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Utility Regulatory Commissions in Wisconsin and Iowa Chart Path on Electric Vehicle Infrastructure

Two midwestern states are taking up the issue of how to address the expansion of electric vehicles (or EVs) in their jurisdictions. The Iowa Utilities Board recently proposed regulations addressing whether EV charging stations are engaged in the "resale" of electricity, which would render them "public utilities" subject to regulation. And the Public Service Commission of Wisconsin recently opened an investigation docket with a series of detailed questions that will inform a host of policy issues, including, among other topics, the role of utilities in owning EV infrastructure in Wisconsin, the jurisdictional status of EV charging station owners, rate options for EV charging and the impacts of increased load from EV charging on the grid.

EV infrastructure providers, utilities, customers and policymakers should watch carefully as these and other jurisdictions formulate policies that could affect the pace of EV deployment in these states, with concomitant effects on the grid, economic development and electric bills.

Iowa Utilities Board Addresses Jurisdictional Status of EV Charging

The Iowa Utilities Board proposed a new regulation in a February 6 order that would clarify whether EV charging providers engaged in the retail sale (or "resale") of electricity and thus are subject to regulation as "public utilities," defined under Iowa law to include "any person . . . owning or operating any facilities for: . . . [f]urnishing . . . electricity to the public for compensation." [1]

Unlike other jurisdictions, the board chose not to adopt a bright-line test that EV charging stations can *never* be considered "public utilities." [2] Such a bright-line test, according to the board, was disavowed by the Iowa Supreme Court in *SZ Enterprises, LLC v. Iowa Utilities Board*, which held that, to determine whether an entity is a "public utility", the "proper test is to examine the facts of a particular transaction on a case-by-case basis to determine whether the transaction cries out for public regulation." [3] Accordingly, the board declined to "disregard its statutory obligation to regulate public utilities under the conclusory assertion that all EV charging stations are not public utilities." [4]

With that said, the board expressed its clear intent in the February 6 order to limit public utility regulation of EV charging stations. According to the board, EV charging stations do not furnish electricity to the public just because they provide electricity for EVs, noting that the electricity intended for EVs is not intended for sale to the general public and in some cases is simply offered as an ancillary service. Interestingly, as support the board cited a [2018 Missouri Court of Appeals opinion](#), but that decision actually concluded that EV charging stations *would* be used to furnish electricity (rather than merely provide a service). And, the Missouri Appellate Court further noted that no one in that case had argued that the electricity was *not* being provided to the public. [5] Nevertheless, the Iowa board has thus far determined that charging an EV "is not the 'furnishing of electricity to the public,' thereby negating two separate elements of the 'public utility' definition under § 476.1(3)(a)." [6]

Even more recently, the board issued an April 19, 2019 order reaffirming its intent to limit public utility regulation of EV charging stations. That order slightly amended the rule proposal and further clarified that public or commercial EV charging "constitutes neither the furnishing of electricity to the public nor the resale of electric service." [7] And, according to the board, a public utility should not be permitted to dictate the terms of sale of energy by third parties for EV charging "or restrict the method of sale of [EV] charging at a commercial or public electric vehicle charging station." [8]

Finally, while the board intends to limit its jurisdiction over EV charging providers, the board still plans to require that entities that provide electric service to those EV charging stations comply with Iowa's exclusive service territory law.[9] Doing so sends a clear signal to non-utility independent power producers and distributed generation vendors, who might otherwise plan to supply energy directly to EV charging stations, that the utility regulatory landscape in Iowa has not fundamentally changed. In other words, the board's proposal to limit public utility regulation of EV charging providers does *not* mean that independent power producers in Iowa can start selling electricity directly to the owners of those EV charging stations and thereby evade the requirements of the exclusive service territory law.

Iowa Economic Development Authority Weighs in on EV Charging

Around the same time that the board proposed its rule, the Iowa Economic Development Authority released a report, [Charging Forward: Iowa's Opportunities for Electric Vehicle Infrastructure Support](#), recommending, among other things, state policy changes intended to accommodate the demand for EVs, which according to the Iowa Department of Transportation is expected to grow from about 3,000 electric or plug-in hybrid electric vehicles on the road today to [potentially more than one million by 2040](#).

Specifically, the development authority recommended that the Iowa legislature enact a law clarifying that an EV charging provider is not a public utility, "whether service is provided on a time basis, per [kilowatt hour] basis or another fee structure." [10] At the same time, the development authority noted that "[i]f EV charging stations are exempted from the definition of a public utility, the question becomes what, if any, authority will the [board] have over the stations. The [board] would retain its regulatory authority of utilities, which could potentially relate to future utility involvement in charging stations (e.g., ownership or investment), the delivery of electricity and potentially other matters." [11]

In brief, both the board and the development authority indicate a strong desire to allow EV charging stations to proliferate with minimal public utility regulation, but with just enough regulation to ensure that the utility regulatory landscape remains unaltered *and* to ensure that traditionally-defined public utilities entering the EV charging market remain subject to regulation. The board's proposed rulemaking effort is currently ongoing. In addition, there is already a [bill](#) in the Iowa legislature that, if enacted, would expressly exempt EV charging stations from the statutory definition of public utility.

Public Service Commission of Wisconsin Opens Investigation Docket on EVs

Wisconsin is one of the latest states to start exploring regulatory approaches to the expanding market for EVs, with the Public Service Commission of Wisconsin opening an investigation docket on February 21, 2019, and issuing a series of topics on April 8, 2019, for public comment by May 20, 2019. These topics are timely given that the Wisconsin legislature is beginning to consider [proposals](#) that would expand public and commercial EV charging in the state.

The commission's topics include, among other things, whether there should be any limitations over who can own public charging infrastructure, the role that utilities should play in deploying public charging infrastructure, how and whether utilities should be entitled to cost recovery for EV charging stations, what options exist to finance charging stations, how competition in the EV charging market should be monitored and regulated, and, as with the similar issue in Iowa, the jurisdictional status of EV charging station owners.

The commission also is seeking comments on issues surrounding EV impacts on energy storage, distribution, and transmission and generation infrastructure, including what considerations should be given to vehicle-to-grid technologies and how such capabilities could impact load management, similar to the successful demonstration of that technology by the California Energy Commission and pilot projects proposed in [South Carolina](#) and [Minnesota](#).

In addition to the topics raised by the commission, Wisconsin's EV investigation docket provides an opportunity to set a roadmap for EV deployment in Wisconsin. In addition to laying out the role of utilities in building out EV infrastructure, that roadmap could include a careful look at the value of utility-managed EV charging in providing grid benefits through demand response, and to what extent these programs can benefit all utility customers through increased electric revenues and lower system costs. Indeed, [a large Minnesota utility](#) recognized this "low hanging fruit" of potential value for its customers and recently proposed a series of managed EV charging programs that are currently pending approval before the Minnesota Public Utilities Commission.

Stakeholders may also be interested in raising issues surrounding potential public EV charging corridors along major transportation routes to alleviate range anxiety (for example, between Milwaukee, Madison and Minneapolis/St. Paul). These topics are ripe for further exploration and could help define Wisconsin's policy toward EV infrastructure deployment and rate-setting for EV charging programs.

Conclusion

State regulatory commissions will continue to take an active role in defining state policies for EV adoption, including who is covered and who is not covered by public utility regulation, the role of public utilities in supporting EVs through infrastructure deployment and how utilities can expand their demand response offerings through utility-managed charging. Utilities, customers and EV infrastructure providers should watch Iowa, Wisconsin, and other jurisdictions to take advantage of opportunities to shape an EV deployment policy that will benefit all parties.

ENDNOTES

[1] Iowa Code § 476.1(3).

[2] Iowa Utils. Bd., No. RMU-2018-0100, Order Requesting Stakeholder Comment on Potential Rule Changes, at 5 (Feb. 6, 2019) (hereinafter February 6 Order).

[3] 850 N.W.2d 441, 466 (Iowa 2014).

[4] February 6 Order at 5.

[5] *Kan. City Power & Light Co. v. Mo. Pub. Serv. Comm'n*, 557 S.W.3d 460, 471 n.5 (Mo. Ct. App. 2018).

[6] February 6 Order at 6.

[7] Iowa Utils. Bd., No. RMU-2018-0100, Order Commencing Rule Making, at 4 (Apr. 19, 2019).

[8] *Id.*

[9] Iowa Code [§ 476.25](#).

[10] Iowa Econ. Dev. Auth., *Charging Forward: Iowa's Opportunities for Electric Vehicle Infrastructure Support* at 12.

[11] *Id.*

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