

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

REPLY COMMENTS OF DUKE ENERGY KENTUCKY, INC.

I. INTRODUCTION

In accordance with the procedural schedule established by the Kentucky Public Service Commission (Commission) on November 29, 2018, Duke Energy Kentucky, Inc., (Duke Energy Kentucky or the Company) offers its Reply Comments for consideration.

The development of a sustainable and reliable Electric Vehicle Charging Stations (EVCS) infrastructure in the Commonwealth of Kentucky requires cooperation, coordination, and commitment of all stakeholders. Numerous parties, representing an inclusive cross-section of stakeholders have offered initial comments regarding the questions posed by the Commission in its November 29, 2018 Order establishing this investigative proceeding. The cross-section of stakeholders includes investor-owned utilities,¹ electric cooperatives,² trade associations,³ third-party providers of charging services,⁴ the Kentucky Attorney General,⁵ and the Kentucky Office of Energy Policy.⁶ While there are some differences of opinion regarding when and if an EVCS

¹ Comments of Kentucky Utilities Company and Louisville Gas and Electric Company, March 1, 2019; Comments of Duke Energy Kentucky, Inc., March 1, 2019; and Initial Comments of Kentucky Power Company, March 1, 2019.

² Kentucky Association of Electric Cooperatives, Inc's Comments Pursuant to November 29, 2018 Order, March 1, 2019.

³ Submittal of Comments by the Alliance for Transportation Electrification, March 1, 2019

⁴ Initial Comments of GreenLots March 1, 2019; Comments of ChargePoint, Inc, March 1, 2019

⁵ Attorney General's Response to Commission Order, March 1, 2019.

⁶ Public Comments from the Kentucky Office of Energy Policy, February 26, 2019.

crosses from a traditional charging service to provision of utility service, the clear majority of respondents agree on several key points:

1. Broad support for EVCS infrastructure and market development exists;
2. A sustainable and reliable EVCS market requires direct and coordinated participation by jurisdictional utilities; and,
3. Traditional third-party-owned EVCS installations that receive electric service from the jurisdictional utility behind a meter do not rise to the level of providing a utility service, but rather, are providing a discrete charging service.

The Commission should encourage and assist in the facilitation of the EVCS market by finding that third-party owned and operated EVCS that are exclusively offering battery charging services and are purchasing electricity from the jurisdictional utility in which the EVCS is located, are not providing a retail sale of electricity and are not an electric utility. Moreover, in the interest of sustainable and reliable market development, the Commission should encourage direct participation by its jurisdictional electric utilities, whether through tariffed rates, direct EVCS ownership, incentives for customer EVCS investment, or other infrastructure improvements necessary to support EVCS.

II. REPLY COMMENTS

A. There is broad stakeholder support to develop a reliable and sustainable EVCS market in Kentucky

The initial comments submitted in this investigation represent an inclusive cross-section of interests. Thematically, these comments align with a single goal, to encourage and support the expansion of the EVCS market. Indeed, a growing EVCS market will provide numerous benefits to the Commonwealth of Kentucky including, but not limited to economic development investments, reduction in vehicular emissions, and load growth for utilities, which all else being

equal, could result in lower allocated costs of service per electric utility customer than absent such incremental customer load. The parties submitting initial comments in this proceeding include Duke Energy Kentucky, Louisville Gas & Electric Company (LGE), Kentucky Utilities Company (KU), Kentucky Power Company (Kentucky Power), The Kentucky Office of Energy Policy (Office of Energy Policy), GreenLots, ChargePoint Inc., (ChargePoint), Alliance for Transportation Electrification (Alliance), and the Attorney General of the Commonwealth of Kentucky (Attorney General). Apart from the Attorney General (whose initial comments, while indicating an interest in the proceeding, necessarily declined to offer substantive discussion with a reservation to file reply comments), each of these stakeholders advocate for and encourage the development of the EVCS market in Kentucky along with the necessary infrastructure to support such development. Although the next phase of the Commission's investigation is undefined, Duke Energy Kentucky encourages the Commission to explore opportunities to foster the growth of the EVCS market in Kentucky by way of a balanced approach that permits third-party owned and operated EVCS development in conjunction with jurisdictional utility participation as both the designated retail electric supplier and potential EVCS infrastructure and station operators where practical and necessary. Such a balanced approach will enable the Commission to maintain some measure of consumer protection and regulatory oversight through its jurisdiction over jurisdictional utilities, but also allow the unencumbered development of traditional EVCS installations supported by utility infrastructure and investment.

B. A Sustainable and Reliable EVCS Market Requires Direct and Coordinated Utility Participation

Kentucky law does not preclude or limit a utility's participation in the EVCS market in its certified territory. In fact, as recognized by many of the parties submitting comments, utilities could and should be directly involved in developing EVCS infrastructure, including ownership

and operation of EVCS. Duke Energy Kentucky agrees and echoes the comments stressing the importance of utility involvement. As succinctly explained by the Alliance, “[o]nly a strong utility role - with ratepayer funding that is deemed to be just and reasonable and approved by the Commission - can solve these gaps on a sustainable basis.”⁷

Again, as the Company described in its initial comments, utilities have the long-term presence and stability, technical and managerial expertise, and the foresight to plan and develop the infrastructure necessary to facilitate and develop a sustainable EVCS market.⁸ This same sentiment was echoed not only by jurisdictional utilities,⁹ but also the Alliance,¹⁰ and third-party EVCS service providers. In its initial comments, GreenLots describes the necessity of utility investment in charging infrastructure, including ownership and operation of charging stations to help break through barriers and accelerate the market and support competition.¹¹ The Alliance explains that utilities have the balance sheets, access to capital markets, and the core competency in building out infrastructure in the distribution grid. Duke Energy Kentucky agrees that utilities should have a strong role, with the regulatory oversight of the Commission, in developing the EVCS market.

The Commission should encourage utility participation in assisting the competitive market for EVCS to come fruition. This can be done through approval of appropriate rate structures to support EVCS, timely cost recovery of distribution infrastructure investments to support EVCS installations, incentives for customer-owned EVCS, and publicly available EVCS stations owned and operated by the utilities either alone or in concert with a third-party supplier. The Commission should remain flexible and open-minded in its consideration of these potential strategies. Utilities

⁷ Alliance Comments at 7.

⁸ Duke Energy Kentucky Comments at 3.

⁹ See e.g. Comments of KU and LGE at 6; and Kentucky Power Comments at 4;

¹⁰ Alliance Comments at 8.

¹¹ GreenLots Comments at 4.

are best suited to determine what potential strategies may be most appropriate for their respective territories and customer demographics. A single or state-wide policy regarding utility offerings may not be the most reasonable approach. Rather, the Commission should encourage jurisdictional utilities to examine potential opportunities to encourage and support EVCS infrastructure and EV adoption and to bring such proposals before the Commission for consideration.

C. Traditional third-party-owned EVCS installations that receive electric service from the jurisdictional utility behind a meter do not rise to the level of providing a utility service, but are providing a discrete charging service

All commenting parties agree that a fully developed EVCS market place includes participation of third-party owned public charging stations. However, there appears some ambiguity and thus, differing interpretation, as to whether Kentucky law classifies third-party EVCS owners as an electric utility or if offering public charging for compensation a retail sale of electricity necessitating Commission regulation. While Duke Energy Kentucky believes there is sufficient room for interpretation that would exclude the third-party owned EVCS from Commission regulation, provided they are providing a unidirectional charging service and are themselves receiving electric service as a customer of the jurisdictional utility, admittedly, one could also interpret strictly construe Kentucky law to reach a different conclusion. The Commission's investigation into this issue is thus timely and relevant. Indeed, additional regulatory or legislative action may be necessary to clarify the Commission's responsibility.

While Duke Energy Kentucky agrees that the Commission should interpret its regulations and ultimately find that Kentucky law does not extend such to blanket third-party owned public EVCS with complete Commission oversight¹² and regulation as a utility, some measure of oversight

¹² As previously stated, the Company's position assumes a traditional EVCS installation where the station is taking service from the utility whose certified territory the EVCS is located.

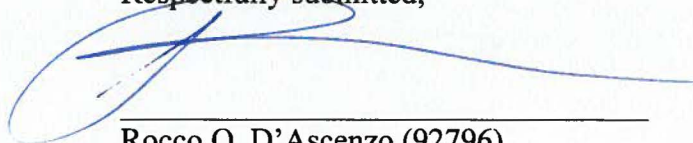
may still be appropriate. As Duke Energy Kentucky previously stated, and as indicated by other commentators, unidirectional charging services where the EVCS is taking service from the jurisdictional utility in accordance with Commission-approved tariffs should not rise to the level of being a utility or retail sale of electricity. Moreover, nothing prohibits an existing electric utility from offering this same service in its certified territory under a Commission-approved tariff and subject to utility-level regulation. However, the line starts to become blurred if the EVCS offers services other than simple and direct battery charging. Similarly, if the EVCS were to begin generating its own electricity or even distributing any such electricity back onto the jurisdiction utility's distribution system, the EVCS would then be engaging in production, generation, transmission and distribution of electricity as those terms are understood and contained in KRS 278.010 and would then be electric utilities subject to Commission regulation and even engaging in retail sales of electricity in violation of KRS 278.016 through 278.018. As such, Duke Energy Kentucky supports the Commission retaining its ability to assert regulatory authority under specific circumstances. This is especially true in both the situations where the EVCS is providing services beyond unidirectional battery charging, as well as in additional situations that are intended to provide consumer protection.

Perhaps an easy solution to this puzzle would be to engage in a simple rule-making procedure whereby clear lines are drawn between the Commission's oversight. For example, such a rulemaking could create a simple registration process for third-party EVCS service where the Commission is able to identify entities that are providing such services in specific utility service territories and retain complaint jurisdiction for certain disputes between or among utilities, third-party EVCS service providers and customers. Such a process would ensure that all stakeholders are afforded due process over disputes regarding EVCS services.

III. CONCLUSION

Duke Energy Kentucky continues to believe that the Commission should encourage the development of the EVCS market and consider opportunities for jurisdictional utilities to help facilitate such development in a manner that does not risk the reliability and adequacy of electric service to all customers. The regulated utilities that submitted comments agree that they must work with the Commission to ensure that there is an infrastructure to accommodate public EVCS and indeed direct utility involvement may be the path to ensuring the longevity and reliable infrastructure is in place to support widespread electric vehicle adoption. While there is some disagreement regarding when and if third-party owned EVCS rises to the definition of a utility under Kentucky law, the majority of commenters seem to agree that there is sufficient room for interpretation to find, at a minimum, that third-party owned EVCS providing a unidirectional battery charging service and receiving service from the jurisdictional utility in whose certified territory the EVCS is located, is permissible under existing law. Nonetheless, Duke Energy Kentucky would support a process where clear rules could be developed regarding the provision of third-party EVCS for the protection of all stakeholders, including third-party owners and operators, customers, and utilities.

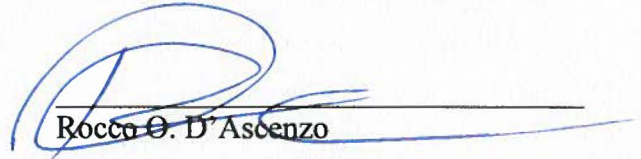
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on March 15, 2019; that there are no parties the Commission has excused from participation by electronic means in this proceeding; and that a copy of the filing in paper medium is being sent to the Commission, via UPS, overnight delivery, this the 15th day of March, 2019.


Rocco O. D'Ascenzo