

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

IN RE:)	
)	DOCKET NO. RMU-2018-0100
ELECTRIC VEHICLE)	
INFRASTRUCTURE)	
)	REPLY COMMENTS
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The Environmental Law & Policy Center (ELPC) and Iowa Environmental Council (IEC) file these reply comments pursuant to the Iowa Utilities Board’s Order Requesting Stakeholder Comment on Potential Rule Changes issued February 6, 2019.

I. Background

The Iowa Utilities Board (Board) has been exploring issues related to the regulatory framework for electric vehicle charging stations since Iowa 80 Truckstop raised an issue with restrictions on electric vehicle charging operations in Interstate Power and Light Company’s (IPL) tariff. On February 6, 2019, the Board issued an order requesting stakeholder comment on potential rule changes regarding electric vehicle infrastructure and charging with an intent “to remove EV charging stations from the definition of ‘public utility’ under Iowa Code § 476.1 and by extension, section 476.25.” (Board Order at 6.) The Board’s Order came after a deliberative process where the Board commenced a rulemaking through an August 27, 2018 order that gathered comments from multiple stakeholders and included a workshop on October 17, 2018. Stakeholders including utilities, the Office of Consumer Advocate, environmental groups,

electric vehicle charging industry organizations, and others have provided comments during this process and more recently on the proposed rule.

ELPC and IEC provided brief initial comments to support the Board's proposal to include a new rule to clarify that EV charging stations do not fall under the definition of public utility under Iowa Code § 476.1, and therefore are not subject to the exclusive service territories under § 476.25. The Board's underlying rationale and conclusions were informed by *SZ Enterprises, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441 (Iowa 2014). We agree with the Board's conclusion that EV charging from a commercial charging station involves much more than simply selling electricity and that the charging may simply be an ancillary service. The Board provided a straightforward rule that gets the regulatory balance right. Several of the commenters suggested significant revisions to the Board's proposed rule language that would go well beyond what is necessary to address any public interest. The Board should maintain its approach and implement the rule as it is proposed.

II. The Board's Proposed Rule Takes an Appropriately Limited Regulatory Approach By Providing Clarity that Electric Vehicle Charging is Not a Public Utility.

In the *Eagle Point Solar* case, the Court noted that "to the extent there might be a sufficient public interest to support regulation, jurisdiction should be extended 'only as necessary to address the public interest implicated.'" *SZ Enterprise, LLC v. Iowa Utilities Bd.*, 850 N.W.2d 441, 456 (Iowa 2014) (citing *Norther Natural Gas II*). The Board's proposed rule gets the regulatory balance right with a narrow rule clarifying that electric vehicle charging does not make an entity a public utility. Utilities sell electricity to all customers for all purposes; in our society electricity is a fundamental necessity and we regulate it because of the broad societal ramifications. EV charging stations supply electricity for the limited purpose of charging

vehicles. In fact, many commercial businesses already sell electricity for the purpose of charging car batteries in combustion engine cars. Gas stations, repair shops, auto dealerships, and more already charge car batteries for customers. The charging stations simply provide a greater charge, but the rationale for not considering the BP station, the Ford dealership or Sears Auto to be utilities remains the same. Such regulation isn't necessary.

In contrast, the utility commenters are advocating for a broad regulatory approach that would unnecessarily prohibit existing applications that should be allowed under the *Serv-Yu* factors in hopes of avoiding unspecified hypothetical future situations. Joint comments from the Iowa Association of Municipal Utilities (IAMU) and the Iowa Association of Electric Cooperatives (IAEC) that MidAmerican supported suggested broad language that throws the Board's proposed rule on its head. The suggested language reads:

An electric vehicle charging station that supplies electric energy on a retail basis to electric vehicle operators without having obtained that energy from an electric utility shall be presumed to be furnishing electricity to the public for compensation.¹ (Joint Commenters at 5.)

This language is the opposite of what the Board is attempting to accomplish with the proposed rule. This language would prohibit ancillary charging services if those services were coupled with *any* on-site distributed resources. Similarly, IPL interpreted the Board's rule to require energy for an EV charging station to come exclusively from its utility and not on-site distributed resources. (IPL Comments at 6.) Under the Joint Commenters' and IPL's proposed rule, the Hy-Vee in Urbandale that has charging stations under a few solar panels to draw in environmentally minded customers would be presumed to be a public utility even though that is a small amount of

¹Joint commenters also suggest that the Board should be focused on regulating how utilities serve EV charging station customers. (Joint Commenters at 4.) The suggested language in this argument was a way to require an electric vehicle charging location to get all of its energy from the utility to avoid public utility classification and regulation. The two different rule recommendations have the same implications and can be analyzed in the same way.

the store's energy use and ancillary to the core business. The car dealership just off of the interstate in Ankeny that has charging stations for its electric vehicles under solar panels and allows use for customers/owners of electric vehicles would be presumed to be a public utility. The parking garage that has solar panels on its roof and four spots out of four hundred for electric vehicle charging would be presumed to be a public utility under this proposed rule. There are potentially countless other examples.

Applying the *Serv-Yu* factors, these examples and many others would not be a public utility, but the joint commenters' and IPL's proposed rule would presume these entities to be public utilities. The Board's rationale and analysis for the proposed rule removing electric vehicle charging from the definition of public utility applies to each of these examples that have solar:

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. (Order at 6.)

Adding on-site solar, batteries or other distributed generation to an entity where EV charging is a small part of an operation or is an ancillary service does not change the Board's analysis for these uses. Adding on site distributed generation that covers a portion of an entity's energy use does not change what the entity does; nor does it make electric vehicle charging an essential service; nor does it create an intent to monopolize service within the territory; nor does it lead to acceptance of all requests for service. *See* TF-2017-0305, Environmental Intervenors, Final Comments (filed Nov. 9, 2018) (applying the *Serv-Yu* factors to EV charging). The fact that the *Serv-Yu* analysis would not change with the addition of distributed resources to the typical EV charging application reinforces that the Board's rule gets the regulatory balance right, while the

utility commenters proposed rules fails to meet the Iowa Supreme Court's guidance that regulation be extended only as necessary to address the public interest implicated.

The utility commenters seem to be concerned about a hypothetical future where EV charging stations are not utility customers. The Board's rule makes clear that Iowa Code § 476.25 applies. (Proposed Rule 20.20(2).) This provides a backstop for a case by case analysis if there are a set of facts that would violate Iowa's exclusive service territory law. A more restrictive rewrite of the rule is not necessary to address utility commenters concerns. The Board's proposed rule creates a regulatory framework that will let the market develop, and if the market changes over time and creates cases that require a different approach, the Board can revisit its rules when needed and based on case-specific facts at the time.

III. ELPC and IEC Support Innovation in EV-Specific Tariffs.

MidAmerican's comments specifically requested clarification that a utility may develop an EV tariff outside of a rate case. Under traditional ratemaking principles, utilities can only recover costs in the context of a rate case and any change to this principle would be beyond the scope of the proposed rule and this particular rulemaking. We believe that development of EVs provide an opportunity for innovation and efficiency. EV-specific tariffs for residential, commercial and fleet customers can help attain this potential. We would welcome the opportunity to work with utilities on innovative tariff design including the appropriate proceedings/process for implementing those approaches.

IV. Conclusion

The Board's proposed rule provides a balanced approach that appropriately clarifies that an EV charging station is not a public utility. ELPC and IEC request that the Board implement its

proposed rule without modifications and require IPL to make the necessary tariff revisions to be consistent with the Board's rules as soon as possible after finalizing the rule.

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Respectfully submitted,

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