

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF COMMISSION	)	CASE NO.
JURISDICTION OVER ELECTRIC VEHICLE	)	2018-00372
CHARGING STATIONS	)	

ORDER

On November 29, 2018, the Commission initiated this proceeding to investigate the Commission's jurisdiction over electric vehicle charging stations (EVCSs) and whether an entity that owns or operates an EVCS is subject to the Commission's statutory authority over electric utilities pursuant to KRS 278.010(3)(a). The Commission sought comments from all investor-owned electric utilities and rural electric cooperative corporations that are subject to the Commission's jurisdiction; from the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention; and from any interested party regarding the Commission's jurisdiction and regulatory oversight of EVCSs. The Commission received nine initial comments and six reply comments. This matter now stands submitted for a decision based on the written record.

BACKGROUND

In initiating this proceeding, the Commission noted the growing interest in and numbers of plug-in hybrid electric vehicles and all-electric vehicles (jointly, EVs) that use electricity either as a primary fuel or to improve the efficiency of conventional vehicle designs. The Commission also noted that Kentucky has 94 public EVCSs, which is fewer

public EVCSs than nearby states.<sup>1</sup> Currently, only two electric utilities in Kentucky, Kentucky Utilities Company and Louisville Gas and Electric Company, have tariffs that govern EVCSs, including privately owned EVCSs and EVCSs owned by the utilities.

### LEGAL STANDARD

The Commission's authority to investigate whether EVCSs are subject to our jurisdiction arises from KRS 278.040(2), which provides that the Commission has exclusive jurisdiction over the regulation of rates and service of all public utilities. Although it is more typical for one party to file a formal proceeding or request an advisory opinion whether an entity is a public utility subject to the Commission's jurisdiction, we initiated this investigation on our own motion due to the policy import of the issue.

If an EVCS is deemed an electric utility, then it would be subject to the Commission's statutory jurisdiction over EVCS rates and service. The Commission's jurisdiction over EVCSs hinges upon the statutory definition of an electric utility.

KRS 278.010(3)(a) defines an electric utility as

any person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with: (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses.

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<sup>1</sup> U.S. Department of Energy Alternative Fuels Data Center (AFDC), <https://afdc.energy.gov/data/10366>. Tennessee has 401 public EVCSs, Indiana has 187 public EVCSs, Ohio has 375 public EVCSs, Virginia has 523 public EVCSs, and North Carolina has 550 public EVCSs.

Based upon the express language of KRS 278.010(3)(a), an EVCS would have to meet the following three criteria to be an electric utility subject to the Commission's jurisdiction:

1. An EVCS must be a "facility used or to be used for or in connection with" the "generation, production, transmission, or distribution of electricity";
2. An EVCS must be a "facility" that provides electricity "for lights, heat, power, or other uses"; and
3. An EVCS must be a "facility" that provides electricity "to or for the public, for compensation."

A collateral issue is whether an EVCS violates the Electric Territorial Boundary Act, codified in KRS 278.016-278.018. Enacted in 1972, the statutory provisions were designed to encourage the orderly development of retail electric service, which KRS 278.010(7) defines as "electric service furnished to a consumer for ultimate consumption." Each regulated utility providing retail electric service is granted an exclusive service territory and is prohibited from serving consumers not within the regulated utility's certified territory.

#### COMMENTS

The Commission received initial comments from the Kentucky Office of Energy Policy (KOEP), The Alliance for Transportation Electrification (Alliance), Kentucky Utilities Company (KU), Louisville Gas and Electric Company (LG&E), Kentucky Association of Electric Cooperatives, Inc. (KAEC), the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), Duke Energy Kentucky, Inc. (Duke Kentucky), Kentucky Power Company (Kentucky Power),

Greenlots, and ChargePoint, Inc. (ChargePoint). Reply comments were filed by Alliance, KAEC, Attorney General, Duke Energy, Kentucky Power, and ChargePoint.

### KOEP

The KOEP is housed within the Kentucky Energy and Environment Cabinet. The KOEP's mission is to support the utilization of Kentucky's energy resources for the betterment of the Commonwealth while protecting and improving the environment.

The KOEP determined that EVCSs do not satisfy the statutory criteria outlined in KRS 278.010(3)(a) and, therefore, are not subject to the Commission's jurisdiction. The KOEP first noted that regulated electric utilities are engaged in the generation, transmission, or distribution of electricity to satisfy all of the retail electric needs of their customers. In contrast, according to KOEP, an EVCS provides a unique service that fills a limited need—fueling an EV. Second, an EVCS is an interface that allows the electric current to pass through the charging cable to an EV, much as an electric outlet is an interface that allows electric current to pass through to an appliance once it is plugged in. Third, the EVCS, and not the EV, is the end-use customer. Finally, according to the KOEP, an EVCS does not offer charging services “to or for the public” and is not essential to the general public as to justify utility status and corresponding regulation by the Commission.

The KOEP also addressed the positive economic impact of establishing an alternative fuel corridor along Kentucky's 20 interstates. The KOEP argue that, due to Kentucky's geographical position and strong automotive industry, Kentucky is positioned to see the benefits of vehicular electrification even before the demand is fully developed in the United States.

## Alliance

Alliance is a non-profit corporation consisting of 45 utilities, EV infrastructure firms, auto original equipment manufacturers, and affiliated trade associations. Alliance advocates for policies that remove barriers to EV adoption and accelerate the deployment of EV supply equipment.

Alliance challenged ChargePoint's summary of the status of EVCS regulation in 23 states, which was attached as an appendix to the Order that opened this proceeding. Alliance asserted that the summary was misleading and should not be given deference. Alliance then set forth its own summary of EVCS decisions in Washington, Oregon, Alabama, Missouri, and Iowa.

While it does not support a bright-line test-exempting EVCSs from regulation, Alliances advised that some regulation of EVCSs is essential to maintaining the reliability of the distribution grid and a more integrated energy system.

Alliance urged the Commission to keep this proceeding open to conduct in-depth studies of the initiate workshops regarding EV development in order to build a transparent and robust record upon which to render a decision.

## KU and LG&E (jointly KU/LG&E)

KU is an investor-owned utility that provides electric service to Lexington and central Kentucky. LG&E is an investor-owned utility that provides electric and gas service to Louisville and surrounding counties. KU/LG&E filed joint comments concluding that EVCSs do not fit the statutory definition of an electric utility. They explained that the determination that an EVCS was not a utility turned on the concept of "distribution" as opposed to "containerization." KU/LG&E asserted that distribution does not include

circumstances in which an end-user receives utility service, and then transforms the utility's product by containerizing it. They compared an EVCS to a battery charging service, such as an auto parts store that uses utility-provided electricity to charge a battery, which is then sold to customers fully charged. Similarly, KU/LG&E compared an EVCS to a bottling plant that provides utility-provided water in a bottle for sale to customers. KU/LG&E argued that, just as the battery charger at an auto parts store or the filling equipment at a water bottling plant are not facilities for the distribution of electricity or water, an EVCS should not be characterized as a facility for distributing electricity. According to KU/LG&E, the distribution of electricity ends at an EVCS, which is the end user. KU/LG&E argued that an EVCS is an electric consuming facility, which, as defined by KRS 278.010(8), means everything that utilizes electric energy from a central station source, and not a distribution facility.

KU/LG&E maintained that their approach does not impact electric utilities' existing rights within their certified service territories because each incumbent retail electric utility would be the exclusive supplier of electricity to an EVCS end-user.

KU/LG&E opined that, under this definition of distribution, EVCS owners could be allowed to self-supply electricity using on-site resources—such as on-site solar panels—because the containerization of electricity into an EV battery at the EVCS is not the “distribution of electricity” for the purposes of KRS 278.010.

However, KU/LG&E noted two important caveats. An EVCS that generated electricity to provide to another party or location would distribute electricity within the meaning of KRS 278.010(3)(a) and, therefore, would be subject to the Commission's jurisdiction and would be violating the Electric Territorial Boundary Act. Additionally,

KU/LG&E's approach to distribution is only appropriate when the electricity exchange is unidirectional. KU/LG&E explained that any instance in which an EVCS draws power from a charged EV battery and delivers that power to a utility's distribution facilities would be subject to the Commission's regulation.

KU/LG&E strongly encouraged a hybrid approach to EVCS regulation, allowing non-utilities and utilities (with Commission approval) to own and operate an EVCS. They asserted that this approach would make EV ownership in Kentucky more practicable, which would in turn also improve utilization of utility assets.

### KAEC

KAEC is a statewide association representing the interests of Kentucky's electric cooperatives. In its initial comments, KAEC concluded that an EVCS does not fit the statutory definitions of a utility or retail electric supplier as defined in KRS 278.010(3)(a), but may if facts were changed. KAEC determined that an EVCS is used for "light, heat, power, or other uses," and offers its service "to the public, for compensation." However, according to KAEC, an EVCS does not generate, produce, transmit, or distribute electricity. Thus, an EVCS satisfies only two of the criteria laid out by KRS 278.010(3)(a) to determine utility status.

Elaborating on its conclusion, KAEC explained that current EVCSs are limited to charging EV batteries. An EVCS is not currently capable of generating, producing, transmitting, or distributing electricity. Furthermore, KAEC asserted that because the electricity going to these batteries is supplied to the EVCS by the existing electric grid, the distribution ends at the electric meter of the territorial utility. However, if an EVCS were to generate or produce its own electricity or provide a service other than charging

EV batteries, then it would satisfy the third criteria of KRS 278.010(3)(a) by generating, producing, transmitting, or distributing electricity, and therefore would likely be a utility and in violation of the Electric Territorial Boundary Act.

KAEC advised the Commission to develop clear guidelines regarding the distribution of electricity via an EVCS in order to prevent Electric Territorial Boundary Act violations. Further, KAEC urged the Commission to reserve the discretion to revisit its decision regarding EVCSs should evolving technology or other circumstances so warrant.

In its reply comments, KAEC clarifies that an EVCS is not a utility so long as the EVCS receives its electricity from its territorial electric utility for the sole purpose of charging the battery of an EV. KAEC explained that utilities and non-utilities can own and operate EVCS but requested that the Commission not require mandatory utility ownership of EVCS.

In contrast to KU/LG&E's position, KAEC contended that if the owner/operator of an EVCS self-supplies electricity—for example, using solar power to generate electricity to charge EV batteries—then that EVCS would be deemed a utility because it is generating electricity to the public for compensation. As an electric utility, such an EVCS would be subject to the Commission's jurisdiction and would be in violation of the Electric Territorial Boundary Act.

KAEC reiterated that the Commission should find that an EVCS is not a utility based on the express assumption that an EVCS cannot generate or produce electricity, and that the sole use of an EVCS is to charge EV batteries.



## Attorney General

In his initial comments, the Attorney General noted that there are no bright line answers to the questions posed in this proceeding. The Attorney General chose not to provide initial comments because the issue invokes questions of law and fact. Given the Attorney General's statutory obligation to represent consumers, the Attorney General explained that providing initial comments could preclude his ability to later fully represent consumers in matters related to EVCSs or to provide legal opinions submitted by public agencies.

In his reply comments, the Attorney General again declined to take a position on the issues presented, but, instead, provided a list of relevant state court cases and Commission orders for review. The cases had a common theme in that an EVCS did not fit within the KRS 278.010(3)(a) definition of a utility, and therefore were not an electric utility subject to the Commission's jurisdiction, and therefore did not violate the Electric Territorial Boundary Act.

## Duke Kentucky

Duke Kentucky is an investor-owned utility that provides electric and gas service primarily in northern Kentucky. In its initial comments, Duke Kentucky concluded that an EVCS does not fit within the statutory definition of an electric utility if installed behind the utility electric meter.<sup>2</sup> Similar to KU/LG&E, Duke Kentucky explained that if an EVCS is installed behind the utility meter, then the distribution of electricity ended at the meter and everything behind the meter would constitute the customer's electric-consuming facility.

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<sup>2</sup> The term "behind the meter" refers to an energy system or building on the customer's side of the meter, and thus behind the meter. Items in front of the meter refer to facilities on the utility's side of the meter, which include generation, transmission, and distribution infrastructure.

Duke Kentucky compared an EVCS to a public phone charging station: both provide a non-regulated service charging batteries in public venues and receiving compensation for the battery charging service. Duke Kentucky asserted that the utility is made whole because the EVCS consumes electricity that is metered and charged to the EVCS by the utility under the utility's tariffs.

In terms of the Electric Territorial Boundary Act, Duke Kentucky asserts that, so long as a third-party owned EVCS is installed behind the meter as a customer of the local electric and the EVCS is providing a non-regulated battery charging service, then that EVCS is not in violation of the Electric Territorial Boundary Act.

Duke Kentucky proposed that the Commission embrace the development of EV and encourage utility participation. Duke Kentucky proposed a hybrid approach with both utility and third-party ownership of EVCSs, similar to KU/LG&E. Duke Kentucky explained that, while there has been a drastic increase in EV ownership in its service territory over the past two years, the market will not reach its full potential without direct and significant utility involvement, which will ensure that there is adequate resource planning and maintenance to ensure a sustainable EV market.

In its reply comments, Duke Kentucky noted that there is near consensus among the commenters that an EVCS is not an electric utility when it receives unidirectional service from a jurisdictional electric utility to power the charging station, but that an EVCS would be a utility if it generated its own electricity or if it distributed electricity back into the jurisdictional electric utility's distribution system.

Duke Kentucky reiterated that the Commission should encourage direct participation in EVCS developed by jurisdictional utilities through tariffed rates or direct

EVCS ownership. Duke Kentucky contended that promoting the development of EVCSs would lead to economic development investments, reduced vehicular emissions, and, important to electric utilities, load growth. Finally, Duke Kentucky recommended that the Commission retain jurisdiction over EVCS service complaints to ensure due process over EVCS service disputes.

### Kentucky Power

Kentucky Power is an investor-owned utility that provides electric service in eastern Kentucky. In its initial comments, Kentucky Power concluded that an EVCS fits within the statutory definition of utility and, therefore, ownership of EVCSs should be limited to jurisdictional utilities. Kentucky Power further concluded that because an EVCS is a utility and subject to the Commission's jurisdiction an EVCS owned and operated by a third party would violate the Electric Territorial Boundary Act.

Kentucky Power argued that an EVCS meets the definition of an electric distribution system, which, as defined in 807 KAR 5:041, Section 1(5), "means electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage." Kentucky Power further argued that the flow of electricity from the EVCS to an EV constitutes retail electric service and, because the retail electric service is performed for a fee, the EVCS provides retail electric service to the public for compensation. For the above reasons, Kentucky Power determined that an EVCS is an electric utility as defined in KRS 278.010(3)(a).

Kentucky Power supported further development of EV infrastructure in Kentucky, arguing that electric utilities are integral to the development of EVCSs in their certified

territory because: (1) utilities have a long planning horizon; (2) utilities have the ability to make capital expenditures; (3) utilities have the ability to manage demand; (4) utilities have considerable electric system expertise; (5) utilities are closely regulated; (6) utilities can identify best practices for charging station deployment; and (7) utilities are uniquely positioned to choose appropriate charging locations. Kentucky Power opined that cooperation and legislation are necessary for the EVCS market to develop in an orderly fashion consistent with the public policy goals of the Electric Territorial Boundary Act. Thus, it proposes that the Commission retain jurisdiction over EVCSs but initially allow the market to set prices, relying on competitive choice to ensure just and reasonable rates.

In its reply comments, Kentucky Power disagreed with commenters who opined that an EVCS is not a utility. Kentucky Power reiterated its conclusion that an EVCS is a utility and the importance of the Commission exercising jurisdiction over EVCSs to ensure sustainable, effective, and customer-supportive development of EVCSs. Kentucky Power agreed with Alliance that workshops should be held to encourage the exchange of ideas to integrate EVCSs into Kentucky.

#### Greenlots

Greenlots is a provider of EV charging software and services. Greenlots concluded that an EVCS is not a utility and therefore is not subject to the Commission's jurisdiction. In support of this conclusion, Greenlots explained that the transmittal of electricity is an incidental component of EV charging services. Greenlots further explained that the fundamental service provided by an EVCS is not electricity, but is value-added battery charging in order to provide EV mobility, range, or vehicle miles.

Greenlots distinguished an EVCS from an electric utility because, unlike customers who take service from an electric utility that operates as a monopoly, EV drivers are customers who voluntarily elect to use an EVCS to power their vehicles while traveling and choose between different charging stations selling fuel, in the form of electricity, at different locations and at different prices.

Greenlots maintained that the EVCS infrastructure gap in Kentucky requires the action and involvement of all market participants to accelerate the market. For this reason, Greenlots recommended that, similar to other jurisdictions, the Commission permit both third parties and jurisdictional electric utilities to develop EVCS infrastructure in order to promote EVCS development that benefits all citizens.

#### ChargePoint

ChargePoint is a commercial EV charging network with 61,000 independently owned EVCSs nationwide. In its initial comments, ChargePoint concluded that EVCSs do not fit the statutory definition of “utility” or “retail electric supplier” because the retail sale of electricity takes place at the meter, while an EVCS provides its service behind the meter. ChargePoint noted that regulatory commissions across the nation have determined that companies purchasing electricity at retail from regulated utilities and using it to provide charging services to EVs are not performing the function of an electric utility or an electricity supplier.

In its reply comments, ChargePoint reiterated that an EVCS is not a utility as defined by Kentucky statutes because the retail sale of electricity occurs in the front of the meter and the EVCS charging service occurs behind the meter. ChargePoint agrees with other commenters that the distribution of electricity ends at the meter. ChargePoint

pointed out that EVCSs use specialized equipment in the form of cords and connectors to charge EVs and the EVCSs have a single purpose of charging an EV, rather than a multiuse purpose of servicing all of the users' electric needs. ChargePoint asserted that, because an EVCS is not a utility, an EVCS would not violate the Electric Territorial Boundary Act.

### ANALYSIS AND FINDINGS

The majority of commenters concluded that an EVCS is not a utility, and therefore is not subject to the Commission's jurisdiction. Kentucky Power was the sole commenter who concluded not only that an EVCS meets the statutory prerequisites and therefore is a public utility, but also argued that EVCS ownership should be limited to jurisdictional electric utilities. For reasons discussed below, we find Kentucky Power's arguments in support of that conclusion unpersuasive.

The majority of the commenters who concluded that an EVCS is not a utility based their conclusion on their determination that distribution of electricity ends at the meter, and thus an EVCS is an electric-consuming facility and not an electric distribution facility.

However, it is well settled that the defining characteristic of a public utility is service to, or readiness to serve, an indefinite public, which has a legal right to demand the utility's service.<sup>3</sup> Thus, determining whether an EVCS is a public utility requires an analysis of "to or for the public."

A public utility expressly holds itself out to the general public and may not refuse any legitimate demand for service.<sup>4</sup> Providing what is traditionally characterized as utility

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<sup>3</sup> Case No. 99-205, *Chris Warner and Charles Norton v. Verna Hills Neighborhood Association, Inc.* (Ky. PSC May 8, 2000); 64 Am. Jur. 2d Public Utilities § 2.

<sup>4</sup> *Id.*

service does not create the presumption that an entity is a public utility; there must also be an intent to provide the service to or for the public.<sup>5</sup> The characterization of a service to or for the public is not determined by the number of customers served by the utility. For example, the Commission previously held that “the public” might be one or more customers.<sup>6</sup> An entity demonstrates its intent to offer service to the public when it “holds [itself] out as willing to serve all who apply up to the capacity of [the] facilities. It is immaterial . . . that [the] service is limited to a specified area and [the] facilities are limited in capacity.”<sup>7</sup>

It is a well-established legal principle that utility service that is limited to a defined, privileged class of persons is not service to or for the public. The Commission found that utility service was limited to a specific class, and therefore was not service to or for the public, under the following facts and law:

- An entity providing sewer service to the tenants of a mobile home park only did not provide service to or for the public because it intended to serve a limited class defined by the relationship of landlord and tenant. Persons outside the mobile home park did not have a legal right to demand sewer service from the entity, and there was no intent to serve an indefinite public. Case No. 90-169, *Application of Metropolitan Sew District for Approval to Acquire and Operate the Fairhaven Mobile Home Village Sewage Treatment Plant* (Ky. PSC June 22, 1990).
- An entity providing sewer service to members of a neighborhood association only did not provide service to or for the public because it intended to serve a limited class defined as members of a neighborhood association. Persons outside the geographic boundaries of the neighborhood association did not have a legal right to demand sewer service from the entity, and there was no intent to serve an indefinite public. Case No. 93-315, *Application of Verna Hills*

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<sup>5</sup> Case No. 2000-00075, *Petition of Kentucky Pioneer Energy, L.L.C. for Declaratory Order* (Ky. PSC July 13, 2000).

<sup>6</sup> Case No. 297, *An Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers* (Ky. PSC May 19, 1987).

<sup>7</sup> *North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 109 (N.C. 1966).

*Neighborhood Association, Inc. for an Order Authorizing Verna Hills Ltd. to Transfer Its Assets to Applicant and for determination of Jurisdictional Status* (Ky. PSC Sept. 16, 1993).

- An apartment complex that contracted with a regulated water utility to receive water through a single meter, then submetered water to apartment residents, did not provide service to or for the public because it intended to serve a limited class defined by the relationship of landlord and tenant. Persons outside the apartment complex did not have a legal right to demand water service from the apartment complex, and there was no intent to serve an indefinite public. Case No. 96-448, *An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services* (Ky. PSC Apr. 29, 1997).
- A neighborhood association providing sewer service to residents who withdrew their membership in the neighborhood association did not provide service to or for the public because it intended to serve a limited class defined as persons who resided in the subdivision affiliated with the neighborhood association. The residents continued to own property in the subdivision served by the neighborhood association, and thus were a defined, limited group of persons who remained materially different from members of the public at large. Case No. 99-205, *Chris Warner and Charles Norton v. Verna Hills Neighborhood Association, Inc.* (Ky. PSC May 8, 2000).

Consistent with Commission precedent discussed above, advisory opinions proffered by Commission Staff opined that:

- An apartment complex that submetered the gas usage of its residents did not provide service to or for the public because it provided service limited to a specific class of persons who entered into a landlord-tenant relationship, and was not intended to serve an indefinite public. *PSC Staff Opinion 20041013* (issued Oct. 13, 2004).
- A United States army base that temporarily transported and sold natural gas to a municipal utility only did not provide natural gas to or for the public because the service was limited to a specific, defined customer, and not intended to serve an indefinite public. *PSC Staff Opinion 2015-012* (issued Aug. 27, 2015).

The legal principle that utility service limited to a specific class of persons is not service to or for the public is not limited to Kentucky. Other courts and state regulatory



commissions have similarly concluded that utility service that is limited to a specific, defined class of persons is not service to or for the public.<sup>8</sup>

Returning to EVCSs, as set forth in the Appendix to the Order initiating this proceeding, almost 50 percent of states have concluded that EVCSs are not utilities. State utility regulatory commissions have determined either that an EVCS provides service to a limited, defined class, and therefore does not provide service to or for the public, or that an EVCS provides a service where electricity is incidental to the transaction. Although each state commission's decision is governed by that state's laws, the characteristics that define a public utility tend to be consistent. Those characteristics include service to or for the public by a person who owns, controls, operates, or manages any facility y used in connection with the generation, production, transmission, or

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<sup>8</sup> See *Drexelbrook Associates v. Pub. Service Comm'n of PA*, 212 A.2d 237 (Pa. 1965) (finding that landlord who purchased electric service at a single point and then provided submetered electric service to tenants only did not provide service to or for the public because service was limited to defined class); *City of Sun Prairie v. WI Pub. Serv. Comm'n*, 154 N.W.2d 360 (Wis. 1967) (finding that landlord who operated natural gas fired generators to provide electric service to tenants only did not provide service to or for the public because service was limited to a defined class); *Baker v. Pub. Serv. Comm'n of OK*, 606 P.2d 567, 571 (Okla. 1980) (finding that shopping center that purchased and then submetered electric service to its tenants only did not provide service to or for the public because service was limited to a defined class); *In Re Submetering Systems, Inc.*, 225 P.U.R.4<sup>th</sup> 151 (Nev. PUC Feb. 25, 2003) (finding that landlord reselling electric service to tenants only does not provide service to or for the public because service is limited to a defined class).

distribution of electricity. The states finding that EVCSs are not public utilities include Alabama,<sup>9</sup> New Hampshire,<sup>10</sup> Massachusetts<sup>11</sup> Hawaii,<sup>12</sup> and New York.<sup>13</sup>

If an EVCS were deemed to sell electricity to or for the public, it would violate the electric territorial boundary act, KRS 278.016-278.018. Enacted in 1972, the statutory provisions were designed to encourage the orderly development of retail electric service, which is “electric service furnished to a consumer for ultimate consumption.”<sup>14</sup> Each regulated utility providing retail electric service is granted an exclusive service territory and is prohibited from serving consumers who are not within the regulated utility’s certified territory.

Consistent with Commission precedent, if an EVCS does not provide service to or for the public, then it is not an electric utility under KRS 278.010(3)(a). If an EVCS is not an electric utility, as defined by statute, it would not be subject to Commission jurisdiction,

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<sup>9</sup> Docket No. 32694, *Generic Proceeding to Determine the Commission’s Jurisdiction Over Electric Vehicle Charging Stations* (Ala. PSC June 22, 2018) (EVCS facilities do not fall within statutory definition of a public utility because EVCS facilities do not generate, transmit, or distribute electricity to or for the public).

<sup>10</sup> IR 15-510, *Investigation into Resale of Electricity by Electric Vehicle Charging Stations* (NH PUC Mar. 18, 2016) (EVSC operators provide a charging service and do not generate, transmit, or distribute electric service).

<sup>11</sup> Docket 13-182-A, *Department Jurisdiction Over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging and Other Matters* (Mass. DPU Aug. 4, 2014) (EVCS is akin to an electric cord, and not a distribution line, used to sell and provide charge services via specialized equipment that allows a customer to charge an EV battery as its only function).

<sup>12</sup> Transmittal No. 13-07 and 13-08, Consolidated (Hawaii PUC July 1, 2013) (EVCS operators provide electric energy for use solely as motor fuel for electric vehicles to charge electric vehicles’ batteries).

<sup>13</sup> Case No. 13-E-1099, *In the Matter of Electric Vehicle Policies* (NY DPS Nov. 14, 2013) (EVCS operators sell charging service using specialized equipment that allows customers to do only one thing: charge an electric vehicle’s battery).

<sup>14</sup> KRS 278.010(7).

pursuant to KRS 278.040, or to the electric territorial boundary act, KRS 278.016-278.018.

Although we reach our determination based on whether an EVCS provides service to the public, we agree with the majority of commenters that an EVCS is an end user or electric-consuming facility, and is not a distribution facility. We reach this conclusion for similar reasons as the comments: an EVCS provides a battery charging service where an electric current—that the EVCS did not generate, transmit, or distribute—passes through a charging port to an EV battery.

The Commission finds that an EVCS does not provide electric service to or for the public because EVCSs provide a limited service of charging EV batteries to a select group of people, namely EV owners. An EVCS does not have a duty to serve the public at large nor do they hold themselves out as ready to furnish electric service to the public at large on a non-discriminatory basis. Further, an EVCS may not be able to serve all EVs on the market because there are different EV batteries and charging ports, depending upon the brand of EV.<sup>15</sup>

Consistent with the above, the Commission finds that an EVCS is not a public utility, as defined by KRS 278.010(3)(a), and is not subject to Commission regulatory oversight.

Several commenters questioned whether an EVCS that self-supplied its own electricity would be deemed an electric utility. Based on the finding that an EVCS does not provide service to or for the public, it is logical that an EVCS that uses a behind the

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<sup>15</sup> U.S. Department of Energy Alternative Fuels Data Center, *Developing Infrastructure to Charge Plug-In Electric Vehicles* ([https://www.afdc.energy.gov/fuels/electricity\\_infrastructure.html](https://www.afdc.energy.gov/fuels/electricity_infrastructure.html)).

meter energy source is not an electric utility so long as its purpose is only to provide electric current to charge an EV battery. We agree with KU/LG&E that an EVCS that generates electricity to distribute to another party or location would distribute electricity within the meaning of KRS 278.010(3)(a) and, therefore, would be subject to the Commission's jurisdiction and would be violating the Electric Territorial Boundary Act.

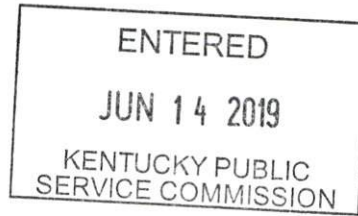
Alliance requested that we keep this case open to hold workshops and gather additional information. We find that Alliance failed to provide sufficient evidence to establish good cause to keep this proceeding open. We have the statutory authority to revisit our decision and will do so if a change in facts or law warrants.

IT IS THEREFORE ORDERED that:

1. An EVCS that receives electric service from a jurisdictional electric utility or that obtains electricity from a behind the meter source is not an electric utility as defined by KRS 278.010(3)(a), is not subject to the certification requirements of KRS 278.020(1), and is not subject to the Commission's jurisdiction.

2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
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