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Missouri Department of Economic Development – Division of Energy

Responses to Staff Questions in EW-2016-0123

1. What is the Missouri Public Service Commission’s role in regulation of electricity from a charging station to an electric vehicle? Please provide the legal justification for your response.

The role of the Missouri Public Service Commission (“Commission”) is explained at Section 386.250, RSMo., and subsection (1) thereof:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same

In other words, the Commission has the authority to regulate the “distribution of ... electricity for ... power” from charging stations for sale to electric vehicles, as well as entities performing such distribution and sales; as explained in the answer to Question 4 below, electric vehicle charging stations are “electric plant” as defined in Section 386.020(14), RSMo. Those “owning, operating, controlling or managing” or “leasing” such charging stations are “electrical corporations” per Section 386.020(15), RSMo.; thus, they are subject to the jurisdiction of the Commission as “public utilities” when they sell electricity to the general public from these stations, as per the definition at Section 386.020(43), RSMo.

The powers invested in the Commission are enumerated at Section 393.140, RSMo., including the oversight of rates (subsections (5) and (11)) and safety (subsection (5)). The only exception may be found at Section 393.140 (12), RSMo., which provides exemptions from Commission jurisdiction for unrelated, subsidiary, and small operations of otherwise regulated entities. The Commission also does not have jurisdiction over entities which provide charging services without a fee or which are not connected to the transmission and distribution system of an electrical corporation; this is in keeping with the Commission’s limited jurisdiction over electrical utilities other than electrical corporations and its distinct role with regards to self-generating customers.

The Public Service Commission has recently stated in respect to Section 386.020(15), RSMo (Cum. Supp. 2013):

That is a complex sentence, but stripped to its essentials, it provides that an electrical corporation is any owner or operator of electric plant, unless the electric plant exists only for its own use and not for the sale of electricity to others.¹

¹ In the Matter of the Application of Ameren Transmission Co. of Illinois for Other Relief or, in the Alternative, A Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage A 345,000-Volt Elec. Transmission Line in Marion County, Missouri, & an Associated Switching Station Near Palmyra, Missouri., EA-2015-0145, 2015 WL 4510797, at *2 (Mo. P.S.C. July 22, 2015) reh'g denied sub nom. In the Matter of the Application of Ameren Transmission of Illinois for Other Relief or, in the Alternative, A Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage A

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The Missouri Supreme Court has stated that “electric plant” and “electric corporation” must be read with the implied condition that the sale of electricity be for public use, notwithstanding such subdivisions do not refer to public use. [State ex rel. M.O. Danciger & Co. v. Public Service Commission of Missouri \(Sup. 1918\) 205 S.W. 36, 275 Mo. 483](#). In *ex rel. Danciger*, the Court found that respondent’s electrical plant which was built to serve its brewery was not a public utility even though the respondent sold excess power to its neighbors. The court stated that agreements to sell excess power to neighbors did not constitute holding out as a common carrier. *Id.* at 42.

Similarly, in *ex rel. Buchanan Co.*, the Court held that a power company, purchasing and selling electricity to a single customer, limited to electricity for private use, having no franchise, and not exercising eminent domain was not a “public utility”. [State ex rel. Buchanan County Power Transmission Co. v. Baker \(Sup. 1928\) 9 S.W.2d 589, 320 Mo.](#) The Court also held that the Commission has no authority over property for private use. *Id.* at 592.

With the above citations in mind, an owner or operator of distributed generation that holds itself out to provide electric vehicle charging services to the general public for sale would constitute a public utility subject to Commission oversight. By contrast, the owner or operator of distributed generation that provides electric vehicle charging only to specific members of the public by and through private property would not be a public utility subject to Commission oversight.

With respect to competitive services and persons subject to Commission jurisdiction the Commissions conclusions in telecommunication cases can provide guidance on the issue of Commission jurisdiction over the provision of electricity from electric vehicle charging stations. The Commission, in [Matter of Nature of Paging Services](#), ordered a hearing to be held to allow all proper parties providing one-way radio paging in Missouri, and other interested parties, to show cause why the Commission should not cease to exercise regulatory jurisdiction over the rendering of one-way radio paging. [Matter of Nature of Paging Serv.](#), 21 Mo. P.S.C. (N.S.) 490 (Mo. P.S.C. Aug. 25, 1977). The Commission concluded that the General Assembly broadly defined the jurisdictional terms in Section 386.250, RSMo. *Id.* In so doing, the General Assembly intended that the Commission look to these terms in a specific case to determine the extent of its jurisdiction. *Id.* The Commission further stated, “. . . we are also aware that our law is highly remedial in nature and is therefore to be liberally construed to achieve the public interest.” *Id.* As the Commission observed in [Nature of Paging Services](#), hereto the Commission should not apply a rigid, historical construction to its jurisdictional terms. Rather, the Commission should read these terms to include those technological advances which have occurred since the enactment of the Public Service Law in 1913, including the provision of electric service for electric vehicle charging. The Commission further concluded in [Nature of Paging](#) that it is a well-established principle that the Commission must regulate those services which are within its jurisdiction because the Commission does not have an unfettered discretion to exercise or not exercise its jurisdiction over a particular service when the General Assembly has directed the Commission to exercise its regulatory control over the service. *Id.* This is true even though some factors may be present which undercut a pure “natural monopoly” justification for

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regulation. *Id.* The Commission also stated that, although there are a number of carriers providing paging services in several urban areas, a majority of the service areas in Missouri contained no competition, and the evidence in the record suggested that it was unlikely that additional carriers would provide paging service in these nonurban service areas; therefore, continued Commission regulation was in the public interest. *Id.* Like in Nature of Paging, the existence of a competitive market for electric vehicle charging is not enough to displace Commission jurisdiction. In the subsequent case of Matter of Mobile Radio, the Commission held that Respondent, Robert T. Schmidt, doing business as Radiophone Leasing Co, Inc., and Answer North, Inc., be prohibited from offering a non-interconnected one-way paging service to the general public within the State of Missouri so long as he did not hold a Certificate of Public Convenience and Necessity (“CCN”) granted by the Commission. Matter of Mobile Radio Communications, Inc. v. Schmidt, 23 Mo. P.S.C. (N.S.) 194 (Mo. P.S.C. Aug. 30, 1979). Respondent Schmidt had been offering a non-interconnected, one-way paging service to the general public within the State of Missouri without a CCN in an area where the Complainant had been granted a certificate to provide service. *Id.*

2. What is the Missouri Public Service Commission’s role in regulation of electricity from a utility to a charging station? Please provide the legal justification for your response.

As per the answer to Question 1 above, the purview of the Commission also extends to the distribution and sale of electricity from utilities to electric vehicle charging stations. This is evident from the authority granted under Section 386.250(1), RSMo., as well as the pre-established ability of the Commission to regulate utilities under the definitions at Sections 386.020(14), (15), and (43), RSMo. The Commission’s powers are again those as delineated at Section 393.140, RSMo.

3. Are Investor Owned Utilities (“IOU”) the only entities that can provide electricity to electric vehicles via a charging station? What other entity (ies) can provide electricity to electric vehicles via charging stations? Is the answer dependent on whether the entity (ies) charges for the electricity? Please provide the legal justification for your response.

Any entity may provide electricity to an electric vehicle via a charging station. Any such entity providing electricity for sale to the general public becomes subject to the jurisdiction of the Commission (see Question 1). The sale of electricity is one threshold issue given the exemption provided at Section 386.020(15), RSMo., “...where electricity is generated or distributed by the producer solely on or through private property ... for its own use or the use of its tenants and not for sale to others” Such an exemption would also apply to self-generating customers, such as those providing electricity for their electric vehicle charging stations through roof-mounted solar photovoltaic panels.

a. Is there a legal restriction which would prevent any company other than the local IOU electric company from providing electricity to an EV charging station?

Such an entity would need to meet all Commission requirements provided for by law.

It should be noted that a CCN does not guarantee an absolute monopoly for an incumbent utility. The Missouri Court of Appeals has stated,“...[I]t is within the discretion of the P.S.C. to determine when the evidence indicates the public interest will be served in the award of a certificate to a competing utility....”State ex rel. Pub. Water Supply Dist. No. 8 of Jefferson County v. Pub. Serv. Comm’n, 600 S.W.2d 147, 154 (Mo.App. W.D. 1980). The Court further

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stated, “The policy favoring regulated monopoly over destructive competition rests upon the public interest. It is not an absolute rule, but is applied relative to the particular facts of each case...”*Id.* Therefore, the Commission can approve a CCN to other EV charging stations providers so long as the additional service is necessary and convenient to the public service as per Section 393.170.3, RSMo.

The Commission should also consider the tariffs of electrical corporations as such tariffs pertain to the resale of electricity. Generally, such tariffs prohibit the resale of electricity except in certain instances. Based on these tariff provisions and the case law regarding CCNs, the Commission may grant a CCN to an entity with an EV charging station selling electricity to customers so long as: 1) the public interest is served; and, 2) any resale of electricity from other electrical corporations is permitted by the tariffs or contracts of the applicable electrical corporations under which such a charging station would take service, if applicable.

b. Is the local IOU electric company obligated by law to provide electricity to EV charging stations?

Electric utilities are obligated by law to serve all customers in their service territories under the conditions provided by law, regulations, and the utilities’ tariffs. Per Section 393.130, RSMo.:

1. Every gas corporation, **every electrical corporation**, every water corporation, and every sewer corporation **shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.** All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited. ...

3. **No** gas corporation, **electrical corporation**, water corporation or sewer corporation **shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.** (Emphases added.)

Electrical corporations must, in short, provide safe, adequate, just, and reasonable service to all customers under the conditions provided by law, regulations, and the utilities’ tariffs without engaging in “undue or unreasonable” discriminatory practices.

c. What impact do the responses provided above in sub-bullets a and b have on EV charging stations that are installed and operational as of this date?

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The Commission's jurisdiction applies to all current entities "owning, operating, controlling or managing" one or more charging station(s) for the purpose of selling electricity to the general public.

4. Is each charging station a distinct electric utility?

A charging station is not a distinct electric utility *per se*, although a charging station is "electric plant" as defined in Section 386.020(14), RSMo.:

"Electric plant" includes 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; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power

Based on this definition, any entity, "owning, operating, controlling or managing any electric plant" for the purpose of selling electricity to the general public, as defined above, would be considered an electrical corporation per the immediately following definition under Section 386.020(15), RSMo.:

"Electrical corporation" **includes every** corporation, company, association, joint stock company or association, partnership and **person**, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, **owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others**

Such corporations are considered "public utilities" subject to the jurisdiction of the Commission under Section 386.020(43), RSMo.:

"Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter

In summary, anyone "owning, operating, controlling or managing" one or more charging station(s) for the purpose of publically selling electricity to EV owners, lessees, renters or operators is an electrical corporation (i.e., public utility) subject to Commission jurisdiction, but an individual charging station is not.

5. How will there be accessibility to electric vehicles for low-income ratepayers? At what point in time would accessibility to electric vehicles for low-income ratepayers occur?

Accessibility to electric vehicle charging stations is a relevant issue for the Commission, both for the purposes of this workshop and for ensuring affordability to low-income customers. To this end, the

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Commission should determine the extent to which it should regulate electric vehicle charging stations to ensure safe and adequate service at just and reasonable rates.

The ability of any consumer group to afford a particular vehicle is not within the strict purview of the Commission, although access to Commission-regulated plant needed to access a regulated service required to fuel a particular vehicle can be of legal and policy concern. Given such considerations, accessibility to electric vehicles as a whole should be addressed by the Commission to the extent that such access depends on the Commission's jurisdiction over safe and adequate electrical service for such vehicles at just and reasonable rates.

7. What are other states doing to fund the development and installation of EV charging stations? Is cost recovery allowed through a utility's rates? Please include a reference to any legal authority that explicitly authorizes the method of funding or cost recovery.

The National Conference of State Legislatures lists state, local, and utility incentives provided for electric vehicles and electric vehicle charging stations (<http://www.ncsl.org/research/energy/state-electric-vehicle-incentives-state-chart.aspx>), as do the U.S. Department of Energy's Alternative Fuel Data Center (<http://www.afdc.energy.gov/laws/search>) and the Center for Climate and Energy Solutions (<http://www.c2es.org/us-states-regions/policy-maps/electric-vehicles>).

It should be noted that the policy and legal environment varies significantly across states, so comparisons of allowed recovery mechanisms may be difficult. Some states exempt electric vehicle charging stations from regulation; for example, 220 Illinois Compiled Statutes 5/3(c) and 20 Illinois Compiled Statutes 627/10 generally exclude electric vehicle charging station providers from public utility regulation, except when such providers would be considered (or regulated as) public utilities. Such an exemption for electric vehicle charging stations would require a statutory revision in Missouri. Electric utilities in some states also operate in deregulated electricity markets, a situation not found in Missouri.

Given these caveats, here are some examples of state policies regarding electric vehicle charging stations:

- **Oklahoma** – under Oklahoma Statute Sections 74-78.G and H, the Oklahoma Office of Management and Enterprise Services, "...may offer public access to alternative fueling infrastructure owned and operated by the Office in areas of the state in which access to an alternative fueling infrastructure is not readily available to the public," with such public access ending once a privately-owned facility opens within five miles of the Office's station. "Alternative fuels" includes electricity under Oklahoma Statute Section 74-130.2.1.
- **Oregon** – the Public Utility Commission of Oregon ("OPUC") determined in Order No. 12-013, 2012 that utilities could own and operate electric vehicle charging stations either below- or above-the-line (pages 6-7). OPUC also stated the following with respect to above-the-line ownership:

We expect a utility that requests rate recovery for EVSE investment to make a compelling case that the utility's ownership and operation of the EVSE is beneficial to ratepayers – not just the public generally. Utilities suggest that prudence be the primary measure used to determine whether EVSE investment should be recoverable in rates. We respond that prudence, in the context of EVSE investment, requires a showing of net benefits to customers. We find, therefore, that Staff's first criterion is fundamental to the analysis. We

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note, however, that a showing that utility EVSE investment has net benefits to customers may be dependent on a showing of Staff's other criteria, such as the necessity of installing and operating charging infrastructure at the particular location to facilitate plug-in EV adoption in the greater area, and the lack of a third party EVSP or utility affiliate to provide the same services at the location or a nearby location. (Page 10).

OPUC also determined that it was too early to require electric vehicle customers to use specific rates; however, OPUC required all utilities to offer electric vehicle customers in all classes a flat rate and two types of time-of-use rates (if already available), one of which would be applicable only to submetered electric vehicles. The costs of an electric vehicle-specific time-of-use rate were assumed "to be relatively minimal and spreadable to all ratepayers" (pages 14-15).

- **Minnesota** – Minnesota Statute 216B.1614 requires all retail public utilities to file residential electric vehicle charging tariffs using either time-of-use or off-peak rates, with the option for customers to purchase either from the supplier's portfolio or from all renewable resources. Utilities have the option to offer such a tariff to other classes. The tariffs must have, "... a mechanism to allow the recovery of costs reasonably necessary to comply with this section, including costs to inform and educate customers about the financial, energy conservation, and environmental benefits of electric vehicles and to publicly advertise and promote participation in the customer-optional tariff ...," and must also "... incorporate[] the cost of metering or submetering within the rate charged to the customer." Utilities are subject to reporting requirements.
- **Washington** – RCW 80.28.360 permits the Washington State Utilities and Transportation Commission ("WSUTC") to, "... allow an incentive rate of return on investment on capital expenditures for electric vehicle supply equipment that is deployed for the benefit of ratepayers ..." for expenditures of up to 0.25 percent in increased ratepayer costs; such an incentive is only permitted for regulated investments. If a utility receives the incentive, the law also requires an increase of up to two percent on the rate of return on common equity on other company investments. Applicable projects must, "... reasonably expected, at the time they are placed in the rate base, to result in real and tangible benefits for ratepayers by being installed and located where electric vehicles are most likely to be parked for intervals longer than two hours." Following the expiration of the incentive, project equipment may be donated by a utility to the owner of the property where the project is cited. The WSUTC must report on the incentives by the end of 2017.

9. Who should pay for the equipment, installation and maintenance for the EV charging station networks?

Cost recovery for electric vehicle charging station networks is partially dependent on ownership, as well as the legal outcomes discussed in prior answers. However, in general, an entity regulated by the Commission which places plant in service should allocate the cost and expense associated with such plant on a cost-causative basis – or, in other words, the customer costs and expenses to be incurred typically should pay for the cost or expense. Based on this principle, charging station customers – either the charging station owners purchasing electricity and offering charging services or those charging their vehicles – should pay for the plant and expense. However, where the Commission determines that there

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is an unmet public interest need, but cost-based rates would be prohibitive for electric vehicle charging station customers, the Commission should consider allowing IOUs to place EV charging stations in service with cost recovery from the general body of ratepayers.

10. How are other countries promoting public use of EV charging stations?

The International Energy Agency's ("IEA") Electric Vehicles Initiative ("EVI") is a collaborative effort between 16 governments, "... dedicated to accelerating the introduction and adoption of electric vehicles worldwide" (<http://www.iea.org/topics/transport/subtopics/electricvehiclesinitiative/>). Members include the U.S., Canada, the United Kingdom, France, Denmark, Germany, India, Japan, and South Africa. EVI's "Global EV Outlook 2015" (http://www.iea.org/evi/Global-EV-Outlook-2015-Update_1page.pdf) indicates that the U.S. is one of four member countries to achieve one percent electric vehicle market share, although market share exceeds 10 percent in Norway. IEA's Hybrid & Electric Vehicle Implementing Agreement ("IA-HEV") website describes member country policies (<http://www.ieahev.org/by-country/>). IEA's October 2014 edition of its "EV City Casebook" showcases numerous public and private initiatives.

Respectfully submitted,

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