

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application)	
of Union Electric Company)	Case No. ET-2016-0246
d/b/a Ameren Missouri for Approval)	Tracking No. YE-2017-0030
of a Tariff Setting a Rate for)	
Electric Vehicle Charging Stations)	

**RESPONSE OF THE MISSOURI DIVISION OF ENERGY TO THE COMMISSION’S
ORDER DIRECTING FILING**

COMES NOW the Missouri Division of Energy (“DE”) and in response to the Public Service Commission’s (“Commission”) October 18th Order Directing Filing in the above-captioned matter states:

On October 18, 2016, the Commission directed its Staff and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) to respond to the jurisdictional arguments of Public Counsel (“OPC”) and Consumers Council of Missouri (“CCM”), and also to the questions listed below, and stated that any other party to the above styled case may also respond.

On October 19, 2016, the Staff filed its Response to Order Directing Filing, in which it rebuked the jurisdictional arguments of OPC and CCM regarding the Commission’s authority to regulate electric vehicle (“EV”) charging stations (“EVCSs”).

OPC’s and CCM’s Jurisdictional Arguments

DE generally concurs with the legal arguments made by Staff rebuking the jurisdictional arguments of OPC and CCM. DE addressed the Commission’s authority to regulate EVCSs at length in its comments in the Commission’s working docket EW-2016-0123, attached here as

Appendix A.¹ OPC's and CCM's arguments which assert that the Commission lacks the authority to regulate EVCSs are conclusory — i.e., unsupported by factual or legal evidence. Contrary to OPC's and CCM's assertions, Ameren Missouri is required to serve the general public within its service territory, not just "captive customers" as these intervenors assert. Ameren Missouri's current temporary service tariff is evidence of this requirement; the tariff sets out tariff rates for, "[c]ustomers desiring service for operations which are not considered permanent in nature, including, but not limited to, construction connections, carnivals, lawn parties, bazaars, fetes, etc."² Ameren Missouri's current temporary service tariff provides temporary electric services to members of the general public who may or may not otherwise be "captive" customers. Furthermore, the Company's proposed EVCS tariff will provide permanent electric facilities to the general public at designated locations along Interstates 70 and 54. The transient nature of EVCS customers does not preclude them from the same rate protections that Ameren Missouri's permanent (or temporary service) customers enjoy. The Staff's analogy to pay telephones is an example of how the Commission has regulated the rates of public utility services offered to the general public including transient customers.³

OPC and CCM also assert that the Commission lacks jurisdiction because EV charging is a competitive service. As will be explained in more detail below, the mere fact that there may be some operators of EVCSs in the state that are holding themselves out as public utilities to the general public without a Commission-authorized certificate of convenience and necessity

¹ Missouri Public Service Commission Case No. EW-2016-0123, *In the Matter of a Working Case Regarding Electric Vehicle Charging Facilities*, Missouri Department of Economic Development – Division of Energy: Responses to Staff Questions in EW-2016-0123, March 1, 2016.

² Missouri Public Service Commission File Nos. ET-2013-0546 and JE-2013-0582, Union Electric Company, Schedule of Rates For Electricity, Effective June 30, 2013, Sheet No. 77.

³ Staff's Response to Order Directing Filing, pgs. 4.

(“CCN”) does not relinquish the Commission of its statutory authority. To the contrary, the Commission has a statutory obligation to ensure that all operators of EVCSs holding themselves out as public utilities to the general public in the state apply for a CCN and provide “ safe and adequate” EV charging at “just and reasonable rates.” Staff’s analogy to pay telephones is a perfect example of how the Commission can regulate both the electric companies operating EVCSs in their certified service territories and the third-party operators of EVCSs.⁴

(A) What is the statutory authority under which the Commission may approve the tariff filed by Ameren Missouri in this case?

In the recent working docket on EVs and EVCSs, DE responded to comments posed by Commission Staff (“Staff”) regarding this issue. DE noted the Commission’s authority under §386.250, RSMo. and subsection (1) thereof:⁵

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

As DE explained, 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

⁴ Staff’s Response to Order Directing Filing, pgs. 4-5.

⁵ Missouri Public Service Commission Case No. EW-2016-0123, *In the Matter of a Working Case Regarding Electric Vehicle Charging Facilities*, Missouri Department of Economic Development – Division of Energy: Responses to Staff Questions in EW-2016-0123, March 1, 2016, page 1.

performing such distribution and sales.⁶ As established in these comments, EVCSs fall under the definition of “electric plant” at §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 is an “electrical corporation” per §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** (Emphases added.)

Such corporations are considered “public utilities” subject to Commission jurisdiction under §386.020(43), RSMo.:⁷

⁶ *Ibid.*

“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, the sale of charging services to the public from EVCSs is a regulated activity under Missouri statutes. Staff agreed with this assessment in its report on the working docket, stating that, per the cited sections of Missouri law, “...the operation of an EV charging station is generally subject to the regulation of the Commission.”⁸

(B) Are there any factual questions that must be addressed in determining the Commission’s jurisdiction over electric vehicle charging stations?

The factual questions involved concern the Commission’s authority over EVCSs under Missouri law. As discussed above, the Commission has clear jurisdiction over EVCSs under Missouri law. The Commission should find that, consistent with this legal authority, it may regulate EVCSs. If the Commission does not assert this authority, it risks allowing electric corporations to provide charging services without any oversight, which would not only violate the law but ignore the public policy interest in ensuring that “just and reasonable rates” be charged to electric utility customers. The fact that the customers at EVCSs may or may not be regular residential, commercial, or industrial customers of Ameren Missouri is not relevant, as they become customers as soon as they receive service from the utility’s charging station.

⁷ *Ibid*, page 5.

⁸ Missouri Public Service Commission Case No. EW-2016-0123, *In the Matter of a Working Case Regarding Electric Vehicle Charging Facilities*, Corrected Staff Report, August 9, 2016, page 13.

DE concurs with Staff that there are “fact patterns where an EV charging station would not be subject to the Commission’s jurisdiction just as there are circumstances in which the operation of electric plant and the distribution and sale of electricity are not within the Commission’s jurisdiction.”⁹ Specifically, the Missouri Supreme Court has held that, in addition to using electric plant to produce electricity for light, heat, and power, an entity must hold itself out as serving the general public before it becomes a public utility. State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n of Missouri, 275 Mo. 483, 205 S.W. 36, 39 (1918). Therefore, the only factual question that the Commission must address before determining the Commission’s jurisdiction over a particular provider of EVCSs is whether the entity providing the service has held itself out as serving the general public. There is no doubt that the Commission has jurisdiction over the proposed EVCSs because Ameren Missouri’s filing of the proposed EVCS tariff indicates that the Company has held itself out as a provider of EV charging services to the general public.

(C) Is a certificate of convenience and necessity required for Ameren Missouri to build, install, and operate the electric vehicle charging stations?

A certificate of convenience and necessity (“CCN”) is not required for Ameren Missouri to build, install, and operate EVCSs. The Missouri Court of Appeals has held that Section 393.170 does not require a public utility to obtain an additional CCN to construct each extension or addition to existing transmission lines and facilities within territory already allocated to it. State ex rel. Harline v. Pub. Serv. Comm'n of Mo., 343 S.W.2d 177, 183 (Mo. App 1960). The Court of Appeals has further held that while a service area CCN granted under Section 393.170(2) authorizes a public utility to build distribution plant without obtaining an additional

⁹ Staff’s Response to Order Directing Filing, pg. 3.

CCN in its service territory, Section 393.170(1) requires a public utility to obtain an additional CCN to construct a new power plant. Stopaquila.Org v. Aquila, Inc., 180 S.W.3d 24, 37 (Mo.App. W.D. 2005). Consequently the Commission's rules for filing a CCN application are relevant to requests to serve a new area (at 4 CSR 240-3.105.1(A)) or building new generation or transmission facilities (at 4 CSR 240-3.105.1(B)).

EVCSs do not constitute generation or transmission plant since EVCSs do not produce electricity nor do they transmit electricity over large distances. EVCSs are more akin to an extension of existing distribution plant as they help facilitate a customer's use of electricity where the customer is located. Therefore, no CCN is required for constructing EVCSs so long as the EVCSs are constructed in the public utility's service area.

WHEREFORE, the Division of Energy respectfully files its Response to the Commission's Order Directing Filing and prays that Ameren's EV charging station tariff be approved as modified by Ameren's October 4, 2016 Response; Ameren Missouri's costs associated with the EV charging stations, as contemplated in its tariff application, be treated above the line; and OPC's Motion be denied.

Respectfully Submitted,

/s/ Alexander Antal

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 21st of October, 2016.

/s/ Alexander Antal
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