

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**KENTUCKY ASSOCIATION OF ELECTRIC COOPERATIVES, INC.’s
REPLY COMMENTS PURSUANT TO NOVEMBER 29, 2018 ORDER**

Kentucky Association of Electric Cooperatives, Inc. (“Kentucky Electric Cooperatives”), by counsel and pursuant to the Commission’s November 29, 2018 order (“Order”) in the above-captioned matter, respectfully provides the following reply comments regarding the question of whether the Commission should assert jurisdiction over owners and/or operators of electric vehicle charging stations (“EVCS”).

I. Introduction.

Although the initial comments filed in this matter expectedly approach the jurisdictional issue before the Commission from different perspectives, the collective substance of those comments reflect three important areas of agreement among the various parties. First, the parties appear to generally agree that utility involvement and participation is important to the orderly and effective development of the EVCS infrastructure. Second, while there is broad agreement that utility involvement may be important, the parties also acknowledge that EVCS deployment is likely to develop first around the Commonwealth’s most population-dense areas, with broader expansion to more rural areas developing in future years, as EV-technology becomes both more commonplace and more advanced, especially in terms of existing vehicle-range considerations. And third, because EV-technology is still in a relatively nascent stage, the Commission should adopt a cautious but encouraging stance toward the jurisdictional treatment of EVCS owners

and/or operators while keeping a watchful eye on how the broader deployment of this technology (with its unique load characteristics) could create potentially novel cost of service and rate design questions or other issues.

Accordingly, the Kentucky Electric Cooperatives reiterate their initial recommendations that the Commission: (i) reserve the discretion to revisit EVCS-related issues in the future, should evolving technology or other circumstances so warrant; and (ii) carefully circumscribe its decision by finding that an EVCS owner or operator is not a “utility” or “retail electric supplier” so long as it receives its electricity for the EVCS from its territorial utility/retail electric supplier solely for the limited service of charging a battery to be exclusively used to power an electric vehicle. To the extent the question of utility ownership and/or operation of an EVCS is before the Commission, the Kentucky Electric Cooperatives further support the notion that they should be permitted to own and operate EVCS – on a strictly voluntary basis – subject to the typical Commission oversight of their tariffed offerings.

II. The Commission Should Acknowledge Rural Considerations by Allowing Electric Utilities to Voluntarily Enter the EVCS Market.

The Kentucky Electric Cooperatives provide a unique perspective on the deployment of EVCS because Kentucky’s electric cooperatives almost exclusively provide service in rural areas of Kentucky. As the Commission is well aware, providing electric service in rural areas presents a unique set of challenges and rate-making implications. Moreover, as member-owned non-profit organizations, Kentucky’s electric cooperatives are especially committed to delivering safe, reliable, and affordable energy in a way that satisfies their members’ needs and desires. That member-driven, non-profit mission makes cooperative electric service a fundamentally unique endeavor, and it underscores the principal reason why utility involvement in the EVCS market should be voluntary in nature.

This recommendation is underscored by the fact that, as some commentator's noted, the use of electric vehicles in Kentucky is currently concentrated in urban areas. The map provided in Figure 3 of the comments submitted by the Office of Energy Policy shows that, in 2017, there was not a single electric vehicle registered in the majority of Kentucky's rural areas.¹ This is not especially surprising given the correspondingly low population densities. Thus, to the extent any commenter is suggesting mandatory utility investment in EVCS infrastructure, the Kentucky Electric Cooperatives believe such a requirement would be inefficient and detrimental to cooperative members, who reside in those primarily rural areas with low EV-technology demands.²

Furthermore, existing market forces do not demand mandatory utility participation. As is evidenced by the fact that private entities providing EVCS services have filed comments in this proceeding, the EVCS market is presently competitive. There are private entities ready, willing, and able to enter the EVCS market in Kentucky. Consequently, competitive market forces will adequately supply EVCS throughout the Commonwealth, as those EVCS services are demanded. This seems especially true if the Commission were to provide the market with regulatory certainty by clarifying the factual circumstances under which existing Kentucky law permits third-parties to invest in the deployment of EVCS infrastructure without risk of being treated as a regulated utility or violating the Territorial Boundary Act.

¹ Kentucky Office and Energy Policy Comments, Case No. 2018-00372, filed February 26, 2019, at 12.

² One commenter seemed to suggest that legislation may be required to determine the scope of the Commission's jurisdiction over EVCS. The Kentucky Electric Cooperatives disagree. As explained in the Kentucky Electric Cooperatives' initial comments, the Commission has adequate present authority for determining its jurisdiction over EVCS. In addition, the absolute earliest the Legislature could even address this topic is now effectively 2020 (and that blindly assumes there is even a consensus on whether or how to do so). Moving forward with an order in this case will help create regulatory certainty for all interested parties, thereby fostering an environment for efficient EVCS deployment.

Not only does this approach allow market forces to seek their own efficient balance, allowing EVCS deployment across the Commonwealth to develop through competition (rather than mandating utility-owned EVCS), would further support the orderly development of retail electric service by avoiding duplicate EVCS facilities in locations where they may not be needed. In the rural case, at least, it would also help avoid the unnecessary rate impact that would likely result from a decision to mandate investment in these technologies. The individual cooperatives need flexibility to address those considerations with their constituent members. Forcing investment, however, serves neither the cooperatives nor their members.

In that vein, Kentucky's electric cooperatives agree with the majority of the commenters that the Commission should allow electric utilities the option of entering the competitive EVCS market. Indeed, KAEC is aware of no authority, and KAEC does not believe any was cited by any commenter, that would prohibit an electric utility from entering the EVCS market. The electric utility's provision of EVCS services and the rate charged to the customer – whether that be the owner of an electric vehicle or a “site host” – would of course be subject to the Commission's jurisdiction through the utility's tariff, just like all other services provided by regulated electric utilities. This approach is consistent with the Commission's prior orders that approved the Louisville Gas & Electric and Kentucky Utilities EVCS tariffs. It could also encourage additional entrants into the competitive EVCS market, resulting in increased competition, which will only benefit Kentucky's citizens.

To the extent the Commission is evaluating whether existing utilities may enter the EVCS market, the Kentucky Electric Cooperatives believe the Commission should enter an order that allows – but does not require – existing electric utilities to provide EVCS services. This approach will help maximize the number of realistic market participants, discourage the potential

duplication or unnecessary placement of EVCS facilities by an electric utility, and help ensure that Kentucky's citizens continue to receive fair, just, and reasonable electric service.

III. The Commission Should Take a Cautious Approach to Its Findings.

Finally, because EV-technology is still in a relatively nascent stage, the Commission should move cautiously by narrowly exercising its jurisdiction to address these issues. Like Kentucky's electric cooperatives, most commenters assumed that current EVCS technology requires an EVCS owner or operator to purchase electricity from the existing electric grid to provide the limited service of charging an electric vehicle battery. Some commenters, however, have suggested that developing technologies – solar-powered EVCS, for example – would allow an EVCS owner or operator to generate electricity that would be used to provide charging services. If this technology is implemented, the Kentucky Electric Cooperatives believe an EVCS owner or operator would clearly become a “utility” subject to Commission jurisdiction, as well as a “retail electric supplier” operating in violation of the Electric Territorial Boundary Act because the EVCS owner or operator would be generating or producing electricity that is provided – for compensation – to the public for ultimate consumption.³

Therefore, the comments suggesting that new technologies are on the horizon underscore the need for the Commission to take a cautious approach to its findings. The Commission's order should be based on the express assumptions that: (1) an EVCS is not capable of generating or producing electricity; and (2) the sole use of the EVCS is to charge a battery to be used

³ See KRS 278.010(3)(a), (4), (7). It is easy to imagine scenarios where creative vendors might attempt to skirt this issue by branding the provision of self-generated or self-provided electricity as “free,” even though the actual cost of producing and providing itself with the electricity is bundled into some other service or charge. For this reason, the Kentucky Electric Cooperatives believe it is appropriate to restrict the current ruling to scenarios where the EVCS owner/operator is receiving its electricity for the EVCS from its territorial utility/retail electric supplier, as that approach avoids the specter of an EVCS owner/operator violating the Territorial Boundary Act.

exclusively in an electric vehicle. This approach will allow the Commission to continue to monitor and consider the jurisdictional issues created by the deployment of EVCS, while preserving adequate flexibility to respond to any additional concerns created by developments in EVCS technology, just as the New York Public Service Commission has done through a similar proceeding.⁴

Accordingly, the Kentucky Electric Cooperatives again urge the Commission: (i) to reserve the discretion to revisit these issues in the future should evolving technology or other circumstances so warrant; and (ii) to carefully circumscribe its decision and find the following, which is consistent with the decisions reached by other state utilities commissions that have considered this issue.

- An owner or operator of a publicly available EVCS is providing its services “to the public” because the services will be provided to one or more end users;
- An owner or operator of a publicly available EVCS receiving any fee or other form of consideration for its services, is providing services “for compensation”;
- An owner or operator of an EVCS is providing services for “power or other uses” because the sole use of the EVCS is to power the battery in an electric vehicle;
- An EVCS owner or operator is not a “utility” or “retail electric supplier,” provided that: (1) the EVCS owner or operator does not generate or produce electricity for the EVCS; (2) the EVCS owner or operator receives its electricity for the EVCS from its territorial utility/retail electric supplier; and (3) the EVCS may be used solely for the limited service of charging a battery to be exclusively used to power an electric vehicle;
 - An EVCS owner or operator satisfying all of these conditions is providing an electric vehicle charging service, not electric service;

⁴ “This Commission should maintain its ability to respond to the market as it evolves. Our determination here does not diminish our ability to respond to changes in the market in which Charging Stations operate.” New York Public Service Commission, *Declaratory Ruling on Jurisdiction Over Publicly Available Electric Vehicle Charging Stations*, Case 13-E-0199, Nov. 22, 2013 Order, at 4-5, available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B0A1AB82A-ABD4-43FA-B3E6-A4C54EC02220%7D>.

- An EVCS owner or operator failing to satisfy all of these conditions is a “utility” subject to Commission jurisdiction, and a “retail electric supplier” supplying electric service to an end-user; and
- The Commission will continue to monitor EVCS deployment and reserves the right to revisit this jurisdictional question as technological advances or other circumstances warrant.

To the extent the question of utility ownership and/or operation of an EVCS is before the Commission, the Kentucky Electric Cooperatives further support the notion that they should be permitted to own and operate EVCS – on a strictly voluntary basis – subject to the typical Commission oversight of their tariffed offerings.

This the 15th day of March, 2019.

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 currently 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 FedEx, overnight delivery, this the 15th day of March, 2019.

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