

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

COMMENTS OF KENTUCKY UTILITIES COMPANY
AND LOUISVILLE GAS AND ELECTRIC COMPANY

Kentucky Utilities Company (“KU”) and Louisville Gas and Electric Company (“LG&E”) (collectively “the Companies”) offer these Comments in accordance with the procedural schedule set out in the Commission’s November 29, 2018 Order establishing this proceeding.

The Companies appreciate the opportunity to offer their comments regarding the Commission’s jurisdiction and regulatory oversight of Electric Vehicle Charging Stations (“EVCSs”). The Companies believe their recommended approach will increase EVCS expansion and investment while protecting retail electric suppliers’ certified territorial rights and this Commission’s jurisdiction over utilities, all of which will redound to customers’ benefit.

The Companies agree with the Commission’s approach to the statutory analysis of this issue, namely to determine whether a person becomes a utility under KRS 278.010(3)(a) and must be regulated as such if that person owns, leases, operates, or otherwise controls one or more EVCSs (for simplicity, an “EVCS owner”). In other words, for an EVCS to be the kind of facility that causes an EVCS owner to be a utility, an EVCS must be a “facility used or to be used for or in connection with ... [t]he generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses” The Companies believe the key to understanding that EVCS owners need *not* be utilities lies in

correctly construing the word “distribution.” (The Companies take it to be uncontroversial that EVCSs *per se* are not part of the generation, production, or transmission of electricity.¹) Notably, multiple kinds of entities provide today and have provided for decades battery charging services that have not been treated as the distribution of electricity that would require regulating them as electric utilities. For example, AAA provides assistance to vehicles with dead batteries, either by charging the existing battery or supplying a new battery that is fully charged. Likewise, most car dealers and car supply stores sell charged batteries to customers, part of the cost of which is necessarily the cost of the electricity to keep the batteries charged. The Companies therefore believe it would be consistent with the longstanding practice of not treating battery charging services as the distribution of electricity to take the same approach regarding EVCSs.

In addition, water distribution provides a helpful analogy to correctly construing electric distribution. KRS 278.010(3)(d) states that a water utility is a person “who owns, controls, operates, or manages any facility used or to be used for or in connection with ... [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation” Many grocery stores, restaurants, coffee shops, and other retailers sell or provide water to customers for ultimate consumption, albeit in bottles, jugs or cups. To the Companies’ knowledge, none of these establishments are treated as utilities and regulated by the Commission. Therefore, whatever it is to “distribut[e] or furnish[] ... water to or for the public, for compensation,” it clearly does not mean any and all forms of “distributing or furnishing of water to or for the public for compensation.”

¹ See, e.g., EIA Glossary, available at <https://www.eia.gov/tools/glossary/?id=electricity> (“Generation: The process of producing electric energy by transforming other forms of energy; also, the amount of electric energy produced, expressed in kilowatthours.”); “Transmission (electric): An interconnected group of lines and associated equipment for the movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.”); Merriam-Webster’s Online Dictionary, available at <https://www.merriam-webster.com/dictionary/production> (“production: ... the act or process of producing; produce: ... to cause to have existence or to happen : bring about”).

It appears from these electric and water examples that there is a customary understanding of “distribution” that the Companies believe the Commission should apply to EVCSs. That definition does not include circumstances where a party receives utility service but then adds value or transforms the utility’s product by placing it into a container (e.g., using utility-provided electricity to charge a battery or filtering utility-provided water into a bottle). Therefore, just as the battery charger at an auto parts store or the filling equipment at a water bottling plant is not a facility for distribution of electricity or water under KRS 278.010(3)(a), the Companies believe EVCSs should not be characterized as facilities for distributing electricity, and therefore EVCS owners should not be regulated by the Commission as utilities solely because they are EVCS owners. In other words, the distribution of electricity would end for utility purposes at an EVCS, i.e., utility-provided electricity would be treated as ultimately consumed by an EVCS; the EVCS would be the electric consuming facility for KRS 278.010 purposes.²

An important caveat is that this approach applies only when an EVCS is a unidirectional provider of charging services. Any instance in which an EVCS operates in the other direction, i.e., it draws power from charged EV batteries and delivers that energy onto a utility’s distribution facilities, would be subject to Commission regulation. Presumably that regulation would be through the serving utility’s tariff provisions governing customer energy deliveries onto the utility’s distribution system. Regardless, the de-containerizing of energy and delivery of it through an EVCS onto a utility’s distribution system would certainly be subject to Commission regulation.

Notably this approach does not erode retail electric suppliers’ existing exclusive service rights within their respective certified service territories. Each retail electric supplier would be

² Under this approach, the EVCS is effectively treated as the utility’s customer. As such, any make-ready or other costs a utility incurs to serve an EVCS would become part of that utility’s rate base and recovered in the same way any other costs to serve a customer would be recovered.

the exclusive utility supplier of electricity to an EVCS; at the EVCS itself utility distribution would end and non-utility containerizing of electricity would occur. That would ensure that retail electric suppliers would stay within their existing service territories while allowing non-regulated competitive entities to enter the EVCS market and presumably expand EV charging availability. This would also allow unregulated utility affiliate entities to own and operate EVCSs in other retail electric suppliers' territories, though those EVCSs would have to be served by the incumbent retail electric supplier in each service territory.

This approach would also allow EVCS owners to self-supply electricity using onsite renewable or other resources. For example, if an EVCS owner desired to have chargers powered largely or exclusively by solar panels located on the same parcel of land, it could do so precisely because the containerizing of electricity into customers' EVs at the EVCS is not the distribution of electricity for the purposes of KRS 278.010. Of course, an EVCS owner who sought to generate electricity on one parcel and transfer it to another party or to another location would be prohibited from doing so under existing law; such distribution would cause the EVCS owner to become a utility subject to Commission regulation, as well as a retail electric supplier impermissibly operating inside the existing certified service territory of an incumbent retail electric supplier. In short, this approach would protect the existing contours of law around self-supply of electricity while allowing EVCSs, including self-supplied EVCSs, to expand.

Although there is little doubt that clarifying the law to allow non-utility competitive entities to enter the EVCS market will expand EVCS availability generally, competitive realities would tend to indicate that certain areas would remain unserved or underserved by EVCSs. To address that concern, the Companies believe it is important to ensure that the outcome of this proceeding continues to allow retail electric suppliers to offer EVCS services in their own

respective certified service territories—under tariffed rates with utility-owned EVCSs as rate base assets—to the extent approved by the Commission. This will help ensure that areas unlikely to be served by competitive EVCS suppliers will be able to access the benefits and convenience of EVCSs and EV ownership more generally should the need in those areas arise. Indeed, the availability of EVCSs in multi-unit housing geographies could be vital to allowing EV ownership to become viable for all customers, who are less likely to have in-home EV charging available to them.

The Companies believe this hybrid approach to EVCS regulation—allowing non-utilities to own and operate them while also allowing utilities to own and operate EVCSs with Commission approval—will most fully expand EVCS availability compared to other approaches. For example, treating EVCS ownership or operation as a utility operation, ensuring that only utilities can own and operate EVCSs, would likely result in slower and less pervasive EVCS deployment than permitting competitive entries into the EVCS market. On the other hand, precluding utilities from ever owning and operating EVCSs as part of their regulated asset base could result in certain geographies obtaining access to EVCS services more slowly, if ever. Therefore, the Companies’ hybrid approach, which is fully consistent with the text of KRS 278.010(3)(a), will allow non-utility parties to bring their resources and expertise to Kentucky to help expand EVCS availability while also protecting retail electric suppliers’ exclusive territorial rights enacted by the General Assembly. This approach will also bring important benefits to customers as non-utility third parties, including unregulated utility affiliates, bear risk associated with competitive EVCS investments and an expanding EVCS network makes EV ownership more practicable in Kentucky. Increasing EV ownership could also improve utilization of the

utility assets already included in customers' base rates, which would also redound to customers' benefit.

The expanded use of EVCSs and EVs will also create new demand patterns on utilities' distribution systems. The increased deployment of interval meters, particularly those with communications capabilities (i.e. advanced meters), will better enable utilities to plan and design their distribution facilities as EV usage reshapes demand and consumption patterns.

Notably, the Companies' proposed hybrid approach was recently approved by the Alabama Public Service Commission. In 2018 the Alabama Commission sought comments from interested parties regarding its regulatory jurisdiction over electric vehicle charging stations.³ In its Order concluding a person who owns, operates, leases, or controls EVCS in Alabama is not a utility under Alabama Code Section 37-4-1,⁴ the Alabama Commission listed the same three key prerequisite components that the Kentucky Public Service Commission listed in its Order in the administrative case at hand.⁵ The Alabama Commission stated that its conclusion was based on the language of the statute, agreeing with commenters that EVCS facilities do not fall within the narrow scope of "full-service electricity providers who generate, transmit, and distribute electricity for the 'public interest.'"⁶ Lastly, the Alabama Commission noted that its conclusion "in no way affects the Commission's jurisdiction over existing utilities, to the extent such utilities engage in the ownership, operation, lease or control of such facilities, and seek to

³ *Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations*, Docket No. 32694, Order (Oct. 30, 2017).

⁴ Under AL Code Section 37-4-1, electric utilities are defined as "every person, not engaged in interstate business, that now or may hereafter own, operate, lease, or control: [a]ny plant, property, or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat, or power, or other uses, including 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, or other uses."

⁵ "First, the equipment must be plant, property, or facilities used for the generation, transmission or distribution, sale or furnishing of electricity. Second, the electricity must be for light, heat, power or other uses. Third, the electricity must be made available to or for the public." *Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations*, Docket No. 32694, Order at 2 (June 22, 2018).

⁶ *Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations*, Docket No. 32694, Order at 3 (June 22, 2018).

recover the costs of same through the jurisdictional rates that are charged to its customers.”⁷ The Alabama Commission’s conclusions are consistent with the hybrid approach that the Companies are recommending.

In conclusion, the Companies appreciate the opportunity to comment in this proceeding and recommend their proposed hybrid approach to the Commission as being fully consistent with the text of KRS 278.010(3)(a), most likely to expand EVCS availability in Kentucky, fully protective of retail electric suppliers’ exclusive territorial rights enacted by the General Assembly, and most likely to provide benefits to customers.

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Respectfully submitted,



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⁷ *Generic Proceeding to Determine the Commission’s Jurisdiction Over Electric Vehicle Charging Stations*, Docket No. 32694, Order at 13 (June 22, 2018).

CERTIFICATE OF COMPLIANCE

This is to certify that Kentucky Utilities Company and Louisville Gas and Electric Company's March 1, 2019 electronic filing of their Comments is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 1, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy in paper medium of the Comments will be delivered within two business days to the Commission.

A handwritten signature in blue ink that reads "Allyson K. Sturgeon". The signature is written in a cursive style and is positioned above a horizontal line.

*Counsel for Kentucky Utilities Company
and Louisville Gas and Electric Company*