

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

ELECTRIC DISTRIBUTION UTILITIES

Investigation into Resale of Electricity by Electric Vehicle Charging Stations

Docket No. IR 15-510

**INITIAL LEGAL MEMORANDUM OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

1. Introduction

In July 2015, the New Hampshire Public Utilities Commission (“Commission”) began a comprehensive review of existing and potential efforts to modernize the electric grid in New Hampshire.¹ In its initial comments in that docket, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) observed that electric customer expectations are evolving and that, as they do, they are trending toward a greater dependence upon the electric grid for powering the electronic devices that allow customers to communicate, entertain, transact, travel, and run their homes and businesses.² In recognition of this same trend, the Commission commented in this proceeding that, “electric vehicles are a growing presence in New Hampshire and in New England, and their use is supported by both State and regional initiatives.”³ The Commission has sought, therefore,³ to review the “the legal and regulatory issues implicated by the potential resale of electricity by electric vehicle charging (EVC) stations”⁴ through this proceeding. Eversource welcomes the opportunity to provide its perspective on the important issues here.

¹ See Docket No. IR 15-296

² September 17, 2015 Comments of Eversource in Docket No. IR 15-296 at 1.

³ December 18, 2015 Order of Notice in Docket No. IR 15-510 at 1.

⁴ *Id.*

Along with its sister companies, Eversource considers itself a leader in supporting the deployment of electric vehicles (“EVs”). Alongside its affiliates, Eversource has been active in three primary areas: education and outreach, planning studies, and infrastructure deployments. The Company has established a dedicated electric vehicle hotline with trained representatives taking calls from 8 a.m. to 5 p.m., Monday through Friday, as well as the “Plug My Ride” website (www.PlugMyRide.org). Both of these resources provide points of contact for customers seeking answers to electric vehicle-related questions. Eversource has substantial knowledge and experience to share in advancing the discussion around electric vehicle deployment and can bring that same expertise and experience to this discussion.

Eversource and its affiliates have also conducted a number of planning studies to help integrate electric vehicles into the utility grid, including two recent studies: the Planning Study for Electric Vehicle Customers with No Garage or Driveway, and the Planning Study for Direct Current Fast Chargers.⁵ These two studies help advance understanding of EV charging in multi-unit dwelling locations and along key travel corridors. The Company has also supported EV charging infrastructure deployments and, along with its affiliates, has sponsored about 70 charging station installations in publically available locations across New Hampshire, Massachusetts and Connecticut. Eversource’s affiliate also has a pilot program for residential EV charging in Massachusetts, which is testing an innovative approach to integrate EVs with the grid in a grid aware and consumer friendly manner. Eversource will continue to support its New Hampshire customers, and the State, in realizing the benefits of electric vehicles.

2. Comments on Legal Issues

As set out in the Commission’s order of notice:

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

⁵ June 30, 2015 filing of NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 12-95 (Electric Vehicle Pilot)

utilities under RSA 362:2 or as competitive electric power suppliers under RSA 374-F: 2 and 7 and N.H. Code Admin. 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.⁶

To assist in its review of the legal issues identified in its order of notice the Commission directed the distribution utilities such as Eversource, along with other interested parties, to submit legal memoranda on potential issues. Eversource herein provides its comments as directed.

In providing its comments, Eversource notes that the development of the EV market is still in its early stages in New Hampshire and that many of the potential costs, benefits and long-term system impacts are not yet known. The needs, demands, and interests of customers are still being formed and will likely evolve as new and different EVs come to market. Accordingly, for now the Commission, and other stakeholders, should be cautious about requiring specific courses of action, and should remain open to following and understanding future market developments to appreciate how they may benefit from new or different Commission oversight.

A. Public Utilities and Competitive Suppliers

As noted by the Commission, a threshold question in a review of the status of EV charging stations in New Hampshire is whether, by their operation, the owners or operators of such stations become either public utilities or competitive electric power suppliers ("CEPS") under New Hampshire law. In Eversource's opinion the sale of electricity through EV charging stations does not make the owners of such facilities public utilities or CEPS. Eversource cautions that its opinion is limited the types of EV charging stations of which it is presently aware, and is based upon the operation of those facilities as Eversource understands today. Eversource notes that its opinion may evolve as the market for EVs and EV charging stations evolves in New Hampshire, New England, and across the country.

⁶ December 18, 2015 Order of Notice in Docket No. IR 15-510 at 1.

Initially, as Eversource's sister companies stated in a similar investigation undertaken by the Massachusetts Department of Public Utilities ("DPU"):

From a distribution service perspective, EV charging facilities are end-use devices that are installed by utility customers and the Companies' service to those customers is governed by Department-approved tariffs and service policies. "Private" EV charging facilities are typically those installed for exclusive use by the homeowner or business. This type of EV charging activity currently accounts for approximately 80% of the EV charging events. The Department would have no role in regulating these facilities, but it would regulate the provision of distribution service by the utility to these customers, consistent with its jurisdiction over rates and service.

"Public" charging facilities account for approximately 20 percent of EV charging activity. In some cases, these facilities might require users to pay a fee, and in other cases such as at shopping malls, restaurants and other venues, EV charging may be offered at no cost as an amenity to attract customers. Similar to private EV charging, these facilities are end-use devices by customers and are not subject to the Department's regulatory authority. In this context, the Companies' customers are the owners and operators of the charging facilities, while EV drivers using those facilities are not. As such, the Department's role with respect to public EV charging facilities would be similar to that of the private facilities, meaning that it would regulate the rates and service by the utilities to those facilities.⁷

Eversource holds the same conclusion today – from a distribution system perspective, EV charging stations are end-use devices and those who install them are utility customers subject to Commission-approved tariffs and policies.

Regardless of the distribution system perspective, and as noted by the Commission, there must yet be an analysis of the status of entities owning such facilities under New Hampshire law. RSA 362:2, I, in relevant part, defines a public utility as "every corporation, company, association, joint stock association, partnership and person, . . . owning, operating or managing any plant or equipment or any part of the . . . manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public . . ." Similar to the analysis above offered to the DPU, in

⁷ February 14, 2014 Comments of NSTAR Electric Company and Western Massachusetts Electric Company in D.P.U. 13-182 at 4-5.

Eversource’s assessment, “private” EV charging facilities would not qualify as public utilities over which the Commission would have jurisdiction. As noted by the New Hampshire Supreme Court, “a distinguishing characteristic of a public utility is service to the public without discrimination” and if a provider is “not furnishing its services to an undifferentiated public . . . it [is] not subject to regulation by the commission.” *Appeal of Zimmerman*, 141 N.H. 605, 609 (1997).⁸ A homeowner who installs an EV charging station for personal use, or a business owner who installs one for a limited group of employees or customers, would not be offering the type of non-discriminatory service to the undifferentiated public that would be required to become a public utility. Nevertheless, the Commission would continue to have jurisdiction over the service provided to those facilities and their owners by distribution utilities.

With respect to “public” EV charging facilities – that is, facilities not limited to use by an individual or specific group, but available for use by essentially anyone and at essentially any time – it could be argued that those facilities, or some subset of them, offer a service to the public in a manner similar to public utilities. Nevertheless, the mere act of providing such a station does not necessitate a conclusion that the owner is acting as a public utility.

The New Hampshire Supreme Court has made clear that “in enacting RSA 362:2 the legislature did not intend to place all companies and businesses somehow related to railroads, telephone, telegraph, light, heat, and power companies under the umbrella of the PUC’s regulatory power.” *Appeal of Omni Communications, Inc.*, 122 N.H. 860, 863 (1982). The Court has further clarified that:

The *Omni* court’s *dicta* that RSA 362:2 did not place all businesses somehow related to utility companies under the umbrella of the PUC’s regulatory power, was not intended to establish a rule that the PUC could regulate only natural monopolies. Rather, it was meant to reconcile RSA 362:2 with the pro-

⁸ Cf. Order No. 25,859 (January 15, 2016) in Docket No. DE 15-303 at 18-19, reviewing the *Zimmerman* standard in assessing the public utility status of an entity that requires a power purchase agreement or “solar lease” as part of its services to customers installing certain solar power facilities.

competition ideals that prompted both the formation of the PUC and the enactment of part II, article 83 of the State Constitution. Had we meant to limit regulation only to natural monopolies, we would not have subsequently presented the four arguments showing that the legislature did not intend for RSA 362:2 to include radio-paging services. Instead, our analysis would have turned on whether or not the radio-paging industry was a natural monopoly. We hold, therefore, that *Omni* stands for the simple proposition that RSA 362:2 (Supp.1991) does not apply to industries that the legislature did not intend to be regulated.

Appeal of Atlantic Connections, Ltd., 135 N.H. 510, 514 (1992) (internal quotation, ellipsis, citation and brackets omitted). To date, Eversource is not aware of any indication by the legislature that EV charging stations were intended to be regulated in the same manner, or to the same degree, as public utilities. The existence of numerous EV manufacturers and distributors who all compete for customers is evidence that the market for EVs is in line with New Hampshire's pro-competitive ideals. Regulating EV charging stations as public utilities would likely hinder their development and deployment and, by extension, the competitive deployment of EVs in New Hampshire. Instead, it appears more appropriate and reasonable for such facilities, like the EVs they serve, to be subject to general competitive forces, rather than the regulation of the Commission. It is Eversource's assessment that EV charging facilities were not intended to be regulated by the Commission as public utilities.

Despite the above, it is possible that the owner of a "public" EV charging facility could begin to function more like a public utility, as described by the Supreme Court, if it charges a fee to those using the facility in a manner that results in a resale of electricity. While charging a fee or reselling electricity does not necessarily result in those facilities becoming public utilities,⁹ it may call for a closer analysis of certain individual situations. As Eversource's sister companies have noted, an EV charging service provider may reasonably include fees or charges to recover

⁹ See Eversource Tariff NHPUC No. 8, Original Page 17, Terms and Conditions Section 17, permitting the resale of delivery service, including the electric energy, upon written permission of Eversource.

the cost of the EV facilities themselves, along with the cost of the electricity.¹⁰ If such service is provided on a flat fee or similar basis it is less likely that it would create an inappropriate resale of electricity.¹¹

With respect to the possibility that EV charging facilities could be considered CEPS, Eversource likewise does not believe that the owners or operators of such facilities are CEPS. Pursuant to RSA 374-F:2, II “Electricity suppliers’ means suppliers of electricity generation services and includes actual electricity generators and brokers, aggregators, and pools that arrange for the supply of electricity generation to meet retail customer demand, which may be municipal or county entities.” Even aside from the fact that the regulatory scheme as contained in the Commission’s Puc 2000 rules regarding CEPS bears little relation to the manner in which EV charging stations operate, an entity, whether public or private as described earlier, that owns or operates an EV charging station is not arranging for the supply of electricity generation to meet retail customer demand. The operation of an EV charging station does not make its owner into a CEPS as contemplated by the statute or the Commission’s rules.

B. Rates and Charges and the Commission’s Jurisdiction

With respect to the rates charged to EV charging stations, it is Eversource’s opinion that such rates should be charged consistent with existing tariffed rates for the delivery service. The Commission will continue to have the same oversight and approval authority over the rates, terms and conditions, and customer service requirements of public utilities and CEPS as it presently does, regardless of the fact that the service is being provided to an EV charging station rather than some other customer.

¹⁰ February 14, 2014 Comments of NSTAR Electric Company and Western Massachusetts Electric Company in D.P.U. 13-182 at 6.

¹¹ *Id.*

As to the rates charged for the use of such stations and the Commission's jurisdiction over them, given the limitations set out above relative to the status of the owners of such stations as public utilities or CEPS, it would appear that the Commission has little or no authority to regulate the rates charged by those stations. That is not to say that no entity should, nor that the Commission ought not to have such authority, but only that under the present state of the law it appears that the Commission would not have the requisite authority to require certain pricing structures, quality standards, or customer service obligations. While the Commission would retain its authority up to the point of delivery by the utility, after that point the Commission's authority would be limited to issues such as, for example, determining whether a particular pricing structure could render an EV charging station owner a public utility.

Nevertheless, there are areas the Commission and the state's utilities ought to continue to monitor to determine whether or when changes in the Commission's processes, or utility tariffs and methods, are warranted. Though the market for EV charging stations is still relatively new, EV charging is unique for a variety of factors that may inspire further changes over time. Usage characteristics (time, rate, location) are flexible and can be shaped with technology and consumer behavior. Presently, EVs are relatively few in number and are often parked for long periods of time for overnight charging when other electric demand is low. However, over time the numbers of vehicles and customers' charging behavior may shift and create system impacts that cannot be known at present. For example, the standards for Level II charging allow for up to 19.2 kW charging while most EVs currently charge at a rate between 1.4 kW and 7.2 kW, which equals the demand of a typical residential customer. Should multiple EVs become clustered together in a residential neighborhood, overloads to the electric system could occur because of the significant load increase. This potential impact increases as higher capacity charging is made available to consumers. The electric utility facilities that could be affected are those closest to

the customer (service lines and distribution transformers). Such facilities might need to be replaced with higher capacity equipment to adequately serve this new load.

Eversource and its sister companies have considered outreach campaigns to request residential customers to self-report their EVs to the Company, which would better enable the Company to plan for the demands that may be placed upon the system. Eversource does recognize that a voluntary reporting program would only collect information from a portion of customers and that the quality of the data would improve if customer self-reported information could be supplemented by additional data from, for example, motor vehicle registrations, or through the building permitting process where a utility would be notified when high capacity residential EV charging equipment is installed. Eversource will continue to review potential outreach campaigns to determine when or if implanting such campaigns is warranted.

Regardless of whether such information may be gathered as described, Eversource will continue to work proactively to identify and address potential system impacts. Based upon its experience, and that of its affiliates, Eversource believes that existing applicable standards are sufficient to ensure continued safe and reliable operation of the system in relation to EVs currently available in the market and it will monitor any developments in relation to these standards and policies as EV capabilities and technologies continue to evolve over time.

3. Conclusion

Eversource appreciates the opportunity to provide these comments and to participate in the forthcoming Commission process. EVs, like other emerging technologies, and changes in customer demands and expectations, require revisiting older ways of thinking to devise new, effective means for providing safe and reliable service at just and reasonable rates to ensure that customers and the Company are obtaining the greatest benefits from our electrical system.

Eversource supports the development of EVs in New Hampshire, and stands ready to assist the

Commission, and other stakeholders in New Hampshire, in working toward a future where all parties may reap the benefits of the increased availability of EVs.