

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 14, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Garry A. Brown
Gregg C. Sayre
Diane X. Burman

CASE 13-E-0199 - In the Matter of Electric Vehicle Policies.

DECLARATORY RULING ON JURISDICTION OVER PUBLICLY AVAILABLE
ELECTRIC VEHICLE CHARGING STATIONS

(Issued and Effective November 22, 2013)

BY THE COMMISSION:

BACKGROUND

A Notice of New Proceeding and Seeking Comments (Notice) was issued in this case on May 22, 2013. The Notice discussed the need to ensure that this Commission's "regulations and policies promote the continuing evolution of the market for [plug-in electric vehicles] PEVs and for supporting services, while maintaining the safety and reliability of New York's electric grid." The Notice sought comment on an argument, set forth in the Notice, which concluded that this Commission does not have jurisdiction over Publicly Available Charging Stations (Charging Stations), their owners or operators, or the transaction between the operators and members of the public. In addition, the Notice sought comment on the potential impact of this Commission's determination that it does or does not have

jurisdiction in this area.¹ In this Declaratory Ruling, we find that this Commission does not have jurisdiction² over (1) Charging Stations; (2) the owners or operators of Charging Stations, so long as the owners or operators do not otherwise fall within the Public Service Law's (PSL) definition of "electric corporation;" or (3) the transaction between such owners or operators of Charging Stations and members of the public.

COMMENTS

In response to the above referenced Notice, nine parties submitted comments.³ The commenters generally agreed that this Commission should not assert jurisdiction over Charging Stations, the owners or operators of Charging Stations, or the transaction between Charging Station owners or operators and members of the public.

NRDC-Pace, RESA and CNY explain that Charging Stations are not a natural monopoly. NRDC-Pace cautions, however, that this Commission "should take care to maintain its ability to respond to a market that is likely to evolve in ways that cannot be anticipated." NYSERDA notes that Charging Stations may be owned or operated by the entity that owns a parking lot or structure, such as a municipality or a private business such as

¹ The Notice also sought comment on other issues related to electric vehicles, which are not addressed in this Declaratory Ruling.

² We retain jurisdiction over the services provided by electric distribution utilities to the owners or operators of Charging Stations.

³ NYS Department of Environmental Conservation (DEC); Natural Resource Defense Council and Pace (NRDC-Pace); ChargePoint, Inc.; the New York State Energy Research and Development Authority (NYSERDA); The City of New York (CNY); the Joint Utilities; NRG Retail Affiliates (NRG); the Retail Energy Supply Association (RESA); and the New York Power Authority (NYPA).

a store. ChargePoint, Inc. agrees with the proposition stated in the Notice, that the operator of a Charging Station is not selling electricity, but rather providing car charging services and/or equipment to the public. RESA states that "[i]n many key areas this market is analogous to the exercise of Commission jurisdiction over electric appliances such as refrigerators, washing machines and other domestic appliances."

Additionally, the commenters generally state that the Commission should not assert jurisdiction solely because the operator of the Charging Station calculates the fee on a per kWh basis, as opposed to a per hour, per minute or other rate unrelated to the measurement of electricity used.

DISCUSSION AND CONCLUSION

Under the Public Service Law (PSL), this Commission's jurisdiction extends to the manufacture, conveying, transportation, sale or distribution of electricity for light, heat or power, to electric plant and to the entities owning, leasing or operating electric plant.⁴ The PSL specifically defines the terms "electric plant" and "electric corporation." "Electric plant" means "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power."⁵ "Electric corporation" means an entity "owning, operating or managing any electric plant... ."⁶ Accordingly, in determining whether our jurisdiction extends to Charging Stations, their owners and/or operators and the transaction between the owners/operators of Charging Stations and members of

⁴ PSL §5(1)(b).

⁵ PSL §2(12).

⁶ PSL §2(13).

the public, we must determine whether a Charging Station is included in the definition of "electric plant."

Charging Stations do not fall within the definition of "electric plant" because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power. Instead, and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services. This service requires the use of specialized equipment and allows the customer to do only one thing, charge a PEV's battery. The primary purpose of the transaction between Charging Station owners/operators and members of the public is the purchase of this service and the use of this specialized equipment. While the customer is using electricity, this is incidental to the transaction.

Since a Charging Station is not electric plant, the owners or operators of Charging Stations do not fall within the definition of electric corporation.⁷ Additionally, the method of calculating the transaction fee, specifically, the use of a per kWh price, will not confer jurisdiction where none otherwise exists. We note that the owners and operators of Charging Stations may decide that a time based fee or kWh based fee, or other fee structure is appropriate.⁸

We share the concerns of NRDC-Pace, that this Commission should maintain its ability to respond to the market

⁷ We do have jurisdiction over the owner or operator of a Charging Station, where that owner or operator otherwise falls within the PSL §2(13) definition of "electric corporation."

⁸ The Joint Utilities stated that some of the electric distribution utilities may need to modify existing tariff language to accommodate Charging Station owners or operators who would utilize a per kWh fee structure. Utilities that need to modify their existing tariff language should file such tariff revisions.

as it evolves.⁹ Our determination here does not diminish our ability to respond to changes in the market in which Charging Stations operate.¹⁰ We maintain continuing jurisdiction over the transactions between electric distribution utilities and the owners and operators of Charging Stations.

The Commission finds and declares:

1. The Public Service Law does not provide the Commission with jurisdiction over (1) publicly available electric vehicle charging stations; (2) the owners or operators of such charging stations, so long as the owners or operators do not otherwise fall within the Public Service Law's (PSL) definition of "electric corporation;" or, (3) the transactions between the owners or operators of publicly available electric vehicle charging stations, which do not otherwise fall within the PSL's definition of "electric corporation," and members of the public.

⁹ With regard to the safe installation of electric vehicle charging equipment, we understand that NYC, for example, relies on the National Electric Code's requirements. NYC requires a permit for the installation of charging equipment, as well as an inspection of the installation by a NYC electrical inspector. We also note that the National Institute of Standards and Technology, a bureau of the U.S. Department of Commerce, has been developing guidelines for oversight of the devices used in the provision of charging services (<http://www.nist.gov/pml/wmd/usnwg-evfs.cfm>). We understand that staff from New York State's Department of Agriculture & Markets, Bureau of Weights and Measures, have been involved in this working group.

¹⁰ This declaratory ruling is based on our understanding of the current market in which Charging Stations operate.

2. This proceeding is continued.

By the Commission,

KATHLEEN H. BURGESS
Secretary