



December 15, 2017

Docket No. 32694

Twinkle Andress Cavanaugh, President
State of Alabama Public Service Commission
P.O. Box 304260
Montgomery, AL 36130

RE: Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations, Request for Comments



Dear President Cavanaugh,

In response to the Alabama Public Service Commission's ("the Commission") October 30th 2017 Order opening a generic proceeding to determine the Commission's jurisdiction over electric vehicle charging stations, and the specific questions posed therein, Greenlots offers the following comments in response to the jurisdictional questions in addition to broader considerations regarding transportation electrification in Alabama.

Greenlots is a leading provider of grid-focused electric vehicle charging software and services. The Greenlots network supports a significant percentage of the DC fast charging infrastructure in North America. Greenlots' smart charging solutions are built around an open standards-based focus on future-proofing while helping site hosts, utilities, and grid operators manage dynamic electric vehicle (EV) charging loads.

Transportation electrification represents a clear opportunity to increase the utilization of the electric grid to the benefit of all utility customers. The issue therefore deserves significant and concerted consideration in the context of the Commission's regulation of utilities and potentially other market participants in Alabama.

Commission Regulation of Non-Utility Owned Electric Vehicle Supply Equipment (EVSE)

Questions 1 through 5 raise the question of whether or not EV infrastructure fits within the statutory definition of a public utility under Alabama law, and if so, whether and to what extent the Commission should exercise jurisdiction in this area.

Non-utility EVSE operators should not be regulated as a public utility because they are providing a value-added *charging service* and not specifically reselling electricity. The fact that the charging service involves the transmittal of electricity is a necessary but incidental component of the service provided. That service fundamentally is battery charging, providing mobility, range, or vehicle miles, not electricity, per se. There are many other examples that as with EVSE, provide a *service* relying upon electricity but are not regulated as a utility, and therefore a determination that EVSE should be regulated as such would require the Commission to look at regulating a range of other services as utilities as well.

Additionally, while a non-utility EVSE provider may be providing a public service, they certainly are not operating as a monopoly or exerting monopoly control, thereby warranting Commission oversight. However, that is not to say that there should not be some consumer protection mechanism for these EV infrastructure deployments. EV drivers voluntarily elect to use a public charging station to power their vehicle when traveling, in the same way as drivers of traditional vehicles choose between different gas stations selling fuel at different locations and at different prices. While we are far from having a robust competitive market for the deployment of public EVSE, non-utility market participants certainly are not operating as monopolies.

These views have the support of strong legal and administrative precedent from a number of other states that have explored this issue. Some states, including HI, CO, FL, IL, MD, MN, UT and VA have addressed this issue legislatively to clarify that non utility entities that own or operate facilities that supply electricity for EVs are not subject to the statutory definition of a “public utility,” or otherwise are not subject to such regulation.¹ Other states have addressed this through administrative orders. In California, the PUC did this by exempting EVSE providers through its definition of a public utility.² It found that only the legislature can confer new powers on the Commission, so unless there is clear legislative intent that (non utility-operated) EVSE be regulated as a utility, they cannot regulate it as such, (an interpretation that the legislature later adopted):

“...the legislature only granted limited authority to the Commission to set rules related to electric vehicle charging. Therefore, we conclude that under existing laws, we do not have jurisdiction to broadly regulate electric vehicle charging service providers as public utilities.”³

In Oregon and Massachusetts this was similarly clarified through administrative interpretation, finding that EVSE providers are not electric utilities that sell or distribute electricity.⁴

In New York, the Public Service Commission did this through a declaratory order. In that order, the State found that:

Charging Stations do not fall within the definition of “electric plant” because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power. Instead,

¹ HI REV. STAT. § 269-1; CO REV. STAT. 40-1-101-104; FL STAT. § 366.94; 220 IL COMP. STAT. 5/3-105; 20 IL COMP. STAT. 627/10; MN STAT. § 216B.02; MD. CODE ANN. § 10-101(a)) & MD CODE ANN., PUB. UTIL. COS. § 1-101(j)); H.B. 19, 2014, and UT CODE ANN. 54-2-1; VA CODE ANN. 56-1.2, 56-232.2:1.

² CA PUB. UTILS. CODE § 216.

³ Decision in Phase 1 on Whether a Corporation or Person that Sells Electric Vehicle Charging Services to the Public is a Public Utility, CPUC Decision 10-07-044, Rulemaking 09-08-009, P. 19 (July 29, 2010).

⁴ Order on Department Jurisdiction Over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging and Other Matters, DPU 13-182-A, MA DPU 8-9 (Aug. 4, 2014); OR PUC Order 12-13, Docket No. UM 1461 (Jan. 19, 2012).

and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services. This service requires the use of specialized equipment and allows the customer to do only one thing, charge a PEV's battery. The primary purpose of the transaction between Charging Station owners/operators and members of the public is the purchase of this service and the use of this specialized equipment. While the customer is using electricity, this is incidental to the transaction.⁵

Question 7 poses an extension of this question, asking *"if a third party were to generate its own electricity and use such generation for the operation of its publically available electric vehicle charging stations, should such operations be subject to the Commission's jurisdiction? If so, to what extent?"* This question could be applicable to the pairing of distributed generation (DG), such as solar, with EVSE installations. Such a pairing does not change our opinion as articulated in this section, as behind the meter (BTM) DG is not regulated in such a manner either. The situation is no different when the DG is intended to supply or offset onsite load from the EVSE as opposed to any other such load. The same assessment would also apply to BTM energy storage.

Question 9 asks *"how are owners/operators currently charging (e.g. cents per kWh or time-based fees) for the use of EVCS?"* EVSE owners and operators currently charge for services using a wide array of measures. These can be volumetric, temporal or even membership-based. Sometimes it is free or included in the cost of parking or another service. What this further illustrates is that what is being provided is a value-added charging/fueling service, where the use of electricity is merely incidental to the service being rendered. As a result, there can be many ways to charge for this service other than the simple measured flow of electricity in kilowatt-hours, but having optionality to price on a per kilowatt or kilowatt/hour basis is nonetheless important for these operators.

Commission Regulation of Utility-Owned EVSE

Question 6 asks, *"if a local utility were to incorporate electric vehicle charging equipment into curb-side street lighting infrastructure, should the operation of these charging stations be subject to the Commission's jurisdiction? If so, to what extent?"*

The answer to this question rests with a utility's requested treatment of its costs related to this EVSE deployment. This activity should be subject to the Commission's jurisdiction provided the utility sought recovery of and a return on such investments from ratepayers. If a utility sought to do this via a separate, unregulated entity or subsidiary not provisioned with ratepayer funds, then no this activity should not be subject to the Commission's jurisdiction, just as should be the case with non-utility owned EVSE.

The key consideration here in determining whether Commission regulation is appropriate or not isn't the physical location of the EVSE or the physics of it dispensing electricity but instead who

⁵ Declaratory Ruling on Jurisdiction Over Publically Available Electric Vehicle Charging Stations, NY PSC Case 13-E-0199, P.4 (Nov. 14, 2013).

bears the costs. If a utility is to use its ability as a regulated monopoly to pass these costs onto ratepayers, then that activity clearly falls under Commission jurisdiction.

Utility involvement in and ownership of EVSE can come with a variety of distinct benefits that the Commission can help to ensure. These are discussed in subsequent sections below.

Barriers to a Competitive Market for Public EVSE

Question 8 asks the critical question of “*should the deployment of publically available electric vehicle charging stations be considered a competitive market?*” This question strikes to the core of Commission and regulated utility involvement in EVSE, as the existence of a competitive market would mean that less involvement may be necessary. To answer this question, we must first conceptually split the market of “publically available” EVSE into two categories.

The first category would comprise scenarios such as the three posed by the Commission, where a business of some sort is owning and operating EVSE on their premises as a service or amenity to their customers and/or employees. Business may do this for a wide array of reasons, including employee satisfaction, social/environmental responsibility, attracting customers or otherwise differentiating themselves in the marketplace. There is no shortage of EVSE suppliers that will sell EVSE products and services to such entities. In this sense, there is a competitive (but relatively small) market for supplying these products and services.

The second and arguably more critical category of “publically available” EVSE is every other scenario where there is not another commercial endeavor that the EVSE is adding value to or being perceived to add value to. These EVSE are deployed purely to provide charging services—chargers for charging and nothing more. This could include lower powered chargers at public parking spaces or parking garages of multi-unit dwellings (MUDs), or higher-powered chargers in metro areas or key transportation corridors to facilitate longer range travel. For this second critical category, unfortunately a sustainable, competitive market is aspirational, and is unlikely to arise prior to the adoption of an unknown number of electric vehicles. This is primarily on account of a lack of a business model for the ownership and operation of public charging stations based on sustainable revenues from charging activities, and this has thus far resulted in a fundamentally inadequate amount of private investment in charging infrastructure

Greenlots looks forward to being engaged in the Commission’s process on this topic, and growing the electric vehicle and electric vehicle charging market across the state.

Respectfully submitted,

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