Commissioner

Kate McKeever, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5 [*24] .

End of Document

GENERAL RULES AND REGULATIONS

V. BILLING PRACTICES (Cont'd.)

L. **RENT INCLUSION (Cont'd.)**

1. For transient multiple occupancy buildings and transient mobile home parks, e.g., hotel, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities, campgrounds, and mobile home parks which set aside, on a permanent basis, at least eighty percent (80%) of their mobile home pads or comparable space for use by travel trailers;
2. Where commercial unit space is subject to alteration with change in tenants as evidenced by temporary versus permanent type of wall construction separating the commercial unit space, e.g., space at a trade fair.
3. For commercial adjacent buildings;
4. For that portion of electricity used in central space heating, central hot water heating, central ventilating, and central air conditioning systems, or
5. For buildings or mobile home parks where alternative renewable energy resources are utilized in connection with central space heating, central hot water heating, central ventilating, and central air conditioning systems.
6. For all portions of electricity in commercial units in buildings with central space heating, ventilating and air conditioning systems.

Any person or entity affected by the provisions of this Section V.L. Rent Inclusion may file an application with the Commission seeking a variance from all or parts of such provisions for good cause shown, pursuant to the Commission's rules applicable thereto.

Nursing homes, as referenced in (1.) above, shall include all facilities licensed by the State of Missouri Department of Social Services Division of Aging. Central space heating, water heating and air conditioning systems referred to in (4.) above shall include those systems employing individual heating/cooling units interconnected with centralized heating/cooling sources by means of a central piping system containing water or other fluids suitable for such purposes.

*M. **RESALE OF SERVICE**

The furnishing of metered electric service by a customer of Company to a third party for a specific identifiable charge based upon such metered consumption is prohibited except where such practice originated prior to July 24, 1958, and except where the resale of the electricity is for the purpose of electric vehicle charging. Where such practice has continued since July 24, 1958, the charge for electric service from customer to a third party shall not exceed the charge which would result from the application of Company's appropriate rate, contained herein, for comparable electric service.

* Indicates Change.