Updates
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Recent Developments in State Regulatory Approaches to Electric Vehicle Infrastructure

Thanks to better technology and lower costs, fuel efficient electric vehicles (EVs) are on the move in nearly every state in the country. EVs have sparked what some believe will be a transportation sector transformation. And while some states are miles ahead in planning for this new world (like California, with a goal of 1.5 million EVs on the road by 2025 and 5 million by 2030), others have just gotten behind the wheel. Those states are staking out different positions on what role utilities should play—if any—in building out the infrastructure (such as charging stations) to support the expansion of the EV market, with some states placing utilities in the driver's seat and others putting their foot on the brakes, at least for now.

This update highlights recent state regulatory developments in addressing the role that electric utilities should play in building and owning the public infrastructure needed to support growth in the EV market.

The Fast Lane: Nevada and Washington

In May of 2018, the Nevada Public Utilities Commission (NPUC) issued an order adopting regulations intended to "incentivize consumer adoption of electric vehicles by reducing or removing range anxiety." In addition, Nevada Governor Brian Sandoval set a goal to complete the Nevada Electric Highway by the end of 2020 and signed a Memorandum of Understanding with seven other western states to create an Intermountain West Electric Vehicle Corridor, which will make it possible to drive an EV through the region's major transportation corridors.

NPUC's new regulations allow the state's only investor-owned utility, NV Energy, to own, operate and recover the cost of charging stations along the Nevada Electric Highway Corridor, and elsewhere subject to NPUC's prudence review of costs. NPUC will approve rates for systems that NV Energy owns and operates, but not those that it owns but doesn't operate.

In addition, the Nevada legislature excluded non-utility third parties that own and operate charging stations (such as truck stops) from the definition of "public utility" to foster competition and promote the EV infrastructure build-out.

Washington state is also moving quickly. In June of 2017, and consistent with a 2015 law incentivizing utilities to build out EV infrastructure, the Washington Utilities and Transportation Commission (WUTC) issued a policy statement that finds that "[c]harging availability and consumer awareness … are barriers that electric utilities are naturally positioned to address." Accordingly, the policy statement allows utilities to earn an incentive rate of return on EV infrastructure. WUTC also directed utilities to offer a "portfolio" of EV charging services to maximize participation and promote competition, including fast charging on a per kWh basis; Level 2 workplace and fleet charging on a per kWh basis; residential charging station leases with direct load control and demand response; and time of use rates to manage peak demand.

A Tale of Two Jurisdictions: Missouri and Kansas

In the Great Plains and Midwest, the EV infrastructure debate has also heated up, as shown in the debate surrounding Kansas City Power and Light Company's (KCPL) plans to install and recover the costs of 1,000 EV charging stations throughout the Kansas City region. Since KCPL has territory in both Kansas and Missouri, it needed approval from both jurisdictions.

The Kansas Corporation Commission rejected KCPL's proposal, finding that the costs weren't prudent. Most EV users charge at home, not at public stations, and KCPL didn't offer credible statistics on demand for EVs, according to the commission. In addition, it didn't help that actual EV adoption in KCPL's territory as of 2016—about 1,000 EVs—was far lower than the projected adoption of nearly 12,000 in 2020. Fundamentally, the Kansas commission just disagreed that utilities should be in the EV infrastructure business at all: "[L]et the private sector invest in the EV market, rather than have ratepayers finance the speculative venture."

Across the border, the Missouri Public Service Commission agreed with the Kansas commission, and added that it lacked statutory authority to allow KCPL to recover charging station costs. But on August 7, 2018, the Missouri Court of Appeals reversed the Missouri commission, finding that the relevant statute required the commission to permit KCPL to rate base the charging station costs, subject to a prudence review of those expenditures.

The Slow Lane: Michigan

Consumers Energy in Michigan recently proposed $10 million in EV infrastructure investments in a recent rate case, including 30 fast chargers and 750 charging stations and financial incentives for the purchase of EVs and installation of in-home charging stations. But in February 2017, an administrative law judge recommended disallowance, expressing concerns about the significant policy issues raised by Consumer's proposal, such as "charging station network dynamics and peak demand issues" that should be addressed before Consumers enters the public charging market. In response, Consumers withdrew its proposal and the Michigan Public Service Commission ordered a technical conference of utilities, automakers, suppliers of charging equipment and transportation planners, among others. The technical conference convened in August of 2017, and again on February of 2018, where both DTE Energy and Consumers proposed to install fast chargers on highway corridors. But there is little doubt that Consumers' plans have been significantly scaled back.

The Significance of the Developments

Electric utilities are planning for the expansion of EVs because they see the benefits to their bottom line and their sustainability goals. And there can be little doubt that the EV market is growing on both a residential and commercial scale. Some regulators want utilities in the driver's seat when it comes to building out EV infrastructure, while others see too much risk and too little market intel. These issues will continue to surface as automakers like General Motors, Ford, Nissan, Tesla and others put more EVs on the road with longer ranges at lower cost. Given the impacts to the grid and the increase in load that will come with it, utilities, EV suppliers and regulators should be proactive in determining what role electric utilities should play in transportation transformation that lies ahead.

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