

## BEFORE THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION NHPUC JAN22'16 PM 4:25

Docket No. IR 15-510

## Electric Distribution Utilities

## Investigation into Resale of Electricity by Electric Vehicle Charging Stations

## Acadia Center and Conservation Law Foundation Joint Comments

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By Order of Notice dated December 18, 2015, the New Hampshire Public Utilities Commission (“the Commission”) seeks input on the legal and regulatory issues implicated by the potential resale of electricity by electric vehicle charging stations.

“The potential resale of electricity by EVC station operators raises, *inter alia*, issues related to the legal and regulatory status of EVC station operators as public utilities under RSA 362:2 or as competitive electric power suppliers under RSA 374-F: 2 and 7 and NH Code Administrative Rules Chapter PUC 2000, the design and implementation of rates charged to and potentially by EVC station operators, the Commission’s jurisdiction over such rates and terms and conditions of service, and whether changes to electric distribution utility tariffs are warranted.”

Acadia Center and Conservation Law Foundation appreciate the opportunity to provide input in this proceeding, and jointly submit the following analysis.

**I. Electric Vehicle Charging Stations Provide a Service and Are Neither Public Utilities Nor Electricity Suppliers**

Acadia Center and Conservation Law Foundation believe that the provision of electric vehicle charging services should be excluded from the definition of “resale” of electricity. In addition, the Commission should conclude that the ownership and operation of electric vehicle supply equipment (“EVSE”),<sup>1</sup> that properly merit such a designation, without additional qualification, do not constitute designation as a “public utility,” and that owners and operators are not “electricity suppliers.” As a result, electric vehicle charging should be considered a “charging service,” regardless of the pricing or business model used, and should not be subject to the limitations placed on public utilities or competitive electric power suppliers.

To incentivize private investment in EVSE, a number of states have decided to clarify that non-utility owners and operators of charging stations who provide charging to third-party vehicle owners and operators do not fall within the scope of statutes or regulations covering public

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<sup>1</sup> An illustrative definition of EVSE, based on California law, is “an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.”

utilities, or related prohibitions on resale of electricity and submetering. Although some states have accomplished this with action through legislation, public utility commissions in other states were the first to issue determinations on this issue, notably California,<sup>2</sup> New York,<sup>3</sup> and Massachusetts.<sup>4</sup>

As in other states, the primary issue for such a determination in New Hampshire is the existing statutory framework. The Commission is interested in the authority the New Hampshire Revised Statutes provide it over EVSE through (1) regulation as a public utility; and (2) regulation as an electricity supplier. Ownership or operation of EVSE, without additional qualifications that render an entity subject to any of these categories, should not trigger the Commission's authority, regardless of any pricing structure or business model. Accordingly, the current statutory definitions do not necessarily cover EVSE and the policy consequences of invoking this authority broadly could be extremely adverse. In particular, the statutory requirements for these two categories of entities would be overly burdensome if applied to EVSE owners and operators and are in many cases inappropriate in that context. Instead, the provision of energy from EVSE to vehicles should be considered "charging services."

It is important for the Commission to determine that EVSE owners and operators are selling "charging services" and not electricity. The typical policy rationales for regulation of public utilities do not apply here. There is no natural monopoly over electric vehicle charging, in part because customers are all mobile. The best analogy to EVSE is a dryer at a laundromat. In both transactions, the marginal cost to the seller is primarily electricity and both involve a non-trivial capital investment. In both cases, a consumer can choose which laundromat or EVSE to visit and will often have the opportunity to install comparable equipment at their residence. In both cases, the energy can only be used for one purpose, not the many purposes for which electricity is used in homes and businesses. These factors can all easily distinguish EVSE from any policies regarding resale and submetering. In addition, a determination that EVSE owners and operators are selling electricity would only cover EVSE-related commercial transactions and not EVSE where vehicle owners charge for free.

## **II. Other Agencies Could More Appropriately Implement Proper Consumer Protections for Commercial Transactions Involving EVSE**

The Division of Weights and Measures, part of the Department of Agriculture, Markets and Foods, has broad statutory authority under RSA 438 over regulating commodities sold by weight or measure in state commerce. Policymakers should explore whether changes to statutory authority would need to be made to allow the Division to include EVSE used in commercial transactions.

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<sup>2</sup>See California Public Utilities Commission Decision 10-07-044, dated July 29, 2010. This was subsequently codified by the California Legislature in 2011 with A.B. 631.

<sup>3</sup> See New York Public Service Commission Declaratory Ruling on Jurisdiction over Publicly Available Electric Vehicle Charging Stations, issued November 22, 2013 in Case 13-E-0199.

<sup>4</sup> See Massachusetts Department of Public Utilities Order 13-182-A, Order on Department Jurisdiction over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging, and Other Matters, issued August 4, 2014.

The National Institute of Standards and Technology (“NIST”), part of the U.S. Department of Commerce, and the National Conference on Weights and Measures (“NCWM”), an association of state and local weights and measures officials, federal agencies, manufacturers, retailers and consumers, has developed national standards that would apply to the measuring devices used in commercial transactions between EVSE owners and operators and vehicle owners and operators. These can be found at <http://www.nist.gov/pml/wmd/usnwg-evfs.cfm>.

Of particular note, RSA 438.8 (III) requires that “the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 and supplements to Handbook 44, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the state of New Hampshire, except as specifically modified, amended, or rejected by a rule adopted by the commissioner.” RSA 438.20 requires “All nomenclature, procedure, and methods of sale of commodities in this state shall comply with the National Institute of Standards and Technology Handbook 130 and all amendments to such handbook, unless otherwise provided in this chapter.”

These regulations would provide a more appropriate level of consumer protection than regulation of EVSE by the Commission as a public utility or competitive electric supplier. The Division of Weights and Measures would be able to adopt these national standards, with any appropriate modifications for New Hampshire, after they are adopted by the NCWM and published by NIST. Additional funding, for both testing equipment and staff, may be necessary to enforce the standards, but that would be necessary regardless of the agency enforcing consumer protections in this area.

### **III. Conclusion**

Acadia Center and Conservation Law Foundation respectfully urge the Commission to determine that electric vehicle charging stations are not public utilities or competitive electric power suppliers. Electric vehicle charging stations should be deemed to provide electric vehicle charging services.

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