

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

The Commission, on its own motion, initiates this administrative proceeding to conduct a formal review of the Commission’s jurisdiction over electric vehicle charging stations (EVCS). The need for this investigation arises from the increased ownership of plug-in hybrid electric vehicles and all-electric vehicles (jointly, EV) that use electricity either as a primary fuel or to improve the efficiency of conventional vehicle designs.¹ The increased ownership of EVs has increased the need for publicly accessible EVCSs as a supplement to residential charging. There are approximately 19,880 public EVCSs in the United States, located at commercial businesses, including shopping centers, hotels, restaurants, grocery stores, airports, and at stand-alone public facilities.² With 94 public EVCSs, Kentucky has fewer public EVCSs than nearby states.³

With the growing need for EVCSs, the Commission finds that a proceeding should be opened to determine whether an entity that owns or operates an EVCS is subject to

¹ Plug-in hybrid electric vehicles are powered by an internal combustion engine that operates on gasoline, or by an electric motor that uses energy stored in a battery. All-electric vehicles are powered only by an electric motor that uses energy stored in a battery. Both types of electric vehicles are charged by plugging the vehicle into an electric power source. See U.S. Department of Energy, Alternative Fuels Data Center (AFDC), <https://afdc.energy.gov/vehicles/electric.html>.

² AFDC, <https://afdc.energy.gov/data/10366>.

³ *Id.* 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.

the Commission's statutory authority over electric utilities. 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." Based upon the express language of KRS 278.010(3)(a), an EVCS would have to meet the following criteria to be a 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."

The Commission notes that 23 states and the District of Columbia have enacted laws or made regulatory determinations that EVCS owners or operators are not electric utilities as defined by law, and therefore are not regulated utilities.⁴ The Commission further notes that, even if an EVCS is not deemed to be an electric utility under KRS 278.010(3)(a), it could violate 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 is "electric service furnished to a

⁴ See Chargepoint Statutory and/or Regulatory Exemptions for EVSE (Oct. 30, 2018), which is attached as an Appendix. See also 50 States of Electric Vehicles 2017 Annual Review, North Carolina Clean Energy Technology Center (Feb. 2018).

consumer for ultimate consumption.”⁵ 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. Last, the Commission notes that two electric utilities in Kentucky—Kentucky Utilities Company and Louisville Gas and Electric Company—have tariffs that govern EVCS, including privately owned EVCS and EVCS owned by the utilities.

The Commission finds that a copy of this Order should be served on all investor-owned electric utilities and rural electric cooperative corporations that are subject to the Commission’s jurisdiction, and upon the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention, in order to afford them the opportunity to file comments regarding this proceeding. The Commission also seeks comments from any interested party regarding its jurisdiction and regulatory oversight of EVCS. The Commission will consider initial comments filed no later than March 1, 2019, and reply comments filed no later than March 15, 2019, concerning the Commission’s jurisdiction over EVCS and any related jurisdictional issues concerning EVCS. The Commission is not, through this Order, relinquishing its authority to assert jurisdiction over this or similar matters.

IT IS THEREFORE ORDERED that:


1. The Commission opens this proceeding to conduct a formal review of its jurisdiction over EVCS.
2. Any initial comments shall be filed no later than March 1, 2019.
3. Any reply comments shall be filed no later than March 15, 2019.

⁵ KRS 278.010(7).

By the Commission

ENTERED
NOV 29 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

APPENDIX

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00372 DATED **NOV 29 2018**



23 STATES (and D.C.) WITH STATUTORY AND/OR REGULATORY EXEMPTIONS FOR EVSE

(Current as of October 15, 2018)

STATE	Citation	SUMMARY
Alabama	Docket No. 32694	A person who owns, operates, leases or controls EV charging stations in AL is not a utility under <i>Code Section 37-4-1</i> , and thus is not subject to the jurisdiction of the Commission, pursuant to Title 37, <i>Code of Alabama</i> .
Arkansas	SB 272 (2017) Arkansas Code § 23-1-101(9)	The term "public utility" as defined does not include a person or corporation that purchases electricity from a utility, furnishes electricity exclusively to charge EVs and PHEVs for compensation, and is not otherwise a public utility.
California	AB 631 PU Code §216(i)	Amends section 216 of the PUC Code and places into law CPUC decision 09-08-009 exempting electric vehicle charging equipment or providers from regulation as a utility.
Colorado	House Bill 12-1258 Col. Rv. Stats Ch. 40 §101-104	Persons selling electricity...to the public for use as a fuel in alternative fuel vehicles ...are not subject to regulation as a public utility and are not subject to the jurisdiction, control, and regulation of the Commission or any other public regulatory body
Connecticut	HB 5510 (2016) Section 16-1 of the 2016 supplement to gen. statutes	(c) An owner of an electric vehicle charging station, as defined in section 16-19f, as amended by this act, shall not be deemed to be a "utility", "public utility" or "public service company" solely by virtue of the fact that such owner is an owner of an electric vehicle charging station.
DC	Council Bill 19-749	Energy Innovation and Savings Amendment Act of 2012": Public Utility excludes a person or entity that owns or operates electric vehicle supply equipment but does not sell or distribute electricity..."
Florida	Fl. Rev. Stat. §27-366.94	Passed into law in 2012, Chapter 27-366.94 is amended to specify that provision of electric vehicle charging to the public by a nonutility is not considered a retail sale of electricity. In addition rates, terms and services of electric vehicle charging services are not subject to regulation by the Florida Public Service Commission
Hawaii	Ha.Rev. Stat. §269-1	Hawaii Revised Statutes states that owners and operators of facilities used primarily to charge vehicle batteries for electric vehicles are exempt from the definition of utility
Idaho	Idaho Code Section 61-119	Exempts electricity purchased from a public utility to charge the batteries of an electric motor vehicle

Illinois	220 ILCS 5/3-105 cha 1112/3 par 3- 104 enacted 1-24- 12	Amends Public Utilities Act. Provides that a company that owns or operates a facility that furnishes or sells electricity to the public for the purpose of charging electric vehicles is not and shall not be deemed a public utility
Maine	LD 593 Sec. 1. 35 -A MRSA §313-A	" 'Competitive electricity provider' means a marketer, broker, aggregator or any other entity selling electricity to the public at retail, but does not include an electric vehicle charging station provider."
Maryland	SB 997, HB/1280, Chapters 631 and 632, Acts 2012 State Govt. Code 1-101(j)	Electric Vehicle Users and Charging Stations-Exclusions Provides regulatory clarification for owners and operators of PEV Charging Stations and PEV Charging station service companies or provider by excluding them from the definition of "electricity supplier" or a "public service company" as defined in law and regulated by the Maryland Public Service Commission.
Massachusetts	Case D.P.U. 13- 182-A	Massachusetts Department of Public Utilities order (August 4, 2014) determines that owners and operators of EVSE are "not subject to the Department's jurisdiction under the current statutory structure either as distribution companies, electric companies, or otherwise."
Michigan	Case No. U-17990 Final PSC Order <i>Only applies to Consumer Energy service territory</i>	"The proposal indeed appears to be non-controversial, and the Commission agrees with the Staff that the sale of electricity by charging station owners should not be treated as a resale of electricity under the tariff, or as a sale by regulated utilities. This is a necessary change to the tariff language which the Commission approves."
Minnesota	Minn. Stat. §216B.02 Subdivision 4.[3])	Minnesota Statute states that the definition of a public utility does not include a retail seller of electricity used to recharge a battery that powers an electric vehicle and that is not otherwise a public utility
Missouri	PENDNG	The Missouri Court of Appeals has reversed a May 2017 PSC decision that it lacks authority to regulate utility-owned EV-charging stations. The court ruled that the PSC erred in finding that KCP&L's EV-charging stations did not fall within the statutory definition of "electric plant," and therefore reversed that portion of the PSC's decision and remanded the case to the PSC for further review.
Nevada	SB145, NRS 704.021 (11.)	Nevada statutory definition of a "public utility" or "utility" does not include: "Persons who own, control, operate or manage a facility that supplies electricity only for use to charge electric vehicles."
New York	Case 13-E-0199 NY PSC	NY State Public Service Commission declaratory ruling finds that the PSC does not have jurisdiction over (1) charging stations; (2)

	Declaratory Ruling on Jurisdiction	owners or operators of charging stations; or (3) the transaction between such owners or operators and members of the public.
New Hampshire	RSA 236:133 as amended by SB 575 of 2018	"IV. An owner of an electric vehicle charging station shall not be deemed to be a "utility," "public utility," or "public service company" solely by virtue of the fact that such an owner is an owner of an electric vehicle charging station. All electricity distribution companies shall make available in tariffs terms and rates for electronic vehicle charging stations and offer such information to the public."
Oregon	Or. Stats. §757.005(1)(b)(G)	The statutory definition of "public utility" does not include any corporation, company, partnership, individual or association of individuals that furnishes electricity for use in motor vehicles as long as the entity is not otherwise a public utility.
Pennsylvania <i>Pending Final Adoption</i>	Proposed Policy Statement, M-2017-2604382	52 Pa. Code § 69.3501 (Section 1313 of the Public Utility Code) (a) Section 1313 of the Public Utility Code, 66 Pa. C.S. § 1313 (relating to price upon resale of public utility services), applies restrictions on the resale of utility service to residential customers. (b) It shall be the policy of the Commission that a person, corporation or other entity, not a public utility, electric cooperative corporation, municipal authority or municipal corporation, owning and operating an electric vehicle charging facility that is open to the public for the sole purpose of recharging an electric vehicle battery should not be construed to be a sale to a residential consumer and should therefore not fall under the pricing requirements of 66 Pa. C.S. § 1313 (relating to price upon resale of public utility services).
Utah	H.B. 19 (2014) Utah Code §54-2-1	Statutory definitions of "electrical corporation" and "public utility" do not include an entity that sells electric vehicle battery charging services.
Texas <i>Austin Energy Territory Only</i>	City Code Section § 15-9-121	This action amends City Code Section § 15-9-121 to allow third parties to deploy, own, and operate electric vehicle (EV) charging stations for compensation. Specifically, this change amends the Code to state that restrictions on the remetering and resale of energy do not apply to the provision of retail EV charging service at the point of remetering or resale.
Virginia	Va. Code Ann. §56-1.2 and 56.1.2:1	Virginia Code makes several stipulations stating that a person not otherwise a public service corporation and who provides electric vehicle charging service at retail is not designated as a public utility, public service corporation, or public service company. In addition, the statute stipulates that electric vehicle charging service does not constitute a retail sale of electricity.

Washington	<p>SHB 1571, Chapter 28 Laws 2011</p> <p>Rev. Code of Wash. 80.28.320</p>	<p>The 2011 legislation established that the Washington Utilities and Transportation Commission shall not regulate the rates, services, facilities, and practices of an entity that offers battery charging facilities to the public for hire if (1) that entity is not otherwise subject to commission jurisdiction as an electrical company; (2) that entity is otherwise subject to commission jurisdiction as an electrical company, but its battery charging facilities and services are not subsidized by any regulated service. An electrical company may offer battery charging facilities as a regulated service, subject to commission approval</p>
West Virginia	<p>W.Va.Code §24- 2D-3</p>	<p>PSC has no jurisdiction over ultimate sale by non-utilities of alternate fuel used for motor vehicles.</p>

