



State of Utah
Department of Commerce
Division of Public Utilities

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ACTION REQUEST RESPONSE

To: Utah Public Service Commission

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Energy Section Manager

Brenda Salter, Technical Consultant

Date: September 19, 2013

Re: Advice No. 13-11

In the Matter of Rocky Mountain Power's Proposed Changes to Regulation No. 4 "Supply and Use of Service" to Add Language Clarifying that Electric Vehicle (EV) Battery Charging Service is Not considered Resale of Electricity
Docket No. 13-035-T12

RECOMMENDATION (APPROVAL)

The Division of Public Utilities (Division) recommends that the Utah Public Service Commission (Commission) approve Rocky Mountain Power's (Company) proposed change to the tariff sheets for Electric Service Regulation No. 4 – Supply and Use of Service.

ISSUE

On September 6, 2013, the Company filed its revised Electric Service Regulation No. 4 – Supply and Use of Service. The Company is proposing to add language to clarify that electric vehicle (EV) battery charging service is not considered resale of electricity. On September 9, 2013, the Commission issued an Action Request for the Division to investigate the filing and make a recommendation to the Commission by October 1, 2013. On September 10, 2013 the Commission issued a second Action Request indicating a response date of September 19, 2013. Also on September 10, 2013 the Commission issued a Notice of Filing and Comment period with

an initial response date of September 19, 2013 and reply comments due September 26, 2013. This memorandum represents the Division's response to the Commission's second Action Request.

DISCUSSION

On September 6, 2013 the Company filed with the Commission a request to add language to Electric Service Regulation 4 to clarify that electric vehicle battery charging service is not considered resale of electricity. The Company has received inquiries from multiple parties regarding the resale of electricity for EVs by an entity other than the Company. In order to reduce confusion the Company is recommending the following be added to Electric Service Regulation No. 4 – Supply and Use of Service:

4. ELECTRIC VEHICLE CHARGING

A Customer taking Electric Service under a general service schedule may sell electric vehicle battery charging services. Electric vehicle battery charging is not considered resale of electricity.

The Company's recommended change to Electric Service Regulation No. 4 will allow for a new or existing customer that chooses to sell EV battery charging services (EV-BCS) to take service from the Company at standard general service rates.

According to one report prepared by the Electric Transportation Engineering Corporation (dba ECOTality North America), a convenient, efficient, and robust charging infrastructure is necessary for successful adoption of EVs.¹ The DPU agrees with this statement and notes that this observation is not dissimilar to the arguments put forward in Docket No. 13-057-02 for the adoption of natural gas vehicles. This docket and the underlying technology changes raise various issues, including:

1. Does EV-BCS constitute resale of electricity?

¹ For convenience, the ECOTality report is provided as an attachment to this memo.

2. What role, if any, should the utility have in providing EV-BCS in the market; and
3. Rules governing the provision of EV-BCS.²

The Company's application explicitly addresses the first issue by asking the Commission to declare EV-BCS as not constituting resale of electricity. The Company's application, however, does not directly address the other two issues.³

Issue 1: Resale of Electricity

The ECOTality report argues that the purchase of EV-BCS is akin to the purchase of other services where electricity is exchanged but the customer payment is for the service and not solely the electricity. For example, the rental of a recreational vehicle parking space or a hotel room would not be considered resale of electricity. The Division agrees with this assessment: providers of EV-BCS are not providing utility services and, therefore, EV-BCS does not constitute the resale of electricity.

Furthermore, in reviewing the Company's application, the Division found that several states have determined that EV-BCS are not subject to public service regulation.⁴ Florida for example, amended its statutes in 2012 to read:

366.94 Electric vehicle charging stations.—

- (1) The provision of electric vehicle charging to the public by a nonutility is not the retail sale of electricity for the purposes of this chapter. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under this chapter. This section does not affect

² The ECOTality report identifies the third issue in terms of sub-metering. The Division, as discussed herein, believes the issue may encompass other issues in addition to sub-metering.

³ The Company has indicated to the DPU that it has no intention at this time to enter into the market for EV-BCS.

⁴ See, ChargePoint, at <http://sub.mychargepoint.net/evpedia-utility-regulation.php>.

the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.⁵

Similarly, under Hawaii statutes, “Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion,” is exempt from the definition of a public utility.⁶ The ECOTality report identifies several additional states with similar legislation including, California, Colorado, Florida, Hawaii, Illinois, Maryland, Minnesota, Oregon, Virginia, and Washington. As noted, the Division believes this interpretation of statute and underlying utility regulatory policies is appropriate.

Issue 2, Company Involvement

In discussing the application with the Company, the Company indicated that it does not intend to enter the market for EV-BCS. Whether it can, and under what circumstances, are questions that may not need immediate attention.

Issue 3, Rules

While several states have in place legislation determining that EV-BCS is not resale of electricity, they have directed the development of rules governing service. For example, in a paragraph immediately following the general declaration that EV-BCS does not constitute resale of electricity, the Florida law requires that,

- (2) The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

⁵ See State of Florida web site, <http://www.flsenate.gov/Laws/Statutes/2012/Chapter366/All>. Accessed on September 17, 2013.

⁶ See, <http://law.justia.com/codes/hawaii/2010/division1/title15/chapter269/269-1/>, accessed September 17, 2013.

From the ECOTality report, it appears that other states have adopted or are in the process of studying rules that would govern the provision of EV-BCS. Maryland, for example has a 25 member council charged with looking at rules to govern installation and regulation of EV-BCS.

While the Division does not necessarily believe EV-BCS needs the types of rules described for other states, a number of unanswered questions suggest that further Commission or legislative treatment at an appropriate time may be wise.

As it stands, the proposed tariff would allow the utility customer to receive electricity at its usual rate for the relevant volume. Seemingly innocuous, this provision might allow certain EV-BCS providers an unfair competitive advantage based on the provider's underlying rate. Further requests for time-of-day rates, tail-block exceptions, and other special treatment are likely to follow any significant level of investment in EV-BCS. As such, the Commission and other policy makers would be wise to consider further treatment of this topic.

CONCLUSION

Based on its review of the Company's filing, the Division recommends approval of the Company's proposed change to the tariff sheets to include Electric Vehicle Charging in Electric Service Regulation No. 4 – Supply and Use of Service and suggests the Commission and other policy makers consider additional consideration of EV-BCS rules, tariffs, and the like at an appropriate time.

CC Dave Taylor, Rocky Mountain Power
Michele Beck, Office of Consumer Services
Service List