

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
ELECTRIC VEHICLE INFRASTRUCTURE	DOCKET NO. RMU-2018-0100

**ORDER REQUESTING STAKEHOLDER COMMENT ON
POTENTIAL RULE CHANGES**

(Issued February 6, 2019)

BACKGROUND

On August 27, 2018, the Utilities Board (Board) filed an order commencing a rule making regarding electric vehicle infrastructure and charging (EV charging) in the above-captioned docket. In the August 27, 2018 order, the Board invited the filing of comments by all interested persons and scheduled a workshop for October 17, 2018. The Board received 23 comments. From the utility industry, the Board received comments from the Iowa Association of Municipal Utilities (IAMU), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IPL), and the Iowa Association of Electric Cooperatives (IAEC). The Board also received comments from businesses with an interest in electric vehicle charging, including Iowa 80 Truckstop, Inc., and Truckstops of Iowa, Inc.; Tesla, Inc.; Siemens Digital Grid; ChargePoint, Inc.; and Kwik Trip, Inc. Other stakeholders and interested parties filed comments, including the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; the Environmental Law and Policy Center and the

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Iowa Environmental Council (Environmental Advocates); the Iowa Chapter of the Sierra Club (Sierra Club); Americans for Prosperity; the Energy Equality Coalition/Mr. George Landrith; the Electric Auto Association; and the Alliance for Transportation Electrification. In addition, the Board received a number of comments from interested individuals.

On October 8, 2018, and in light of the comments received, the Board issued an order identifying four topics, which were expanded to six in an order dated October 15, 2018, that the Board requested be discussed by the presenters at the workshop. Specifically, the topics include:

1. How have other states addressed electric vehicle charging?
2. What business models exist for electric vehicle charging?
3. What, if any, role should the Board play in the development and regulation of Electric Vehicle infrastructure? Will this role allow the Board to comply with the provisions of Iowa Code § 476.25?
4. Recommendation for rules or legislation.
5. Please provide a response to the jurisdictional contentions raised by the Office of Consumer Advocate, a division of the Iowa Department of Justice.
6. In their “Joint Utility Stakeholder Comments” filed on September 17, 2018, MidAmerican Energy Company, Interstate Power and Light Company, the Iowa Association of Electric Cooperatives, and the Iowa Municipal Utility Association suggest the Board adopt rules exempting electric vehicle charging services from the Board’s regulations as a public utility “subject to certain parameters” identified by the joint filers. Please provide a response to the parameters discussed by the joint filers.

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On October 17, 2018, the Board held the workshop and received presentations from OCA; Iowa 80 Truckstop, Inc., and Truckstops of Iowa, Inc.; ChargePoint, Inc.; Siemens Digital Grid; Alliance for Transportation Electrification; Greenlots; IPL; MidAmerican; IAMU; IAEC; Sierra Club; the Environmental Advocates; and Mr. Andrew Fisher.

BOARD DISCUSSION

A. Response to Jurisdictional Argument

Prior to discussing its proposed EV charging rule, the Board must first consider OCA's contention that the Board "lacks statutory authority to regulate third-party operators of electric vehicle charging stations" and must, therefore, immediately terminate this rule making. Within its initial comment, OCA correctly observes the Board possesses regulatory authority over "public utilities." See Iowa Code § 476.1(1) (stating the Board "shall regulate the rates and services of public utilities"). OCA is further correct in its assertion that Iowa law establishes three elements that must be met in order to find a person or entity is a "public utility" in the electric context; namely, that person or entity must: (1) furnish electricity, (2) to the public, (3) for compensation. *Id.* at § 476.1(3)(a). Finally, OCA properly states the Iowa Supreme Court interprets the "to the public" element to mean "'sales to sufficient of the public' to 'clothe the operation with a public interest.'" *SZ Enterprises, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441, 465 (Iowa 2014) (quoting *Iowa State Commerce Comm'n v. Northern Nat. Gas Co.*, 161 N.W.2d 111, 115 (Iowa 1968)). To assist in

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determining whether the sales are clothed with the public interest, the Court utilizes an eight-factor test. *Id.*

To this point in OCA's analysis, the Board is in agreement; however, the Board questions OCA's next analytical step. OCA asserts a commercial EV charging station can never have its sales clothed with the public interest under the eight-factor test to meet the "to the public" element of a "public utility." In other words, according to OCA, there are no conceivable facts under which an EV charging station could be found to be a public utility under the eight-factor test. However, OCA's position appears to be precisely the type of "bright-line" rule the Supreme Court expressly disavowed in *SZ Enterprises*. In that case, the Court clearly and unequivocally stated 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." *Id.* at 466. "The weighing of [the] factors is not a mathematical exercise but instead poses a question of practical judgment" based on assessing the strength of the factors on a case-by-case basis. *Id.* at 468.

During the workshop, the Board received information suggesting a wide variety of business models exist for EV charging. Siemens Digital Grid stated there are numerous components to the EV charging system (*e.g.*, technology, installation, maintenance, operations, etc.) and the ownership and provision of those elements varies. Siemens further stated that some business models exist where non-utility enterprises provide everything and in other business models the public utilities play

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roles. ChargePoint presented information suggesting several business models exist under which a public utility's involvement varies. The Alliance for Transportation Electrification asserted the EV charging market is growing and "there's a wide variety of business models that include a strong utility presence as well as a strong third-party role...." IAEC suggested business models could include ownership by governmental entities.

Given the potential factual variances implicated, the Board is not confident OCA's argument in favor of a bright-line rule is consistent with the Iowa Supreme Court's dictate that the "public utility" inquiry be made on a case-by-case basis. Therefore, while appreciating the possibility that there could be situations in which an EV charging station does not constitute a "public utility" under the eight-factor test, the Board is unwilling to disregard its statutory obligation to regulate public utilities under the conclusory assertion that all EV charging stations are not public utilities, especially in light of the substance of the Board's proposed rule and the clarity it will provide. For these reasons, the Board will proceed with this rule making.

B. Proposed Rule

The Board proposes to promulgate a new rule in Iowa Administrative Code chapter 199—20 (Service Supplied by Electric Utilities). Specifically, the Board proposes the following:

20.20 Service to Electric Vehicle Charging Stations.

(1) Electric energy sold for the purpose of electric vehicle charging at a commercial or public electric vehicle charging station constitutes neither the furnishing of electricity to the public nor the resale of electric

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service. If the electricity used for electric vehicle charging is obtained from a rate-regulated public utility, the terms and conditions of the service to the electric vehicle charging station shall be governed by and subject to the utility's filed tariff.

(2) Providers of electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25.

(3) Electric utilities and entities providing commercial or public electric vehicle charging shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including, but not limited to, all taxing requirements, and, if necessary, file all appropriate tariffs.

The primary intent of subrule 20.20(1) is to remove EV charging stations from the definition of "public utility" under Iowa Code § 476.1, and by extension, section 476.25. Providing EV charging from a commercial charging station involves much more than simply selling electricity. In some cases the provision of electricity is simply an ancillary service. Charging stations may provide space for a vehicle to park while charging, together with other amenities. In addition, use of the electricity is available only to electric vehicles, not the general public. See *e.g., Kansas City Power and Light Co. v. Missouri Public Serv. Comm'n*, 557 S.W.3d 460, 471 (Mo. Ct. App. 2018). Accordingly, the Board proposes to explicitly provide that the charging of an electric vehicle at a charging station, even if the charging occurs as part of a commercial transaction, is not the "furnishing of electricity to the public," thereby negating two separate elements of the "public utility" definition under § 476.1(3)(a).

Proposed new subrule 20.20(1) also affirmatively states that the charging of an electric vehicle at a charging station does not constitute the resale of electric service. While "resale" is not a term utilized in chapter 476, electric tariffs contain

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provisions concerning the resale of electric energy and service. Therefore, the inclusion of “resale” is intended to address such tariff language.

At the workshop, the Board received information from several presenters, including IPL and MidAmerican, about the need for coordination between those EV charging stations intending to obtain electricity to operate the charging station from a public utility and the public utility. For example, IPL stated DC Fast Chargers require significant electric loads and for reasons relating to grid safety, consumer understanding, and public utility load management and planning, coordination between the EV charging station and public utility must occur. Similarly, MidAmerican noted that especially with DC Fast Chargers, which require a higher level of electrical service, collaboration between the public utility and EV charging station must occur to identify and address challenges and station, or site-specific issues. Based on this information, the Board is proposing language in subrule 20.20(1) that if the electricity for EV charging is obtained from a public utility, the terms of that service of electricity to the EV charging station shall be governed by and subject to the utility’s filed tariff.

Proposed subrule 20.20(2) addresses the provision of electric service to EV charging stations and the service requirement of Iowa Code § 476.25. The Board’s proposed language is intended to ensure that entities providing electric service to EV charging stations comply with Iowa Code § 476.25.

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C. Remaining Issues

Commercial and non-commercial EV charging in Iowa implicates a host of issues, many of which are outside the scope of the Board's authority. For example, in Senate File 2311, the Legislature directed the Iowa Economic Development Authority (IEDA) to collaborate with the Iowa Department of Transportation (IDOT) and the Iowa utility industry in studying "electric vehicle infrastructure support for both commercial and noncommercial vehicles and make recommendations to the General Assembly regarding electric vehicle charging infrastructure." 2018 Iowa Acts ch. 1135, § 19. As part of the study, IEDA must evaluate the relative costs and benefits associated with different options for EV infrastructure support. *Id.* IEDA is required to submit a report that details the results of its study to the General Assembly by June 30, 2019. *Id.*

Additionally, during the last legislative session, the Legislature questioned how the use of electric and other high-efficiency motor vehicles may impact future revenues to the road use tax fund. 2018 Iowa Acts ch. 1077, § 3. The Legislature directed the IDOT to submit a report to the General Assembly that contains IDOT's estimate of the future loss of road use tax funds and may contain IDOT's recommendations regarding "the creation of alternative funding mechanisms or the alteration of existing funding mechanisms to mitigate any estimated decrease in future revenues to the road use tax fund...." *Id.*

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On December 31, 2018, IDOT issued the “2018 Report on the Impact of Electric Vehicles to the Road Use Tax Fund.” A copy of the report may be found at: <http://publications.iowa.gov/29142/1/EV%20RUTF%20Impact%20Report%20123118.pdf>. In its report, the IDOT identifies and discusses three funding recommendations: (1) the addition of a per-kilowatt-hour excise tax for charging at non-residential charging locations, (2) the addition of a supplemental registration fee for passenger electric vehicles, and (3) the addition of a hydrogen fuel excise tax.

As evidenced through the legislation and reports, issues pertaining to commercial and noncommercial EV charging in Iowa are being identified and reviewed. In addition to those state entities already mentioned, the Iowa Department of Agriculture and Land Stewardship, Weights and Measures Bureau, may play a role in EV charging in carrying out its inspections and licensing “for commercial use all weights and measures...” 21 IAC 1.2(2). The Iowa Department of Revenue may play a role in tax collection. The electrical licensing and inspection program administered by the Iowa Department of Public Safety, Fire Marshal Division, may play a role.

The Board’s rule regarding EV charging stations addresses the Board’s jurisdiction for public utility regulatory purposes. As EV charging stations are developed in Iowa, other state agencies may also be required to address issues falling within the scope of their authorities. As the legislature and executive branch agencies continue their review, statutes may be enacted and rules may be adopted

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that implicate entities subject to Board jurisdiction and, if necessary, tariff filings with the Board may be required. Proposed subrule 20.20(3) is intended to ensure electric utilities and entities providing EV charging at commercial or public stations subject to the Board's jurisdiction comply with all applicable EV charging statutes and administrative rules and, if necessary, file all necessary tariffs.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

Comments regarding the proposed new rule in 199 IAC chapter 20 as described in the body of this order, as well as comments proposing other revisions pertaining to electric vehicle charging to others chapters of the Utilities Board's rules, shall be filed no later than 30 days from the date of this order. Replies to the comments shall be filed no later than 45 days from the date of this order.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Kelsie Vanderflute

/s/ Richard W. Lozier, Jr.

Dated at Des Moines, Iowa, this 6th day of February, 2019.

DRAFT

Item 1. Adopt the following **new** rule 199—20.20:

199—20.20(476) Electric Vehicle Charging Service.

(1) Electric energy sold for the purpose of electric vehicle charging at a commercial or public electric vehicle charging station constitutes neither the furnishing of electricity to the public nor the resale of electric service. If the electricity used for electric vehicle charging is obtained from a rate-regulated public utility, the terms and conditions of the service to the electric vehicle charging station shall be governed by and subject to the utility's filed tariff.

(2) Providers of electricity to a commercial or public electric vehicle charging station shall comply with Iowa Code section 476.25.

(3) Electric utilities and entities providing commercial or public electric vehicle charging shall comply with all applicable statutes and regulations governing the provision of electric vehicle charging service, including, but not limited to, all taxing requirements, and, if necessary, file all appropriate tariffs.