

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

In the Matter of:

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

**INITIAL COMMENTS OF
KENTUCKY POWER COMPANY**

A. Background.

The Public Service Commission of Kentucky (“Commission”) initiated this administrative proceeding to formally review its jurisdiction over electric vehicle charging stations (“EVCS”). Among the purposes of this proceeding is to “determine whether an entity that owns or operates an EVCS is subject to the Commission’s statutory authority over electric utilities,” as defined in KRS 278.010(3)(a).¹ The proceeding also will address whether an entity that owns and operates an EVCS, even if not an electric utility, could be deemed to violate the Electric Territorial Boundary Act, KRS 278.016-278.018.² Finally, the Commission sought comments regarding its jurisdiction and regulatory oversight of EVCSs.³

The Commission’s Order specifically notes there currently are a limited number of EVCSs available in Kentucky.⁴ It seeks comment because of a concern that this limited availability could present an impediment to the adoption of electric vehicle (“EV”) technology in the Commonwealth.

¹ Order, *In the Matter of: Investigation Of Commission Jurisdiction Over Electric Vehicle Charging Stations*, Case No. 2018-00372 at 1-2 (Ky. P.S.C. Nov. 29, 2018) (“Order”).

² *Id.* at 2.

³ *Id.* at 3.

⁴ *Id.* at 1 and n.3.

B. Kentucky Power's Position.

The current statutes, enacted prior to the advent of EVs and the need for EVCSs, categorize an EVCS as both a utility (hence subject to the Commission's jurisdiction) and a retail electric supplier (hence subject to the Kentucky Electric Territorial Boundary Act). The operation of an EVCS by an entity other than the retail electric supplier in whose certified territory the EVCS is located would violate the Kentucky Electric Territorial Boundary Act.

However, Kentucky Power Company supports efforts to further the development of EV infrastructure in Kentucky. Key to the promotion of EV adoption is increased investment in and deployment of charging station infrastructure – by both electric utilities and non-electric utility entities. Kentucky Power is open to finding a path that fosters investment in Eastern Kentucky's EVCS infrastructure. The EVCS market is developing in other states and the Commission's request for comments is timely. The outcome of this proceeding should provide a means to provide the things customers want and to ensure that the Commonwealth is poised to take advantage of the opportunities for economic development presented by the growth of EV and EVCS.

Kentucky Power stands ready to work with the Commission and other stakeholders to determine the optimal path (including the necessary legislation) to: (a) enable investment by traditional electric utilities and others to develop EVCS infrastructure and service for customers ; (b) provide appropriate customer protections and Commission oversight thereof; and (c) continue to advance the public policy goals of the Kentucky Electric Territorial Boundary Act. This is an opportunity for all stakeholders to partner in the best interest of the Commonwealth and its citizens. Kentucky Power Company appreciates the opportunity to provide the following initial comments.

A. Ownership or Operation of an EVCS Makes an EVCS Owner or Operator a “Utility” Under KRS 278.010(3)(a).

The fact that an entity owns or operates an EVCS renders that entity a “utility,” as defined in KRS 278.010(3)(a) because an EVCS qualifies as a facility used in connection with “[t]he generation, production, transmission or distribution of electricity.”⁵ By its nature, an EVCS is a facility used in the distribution of electricity. Further, the Commission has defined “distribution system” to include “electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage.” 807 KAR 5:041, Section 1(5). By definition, an EVCS comprises the “necessary accessories and appurtenance for furnishing electric power [to EVs] at utilization voltage” category.

When an EV pulls up to an EVCS it does so for a single purpose: to obtain electric energy to recharge the EV’s battery. In providing charging service, an EVCS “serve[s] to deliver electrical energy from an electricity source (such as the electricity running to the electrical outlets at a business) to an [EV].”⁶ Moreover, inherent in EVCSs is that they exist to provide electricity to the public. Thus, while the sale of electricity by EVCSs is limited in scope it nevertheless constitutes the distribution of electricity to the public. If the service is provided for compensation, an EVCS owner or operator would constitute a utility for purposes of KRS 278.010(3)(a).

⁵ See KRS 278.010(3)(a).

⁶ U.S. Department of Energy, Plug-In Electric Vehicle Handbook for Public Charging Station Hosts, at 6 (Apr. 2012), available at <https://afdc.energy.gov/files/pdfs/51227.pdf> (last accessed Feb. 4, 2019).

B. Ownership or Operation of an EVCS By One Other Than The Retail Electric Supplier In Whose Certified Territory The EVCS Is Located Would Violate Kentucky's Electric Territorial Boundary Act.

KRS 278.016 and KRS 278.018(4) proscribe the provision of retail electric service by a retail electric supplier in the certified territory of another retail electric supplier. KRS 278.010(7) defines "retail electric service" to mean "electric service furnished to a consumer for consumption." The flow of electrons (electric service) from the EVCS to charge the battery (for consumption) of the EV owner or operator's (consumer) vehicle constitutes the provision of "retail electric service." The owner or operator of the EVCS thus is a "person, firm, corporation, association, or cooperative corporation ... engaged in the furnishing of retail electric service" and would be a retail electric supplier. As a result, the sale of electricity by an EVCS owner or operator other than the retail electric supplier in whose certified territory the EVCS is located would violate the Electric Territorial Boundary Act.

C. Electric Utilities Are Integral To The Development Of EVCS In Their Certified Territory.

There are many reasons why electric utilities such as Kentucky Power are uniquely well suited to deploy EVCS infrastructure:

1. Utilities have a long planning horizon. Electric utilities like Kentucky Power will be providing electric service in their service territories for decades to come, and they are accustomed to taking a long-term approach to electric infrastructure deployment. This makes public utilities well-positioned to take a long-term approach to EVCS development.
2. Utilities have the ability to make capital expenditures. Public utilities such as Kentucky Power have the financing and regulatory constructs in place to make large-scale investments in electric infrastructure such as EVCSs. Unlike many

private entities, utilities can amortize capital investments and recover capital expenses over a long period of time, which better enables utilities to make such investments.

3. Utilities have the ability to manage demand. Unlike private entities, utilities such as Kentucky Power have the experience and existing capability to more effectively manage the impact of demands on the power delivery system. This means that public utilities are uniquely positioned to take advantage of charging stations as demand response resources, to offset costs with additional revenues associated with demand response, and to most effectively integrate such capabilities into the grid.
4. Utilities have considerable electric system expertise. Public utilities such as Kentucky Power possess institutional knowledge and expertise of their grid and operating system to operate charging stations safely and to ensure that no damage occurs to power delivery equipment. This expertise may also allow public utilities to operate and locate charging stations more efficiently, reducing cost to the EV owners.
5. Utilities are closely regulated. Public utilities such as Kentucky Power are closely regulated by this Commission and other regulatory entities and are responsive to regulatory and political leadership to address the Commonwealth's energy policies.
6. Utilities can identify best practices for charging station deployment. By deploying charging stations, public utilities such as Kentucky Power can produce a base of valuable experience for the utility and for the industry in Kentucky regarding

charging behavior, demand response program parameters, charging station installation and operation, and interactions with EV owners.

7. Utilities are uniquely positioned to choose appropriate charging locations. Public utilities can make sure that EVCSs are placed in locations that are able to support the added load on the system without distribution investments.

Moreover, as the Commission noted in its Order initiating these proceedings, the Commission has approved tariffs for two Kentucky electric utilities that permit both private and utility ownership of EVCSs, with the relationship between the electric utility and the private EVCS owner to be governed by the terms of the electric utility's retail tariff.⁷ The Commission should decide the issues presented in this proceeding in harmony with its decision in that case.

D. Cooperation And Legislation Are Required For The EVCS Market To Develop In An Orderly Fashion Consistent With The Public Policy Goals Embodied In The Electric Territorial Boundary Act.

Kentucky Power supports the development of the nascent EVCS industry under the watchful eye of the Commission. Partnerships are necessary to ensure the Commonwealth progresses. There is an appetite for investment in this area that will provide benefits for customers and economic development for our region and Kentucky

⁷ Order at 3; *In The Matter Of: Application of Louisville Gas and Electric Company and Kentucky Utilities Company to Install and Operate Electric Charging Stations in their Certified Territories, for Approval of an Electric Vehicle Supply Equipment Rider, an Electric Vehicle Supply Equipment Rate, an Electric Vehicle Charging Rate, Depreciation Rate, and for a Deviation from the Requirements of Certain Commission Regulations*, KPSC Case No. 2015-00355, Order (Apr. 11, 2016). Importantly, although they allow a customer with a private EVCS to charge end-users a fee that recovers its costs of service, installation, and other associated costs, the tariffs the Commission approved in Case No. 2015-00355 do not permit a customer with a private EVCS to profit from the resale of electricity.

as a whole. But there are also risks should the development get out of control or the new entrants go beyond the basic charging service being proposed.

The General Assembly has recognized that the establishment and maintenance of exclusive certified territories for retail electric suppliers is in the public interest.⁸ Exclusive certified territories serve “to encourage the orderly development of retail electric service, to avoid wasteful duplication of distribution facilities, to avoid unnecessarily encumbering the landscape of the Commonwealth of Kentucky, to prevent the waste of material and natural resources...,”⁹ as well as by furthering the public convenience and necessity and by the avoidance of diminished efficiency and higher costs that would result in the absence of such certified territories.¹⁰ The development of EVCS should not undermine these policies or the benefits that have accrued to Kentucky residents, businesses, and industry as a result of the Commission’s implementation and enforcement of the Electric Territorial Boundary Act. EVCS should be limited to the retail delivery of electric charging services. The generation, transmission, and distribution of electricity to the EVCS must remain the function of the retail electric supplier in whose certified territory the EVCS is located.

This will require legislation. The legislation should provide Commission oversight and protections for the customer and the utilities with certified territories. It should allow the Commission to act to protect both the consumers and the utilities directly, through regulation of the EVCS, and indirectly by maintenance of the nearly 50-year old system of certified territories.

⁸ KRS 278.216.

⁹ *Id.*

¹⁰ *Id.*

There are some distinctions that are important to consider as the Commonwealth explores legislation to develop this new opportunity. With sales by an EVCS, a customer has the choice where to charge and receive the charge as opposed to when they charge at home or a commercial business and do not have the choice of electric provider. Additionally, as long as one competitor does not dominate the market, the sales by EVCSs are not exactly akin to a public utility that has “monopoly” status, and therefore, the Commission’s review of just and reasonable rates could differ.

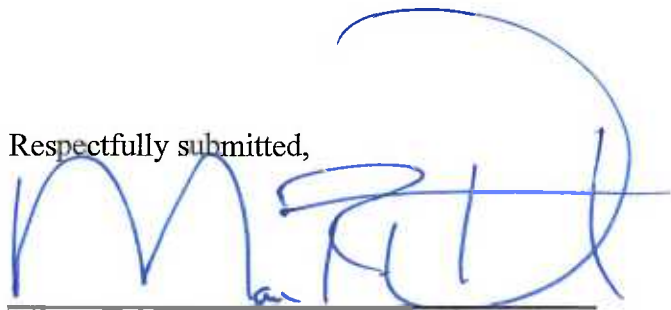
Kentucky Power is open to exploring a path where the distribution of electricity by EVCSs is subject to the Commission’s jurisdiction, but EVCSs are not subject to the same level of regulatory scrutiny. The required legislation should provide the Commission with considerable discretion to strike the appropriate balance for both the near and longer term development of this emerging market. These distinctions and the opportunity to help develop a new industry and investment in the Commonwealth provide an avenue for the Commission to explore a different level of regulation. Importantly, some regulation of EVCSs, particularly as they begin to proliferate in the coming years, is essential to maintain the reliability of the distribution grid and the development of a more integrated energy system that serves the interests of customers, utilities, and service providers.

Some form of competition inherently exists with EVCSs, either because customers can choose to charge at an EVCS or not, or because other players (including utilities) could also participate in the EVCS market. Therefore, the Commission’s position, initially, could be that of a monitor. Accordingly, the Commission retains jurisdiction, but initially allows the market to set prices (relying on competition choice to ensure just and reasonable rates). Any legislation should nevertheless allow the Commission to (1) hear complaints; (2) monitor prices to ensure

just and reasonable rates; (3) watch the market to determine that true competition exists – rather than one competitor dominating the market and effectively looking like a monopoly; (4) inform future EV charging rate design; and (5) when necessary, assert jurisdiction to ensure just and reasonable rates, service quality, etc. It also would allow the Commission to immediately step in to address violations of the Electric Territorial Boundary Act if the owner or operator of an EVCS connected to any form of distributed generation or battery storage technology.

Kentucky Power is willing to work cooperatively with the Commission and stakeholders to find a way to foster development of the EVCS industry in a manner that does not infringe upon Kentucky Power’s standing as the sole retail electric service provider in its certified territory.

Respectfully submitted,



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