

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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

**ORDER ADOPTING AMENDMENT**

(Issued September 30, 2019)

On August 27, 2018, the Utilities Board (Board) issued an order requesting stakeholder input concerning a potential rule making regarding electric vehicle (EV) infrastructure and charging in the above-captioned docket. As part of the order, the Board established comment submission deadlines and scheduled an EV infrastructure workshop for October 17, 2018. The Board received 23 comments and, at the workshop, received presentations from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; utilities and utility associations; environmental advocates; and other entities and individuals.

On February 6, 2019, the Board issued an order sharing proposed EV rule (*i.e.*, new rule 20.20) language the Board prepared in consideration of the written and oral comments received. The Board stated “[t]he primary intent of [the new rule] is to remove EV charging stations from the definition of ‘public utility’ under Iowa Code § 476.1 . . . .” *In Re: Electric Vehicle Infrastructure*, Docket No. RMU-2018-0100, “Order Requesting Stakeholder Comment on Potential Rule Change,” p. 6 (Feb. 6, 2019). The Board further noted that EV charging from a commercial charging station may involve much more than simply selling the charging service and, in some cases, EV charging is simply an ancillary service. *Id.* The Board invited stakeholders to

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submit comments in response to the proposed rule language. *Id.* at p. 10. The Board received initial comments from Iowa 80 Truckstop, Inc., and Truckstops of Iowa, Inc. (collectively Truckstops); OCA; the Environmental Law and Policy Center and the Iowa Environmental Council (collectively Environmental Advocates); the Iowa Chapter of the Sierra Club (Sierra Club); Iowa Association of Municipal Utilities (IAMU) and the Iowa Association of Electric Cooperatives (IAEC); Interstate Power and Light Company (IPL); the Alliance for Transportation Electrification; MidAmerican Energy Company (MidAmerican); Greenlots; and ChargePoint, Inc. The Board received reply comments from the Truckstops; ChargePoint, Inc.; IAEC and IAMU; IPL; the Environmental Advocates; and OCA. The Board also received comments from interested individuals.

On April 19, 2019, the Board issued an “Order Commencing Rule Making,” proposing to adopt a modified version of the February 6, 2019 shared language. The Notice of Intended Action (NOIA) was published in the May 8, 2019 Iowa Administrative Bulletin as ARC 4417C. The Board accepted written comments concerning the noticed rule through May 28, 2019. On June 12, 2019, the Board held an oral presentation attended by OCA, IAEC, IAMU, MidAmerican, IPL, the Environmental Advocates, Sierra Club, Truckstops, the Missouri River Energy Services, and Tesla, Inc.

Generally, the written and oral comments fell into one of two groups. A number of commenters expressed support for proposed rule 20.20 as published in the NOIA. Others objected, arguing proposed rule 20.20 failed to take into consideration the rights of incumbent service providers under Iowa’s assigned service territories law. In an effort to address the concerns expressed by the

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objecting parties, on July 17, 2019, the Board requested stakeholder comment on new proposed rule 20.20 language, which incorporated the Kentucky Public Service Commission's analysis of the EV charging issue. See *In the Matter of: Electronic Investigation of Commission Jurisdiction over Electric Vehicle Charging Stations*, Case No. 2018-00372, 2019 WL 2514632 (June 14, 2019). Specifically, the Board requested comments on the following proposed language:

**20.20 Service to Electric Vehicle Charging Stations.**

(1) An electric vehicle charging station is not a public utility under Iowa Code section 476.1 if the charging station receives electric service from the electric utility in whose service area the charging station is located or obtains electricity from a behind-the-meter source.

(2) 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.

Through August 1, 2019, the Board received nine initial comments and through August 16, 2019, received four reply comments to the Board's July 17, 2019 revised rule language. Again, the responsive comments generally fell into two groups. A number of commenters expressed support for the July 17, 2019 amended language (with minor modifications); however, MidAmerican, IAMU, IAEC, and IPL (collectively Joint Commenters) objected, contending the revised rule is based on an erroneous interpretation of a provision of law, is arbitrary and capricious, and the product of illogical and wholly irrational reasoning.<sup>1</sup>

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1. The Joint Commenters raised these contentions in their August 16, 2019 reply comment. However, in their August 1, 2019 initial comments, the Joint Commenters characterized the July 17, 2019 revised language "as a positive step" towards "a balanced regulatory approach" and asserted the revised rule simply required additional regulatory clarity.

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The Board created the July 17, 2019 revised language in an effort to address the concerns expressed by the Joint Commenters to the NOIA rule language. For example, in their May 28, 2019 joint comments, IAMU, IAEC, and MidAmerican complained the rule published in the NOIA failed to address a “critical factor” in the public utility analysis; namely, “whether a generator of electric energy is a ‘behind the meter’ customer of the incumbent electric utility . . . .” Other utilities, including IPL in its March 8, 2019 comment, advocated for the creation of a “bright line rule under which an entity providing EV charging service may operate without being deemed a public utility, subject to” certain conditions. In the July 17, 2019 version of the proposed rule, the Board addressed these concerns through language requiring that the electricity obtained for EV charging must be received from the incumbent electric utility or from a behind-the-meter source.

A fair and full reading of the arguments contained in the Joint Commenters’ August 16, 2019 reply comments reveals a common theme. In their contention that the alternative language is based on an “erroneous interpretation of law,” the Joint Commenters assert that a “bright-line rule” runs counter to Iowa adjudicatory law, which requires application of a multifactor test to determine whether an entity is a public utility. Concerning their “arbitrary and capricious” contention, the Joint Commenters assert the alternative language fails to “take a facts-and-circumstances approach to the public utility and service area determinations . . . .” Finally, in their “illogical and wholly irrational” contention, the Joint Commenters again assert the alternative language constitutes a “bright-line test.” Thus, while the Board crafted the revised language in response to the utilities’ requests to provide greater clarity and to incorporate the “critical factor” in the public utility analysis, the Joint Commenters’

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overarching theme in their response to the alternative language appears to be that the modified rule language is improper because it does not allow for a “facts-and-circumstances approach.”

The Board finds the rule published in the NOIA allows for the “facts-and-circumstances approach” while ensuring the electricity obtained for EV charging is provided in compliance with the service territory provisions of Iowa Code § 476.25. The NOIA rule leaves in place and does not alter existing law concerning the furnishing of electricity to the EV charging station, including application of the Supreme Court’s multifactor test set forth in *SZ Enterprises, LLC v. Iowa Utilities Board*, 850 N.W.2d 441 (Iowa 2014).

There are at least two separate and distinct potential electric energy transactions implicated in commercial EV charging. First, an electric energy transaction occurs between the EV charging station and the vehicle (*i.e.*, charging the EV’s batteries). Second, a potential electric energy transaction occurs through the electric energy generator supplying electricity to the EV charging station. The primary intended purpose of this rule making is to address the former of two-described transactions — to clarify that an EV charging station does not become a public utility under § 476.1 solely by virtue of the commercial EV charging transaction between the EV charging station and the vehicle. Under the version of rule 20.20 published in the NOIA, the legality of the latter of the two-described transactions (*i.e.*, between the electric energy generator and the EV charging station) is determined under existing adjudicatory and statutory law, and the determination of whether the electric energy-supplying entity is a public utility will be dependent upon application of the multifactor test.

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The NOIA version further protects consumers through the unnecessary duplication of electric service through subrule 20.20(2), which declares that entities furnishing electricity to an EV charging station must comply with the exclusive service areas. In other words, if an entity furnishing electricity to an EV charging station is a public utility under the “facts-and-circumstances” approach, Iowa Code § 476.25(3) could be implicated, which precludes an electric utility from serving or offering to serve “electric customers in an exclusive service area assigned to another electric utility . . . .”

Finally, the Board notes the version of 20.20 published under notice received support from a number of stakeholders and individuals, including OCA; the Truckstops; IEC and ELPC; the Sierra Club; Tesla, Inc.; and ChargePoint, Inc.

Therefore, for the reasons set forth above, the Board will not adopt the July 17, 2019 revised rule 20.20 and, instead, adopts new rule 20.20 as contained in the NOIA. The adopted rule 20.20 is shown in the “Adopted and Filed” notice that is attached to this order and incorporated into this order by reference. The Administrative Code Editor may make editorial changes to the “Adopted and Filed” notice attached to this order and the official version of the amendments will be published in the Iowa Administrative Bulletin.

## **ORDERING CLAUSES**

### **IT IS THEREFORE ORDERED:**

1. New 199 Iowa Administrative Code rule 20.20, as shown in the attached “Adopted and Filed” notice, incorporated into this order by reference, is adopted by the Utilities Board.

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2. The "Adopted and Filed" notice attached to this order shall be submitted to the Administrative Code Editor for review and publication in the Iowa Administrative Bulletin.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Bradley Nielsen

/s/ Richard W. Lozier Jr.

Dated at Des Moines, Iowa, this 30<sup>th</sup> day of September, 2019.

The following rule-making action is adopted:

Adopt the following **new** rule 199—20.20(476)

**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. A rate-regulated public utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.

(2) A person, partnership, business association, or corporation, foreign or domestic, furnishing 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 shall, if necessary, file all appropriate tariffs.