

the intent of the statute. Rather, electricity is sold to EV charging stations, which then provide charging services to their customers. As other states' commissions have found, the use of electricity is merely incidental to the provision of services offered through a privately-owned EV charging station. The service provided by the EV charging station owner or operator is not delivered over distribution system wires or circuits but rather by a cord and a connector. A reasonable question to ask is whether this Commission should begin regulating those services as well.

While there may be a debate as to whether this is a plant, what is largely uncontroversial is why the Legislature has seen fit to regulate the “general supervision” of an electric utility by exploring the nature of why legislatures regulate natural monopolies. Judge Richard Posner, a professor at the University of Chicago School Of Law, in the 1968 *Stanford Law Review* article “Natural Monopoly and its Regulation”, discusses this as follows:

The term “natural monopoly” does not refer to the actual number of sellers in a market but to the relationship between demand and the technology of supply. If the entire demand within a relevant market can be satisfied at lowest cost by one firm rather than by two or more, the market is a natural monopoly, whatever the actual number of firms in it. If such a market contains more than one firm, either the firms will quickly shake down to one through mergers or failures, or production will continue to consume more resources than necessary. In the first case competition is short-lived and in the second it produces inefficient results. Competition is thus not a viable regulatory mechanism under conditions of natural monopoly. Hence, it is said, direct controls are necessary to ensure satisfactory performance: controls over profits, specific rates, quality of service, extensions and abandonments of service and plant, even permission whether to enter the business at all. This set of controls has been applied mainly to gas, water, and electric power companies. 21 *Stanford Law Review* 548, 548 (1968)

If the purpose of these regulations is to introduce free market conditions into monopolistic market, it is difficult to see how EV charging systems fit into this concept. For instance, while the for-profit corporation ChargePoint has worked with Kansas City Power and Light (“KCP&L”) to establish and administer EV charging stations in and

around the Kansas City area, drivers of EV's have other options. A study by the Idaho National Laboratory reveals eight-five percent (85%) of drivers charge up at home. Some car dealerships have their own EV charging stations. Moreover, the marketplace for EV's, and corresponding services, is so embryonic it is hard to say what options will be available to consumers in even a few years. If there is indeed a diverse set of options for consumers to charge their EV's, then there is no need to regulate them and provide protections mimicking a free market process.

Further, proponents of Commission oversight of EV charging stations admitted during the May 25th, 2016 workshop there may be a need for legislation to expand upon the already-established powers of the Commission's regulatory authority. More on this will be discussed in the next section but this further suggests authority currently does not exist and would not exist until the 2017 legislative session at the earliest.

In this same vein, the OPC has further concerns that interfering with such a new market for this technology will lead to the additional issue of these EV charging stations becoming "stranded assets." Our concern is based off a situation where the utility would seek, and the Commission would allow, ratepayers to pay for these EV charging stations. A station gets set up in a location and then, for whatever reason, customers start drifting away and start using an EV charging station elsewhere. Then, the EV charging station no longer serves any purpose and ratepayer money would be wasted on this stranded asset. Then, at some future rate case, the utility would request to write-off this asset without seeking to remit any savings back to the ratepayer. While this is only a hypothetical, it demonstrates that this technology continues to grow and evolve and no one knows what direction this is going. In a competitive market, this is a good thing. Participants innovate

or they die. Ratepayers benefit as a result. In a natural monopoly with a captive audience, that risk shifts to the ratepayer to their detriment.

Moreover, the OPC is concerned that such a regulation, if determined to be in fact under the jurisdiction of the Commission, is regressive. According to the Federal Reserve Bank of St. Louis, the per capita average income for a Missouri resident is \$43,290.00. Almost every person pays a utility bill of some sort. According to the auto web site www.cheatsheet.com, the average household income of a purchaser of an electric Ford Focus is \$199,000.00. This section of the public is much smaller and affluent. While not a direct comparison, the OPC is concerned a ratepayer of limited means would be required to subsidize those who have the luxury to be “first adapters” thanks to their higher levels of income. Currently, these EV charging stations operate by allowing drivers to use them for free. It is incumbent upon the OPC to ask why this is not a cost that should be borne upon those most directly benefiting from these EV charging stations – the EV operators themselves. A ratepayer who is not directly receiving a benefit from these EV charging stations should not be required to subsidize another consumer class who is more affluent.

Due to a lack of statutory authority and ongoing technical advances in the field that continue to protect consumers through natural competition, the OPC is urging the Commission to decline assuming any general supervision of EV charging stations.

STANDARDS TO PROTECT RATEPAYERS

Under the assumption the Commission DOES decide it has the jurisdiction to proceed with regulating EV charging stations or the Legislature amends their authority accordingly, the question becomes as to what standard should be employed in this regard.

There are several states that have already tackled this issue and provide good instruction for Missouri moving forward.

Massachusetts: The MA Department of Public Utilities (“DPU”) determined costs are recoverable “only if the utility could demonstrate the service (a) is in the public interest, (b) is meeting a need not being met by non-utility providers, and (c) utility participation is not hindering development of a competitive vehicle market.” See *Investigation by the Department of Public Utilities Upon Its Own Motion Into Electric Vehicles and Electric Vehicle Charging*, 315 P.U.R. 4th 139 and dated August 4th, 2015. Of all the standards found around the country, OPC believes this not only addresses consumer concerns but also precludes utilities or their third-party partners from seeking ratepayer money in areas where a competitive and cost-effective market is already in place.

Oregon: The Public Utility Commission (“PUC”) of Oregon decided, in Order 12-013 titled *In the Matter of the Public Utility Commission of Oregon Investigation of Matters Related to Electric Vehicle Charging*, 295 P.U.R. 4th 7 and dated Jan. 19, 2012, that charging stations are a “non-regulated, non-rate base venture”, but are subject to regulation if they operate them above the line. Despite the assertion of representatives from ChargePoint, OPC learned from further discussions with corporate representatives that this matter was not “overturned”, suggesting a court or other administrative body found it unlawful or un-Constitutional. Rather, the Legislature of Oregon intervened to change the standards by which the PUC regulated EV charging stations. Further, this only modified some of this decision. This, again, points to the necessity of the Legislature’s intervention to make EV charging stations part of their jurisdiction.

While on the point on legislative involvement, the Legislature has modified the definition of “utility” under OR Rev. Stat. §757.005(1)(G) that makes an exemption in said definition “for any entity that furnishes alternative fuels to any number of customers for use in alternative fuel vehicles so long as that entity does not otherwise provide utility service.” Therefore, a partnership such as the one existing between KC P & L and Charge Point would not be regulated under this definition.

California: Section 740.3(c) of California’s Public Utilities Code states in pertinent part: “The (California Public Utilities Commission) policies authorizing utilities to develop equipment or infrastructure needed for electric-powered and natural gas-fueled low-emission vehicles shall ensure that the costs and expenses of those programs are not passed through to electric or gas ratepayers unless the commission finds and determines that those programs are in the ratepayers’ interest. The commission’s policies shall also ensure that utilities do not unfairly compete with nonutility enterprises.”¹

Washington: By statute (proposed under SHB 1571, SHB 1853), EV charging stations provided by utilities are regulated and incorporated into rate base, while those provided by other entities are unregulated. This stands as another example of a state where the Legislature had to get involved to make EV charging stations a regulatory matter.

There are important lessons to learn from simply looking at this statutory survey. First, many states have required legislative directives when it comes to utility regulators being involved with the oversight of EV charging stations. Secondly, many states have incorporated standards for which an EV charging station may be included in a rate base factoring in the volatility of the marketplace and the need to allow the free marketplace to

¹ There is pending legislation in the California Legislature that could potentially impact this issue. The OPC will supplement this position in the event said legislation becomes law.

operate unfettered. Third, these statutes also spell out that EV charging stations operated within utilities and EV charging station operated independently are treated differently.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record electronically on this 8th day of June 2016.

/s/ James M. Owen
