

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

In the Matter of a Working Case Regarding)
Electric Vehicle Charging Facilities) **File No. EW-2016-0123**

COMMENTS OF UNITED FOR MISSOURI, INC.

I. INTRODUCTION

United for Missouri, Inc. (“UFM”) appreciates the opportunity to respond to the questions of the Missouri Public Service Commission Staff (“Staff”) prior to the workshop in the above referenced matter. UFM appreciates the questions propounded by the Staff as well considered and encourages Staff to take a step back and consider these questions in the light of history and policy.

Any discussion of these issues must be engaged with a significant amount of caution. Our Public Service Commission Act, in its original formulation, is approximately a century old. It is difficult if not impossible to conceive that the Missouri Legislature could have considered the Public Service Commission Act as expressing a role for the Missouri Public Service Commission (“Commission”) or other policy directions on matters of electric motor vehicles. As a result, any answer tendered on these questions must be preliminary and, of necessity, somewhat tentative. Certainly, the discussion must be tempered by a respect for history and broader policy in a free society. It is with these initial principles that UFM will engage this discussion.

The starting point for this discussion, as with all discussions about the role of the Commission, is a recognition of the proper role of government. As UFM has observed in the past, the primary role of government is described in the Missouri Constitution, Article I, Section 2.

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the **enjoyment of the gains of their own industry**; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

(emphasis added) Of particular note, Chief Justice Holstein provided an instructive comment in his opinion in the case of *Fischer v. State Highway Commission*, 948 S.W.2d 607 (Mo., 1997) (dissenting in part and concurring in part): “Taken together, these provisions give persons in this state a fundamental right to lawfully acquire, hold, enjoy and dispose of property.” 948 S.W.2d at 613. As the majority opinion in *Fischer* pointed out, there is no substantive difference between the phrase the “enjoyment of the gains of their own industry” and its predecessor language in the Missouri Constitution of 1865 “the enjoyment of the fruits of their own labor.” 948 S.W.2d 609. As is recognized here and in the U.S. Declaration of Independence, these rights are God given and not subject to divestiture by government.

By way of further elaboration, Edmund Burke expressed the ideas from which this provision is taken in his *Reflections on the Revolution in France*:

[L]aw itself is only beneficence acting by rule. Men have a right to live by that rule; they have a right to do justice, as between their fellows, whether their fellows are in public function or in ordinary occupation. They have a right to **the fruits of their industry, and to the means of making their industry fruitful**. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to all which society, with all its combinations of skill and force, can do in his favour.¹

¹ Quoted in Kirk, Russell, *The Conservative Mind: from Burke to Santayana*, (Chicago: Henry Regnery Company, 1953), p. 48.

(emphasis added) It is the Commission’s role, therefore, to protect the citizens’ right in the profits of free commerce. The Commission has no interest or purpose in fostering any commercial advantage or restricting free commerce.

II. Answers to Specific Questions

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.

None. The Commission’s role and authority is limited to regulation of electricity generated or transmitted for “light, heat or power.” Section 393.110.1, RSMo states as follows:

Sections 393.110 to 393.285 shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power, the supplying and distributing of water for any purpose whatsoever, and the furnishing of a sewer system for the collection, carriage, treatment or disposal of sewage for municipal, domestic or other beneficial or necessary purpose.²

Electricity generated and transmitted to electric vehicle charging stations for use by electric vehicles is not intended for light or heat, but it could be for power. However, interpreting “power” in the context of “light” and “heat,” would suggest that the term “power” does not encompass electric vehicles.³ “Light” and “heat” in their historical context indicate a stationary use. “Power” must be construed in a similar manner.

² Likewise, Section 386.020(14) defines “electric plant,” over which the Commission has authority, 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**; 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**.” [emphasis added]

³ *Noscitur a sociis* requires that an uncertain term be interpreted by reference to the words associated with it.

The historical context of the Public Service Commission Law also indicates that regulation was imposed to remedy monopoly power exercised within a set geographic locale. This historical context does not justify the extension of the regulatory authority to a use that is essentially mobile in nature, i.e. a mode of transportation. For these reasons, the Commission should not impose regulation on electric vehicle charging stations.

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.

UFM infers from the question that the utility is selling the electricity to a charging station for resale to the owner of an electric vehicle. In such an instance, the transaction would be a sale at wholesale. However, in either event, whether a sale to a charging station owned by a third party or a sale by a utility owned charging station, the Commission’s authority is limited as discussed in 1. above, and the Commission should not impose regulation on these transactions.

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.

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?

No. The legal restriction that would prevent any company, including an IOU, from providing electricity to an EV charging station is section 393.170 RSMo. Section 393.170.1 provides, in part, that, “No . . . electrical corporation . . . shall begin construction of a[n] . . . electric plant . . . without first having obtained the permission and approval of the commission.”

Similarly, section 393.170.2 provides that, “No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission.”

"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; 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 . . .” Section 386.20(14) RSMo. Here again, the purpose to furnish “light, heat or power” is the key consideration. A source of locomotion does not fall within the original intent of the law.

It should also be pointed out that, as observed by the Court in *State ex rel. Harline v. Public Service Commission of Mo.*, “

The certificate of convenience and necessity granted no new powers. It simply permitted the company to exercise the rights and privileges already conferred upon it by state charter and municipal consent. *State ex inf. Shartel ex rel. City of Sikeston v. Missouri Utilities Co.*, 331 Mo. 337, 53 S.W.2d 394, 89 A.L.R. 607. The certificate was a license or sanction, prerequisite to the use of existing corporate privileges.

343 S.W.2d at 181. A corporation’s rights and privileges are conferred by state charter and not by the Commission. Unless those rights and privileges are limited by statute, they cannot be limited by the Commission. Inasmuch as “electric plant” is limited to property devoted to the provision of light, heat or power, as discussed above, section 393.170 does not prohibit any company from providing electricity to an EV charging station.

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

For the reasons stated above, No.

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?

UFM does not have enough information to answer this question. The answer depends on the facts and circumstances under which such service is being provided. However, since the Commission has no authority over such considerations, it should leave the question to the free market.

4. Is each charging station a distinct electric utility?

For the reasons stated above, the provision of electric vehicle charging station services is not a provision of service for light, heat or power. Therefore, an electric vehicle charging station is not an electric utility.

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?

UFM is confused by the relationship in this question between low-income ratepayers and access to electric vehicles. The relationship between low-income ratepayers and access to electric vehicles should be the same as the relationship between low-income ratepayers and access to a cup of coffee at Starbucks. If they can buy an electric vehicle, they can have an electric vehicle. The relationship between low-income ratepayer and access to electric vehicle charging stations is the same. If they pull up to an electric vehicle charging station, they should not be denied service simply because they are low-income ratepayers. If they can pay for it, they can buy electricity for their electric vehicle, without discrimination.

However, UFM recognizes that the Staff may have a more expansive question in mind, namely, how to assist low-income citizens in acquiring access to electric vehicles. In this, UFM turns once again to the primary role of government as expressed in the introduction to these comments. Government is not endowed with the authority to infringe on a citizen's right to life, liberty, pursuit of happiness or enjoyment of the gains of his own industry, but is called to protect and defend those rights for all citizens equally. Theft or larceny in its simplest terms is, "The taking of property without the owner's consent." BLACK'S LAW DICTIONARY 718 (5th ed. 1979). When government legislates or regulates larceny against a man, and takes from him property for the benefit of another, it elevates those rights it seeks to benefit above the inalienable rights our constitution and the government exist to defend. Such a government fails in its chief design. Access to an electric vehicle is not an inalienable right, and the Commission cannot elevate the desire above such inalienable rights without violating the Missouri Constitution.

Certainly, a Missouri citizen is free to voluntarily contribute to the aid of the poor and needy. He is at liberty to exert his life and liberty to the purposes he deems fit. UFM encourages the Commission to recognize the way American culture historically provided care to the less fortunate, by private compassion and charity. See Marvin Olasky's excellent treatment of that issue in his book *The Tragedy of American Compassion*. The Commission must allow free individuals to practice private compassion and must not infringe on their God given rights through plundering the fruits of their labor.

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

This should be a question for the free market to ferret out. If, in a free market, investors find a certain transaction to be valuable, those investors will voluntarily commit resources to obtain a return on that investment. Imposing a cost on ratepayers or citizens of the state of Missouri without their voluntary engagement is contrary to the principles of our free society.

Respectfully submitted,

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