

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**IR 15-510**

**ELECTRIC DISTRIBUTION UTILITIES**

**Investigation into Resale of Electricity by Electric Vehicle Charging Stations**

**MEMORANDUM OF UNITIL ENERGY SYSTEMS, INC.**

**I. Procedural History**

On December 18, 2015, the New Hampshire Public Utilities Commission (“the Commission”) issued an Order of Notice in the above-captioned docket announcing an investigation into the legal and regulatory issues implicated by the potential resale of electricity by electric vehicle charging (“EVC”) stations. The Order of Notice indicated that Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (“Liberty”) had filed a tariff amendment on November 20, 2015 to permit the resale of electricity for electric vehicle charging (“EVC”) stations. Liberty’s tariff amendment was docketed as DE 15-489 and was suspended by the Commission to permit Commission Staff (“Staff”) to undertake and complete an investigation in the instant docket.

The Order of Notice stated that the potential resale of electricity by EVC station operators raises, *inter alia*, issues related to the legal and regulatory status of EVC station operators as public utilities or competitive electric power suppliers, the design and implementation of rates charged to and potentially by EVC station operators, the Commission’s jurisdiction over such rates, terms and conditions of service, and whether changes to electric distribution utility tariffs

are warranted. The Order of Notice also stated that because the Commission expects that all electric distribution utilities will be affected by the resolution of the issues in this docket, participation by the State's electric distribution utilities in the instant investigation is mandatory. The Order of Notice further ordered Eversource Energy, Liberty and Unitil Energy Systems, Inc. ("Unitil") and other interested persons to file legal memoranda on the relevant legal and jurisdictional issues referenced in the Order of Notice on or before January 22, 2016. In accordance with the Order of Notice, Unitil submits this memorandum.

## **II. Legal and Regulatory Status of EVC Station Operators**

### **A. An EVC is not a Public Utility or Competitive Electric Supplier**

Resolution of the question of whether EVC station operators are public utilities begins with an examination of the definition of public utility found at RSA 362:2. That statute defines "public utility" as:

every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, **owning, operating or managing any plant or equipment or any part of the same** for the conveyance of telephone or telegraph messages or **for the manufacture or furnishing of** light, heat, sewage disposal, **power** or water **for the public, or in the** generation, transmission or **sale of electricity ultimately sold to the public**, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products, rural electric cooperatives organized pursuant to RSA 301 or RSA 301-A, and any other business, except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction. (Emphasis added.)

Thus, an EVC station operator can only be deemed a public utility if it owns, operates or manages and plant or equipment (or any part of the same) for the furnishing of power for the public, or in the sale of electricity ultimately sold to the public. The Commission's Order of

Notice in this docket does not provide any factual information about EVCs other than stating that “they are a growing presence in New Hampshire and in New England, and their use is supported by both State and regional initiatives...”. Order of Notice, IR 15-510 (Dec. 18, 2015), p. 1.

Although the Order of Notice lacks factual information describing the details of EVC equipment and operations, it does not seem reasonable to conclude that EVCs fall within the RSA 362:2 definition of owning, operating or managing equipment for the furnishing of power or in the sale of electricity.

First, Unitol submits that EVC equipment does not fall within the definition and intended scope of RSA 362:2. Charging stations operate in the marketplace similar to other businesses that involve the end-use consumption of electricity, such as data centers, laundry services, or even refrigeration. These end-uses do more than simply offer electric commodity for resale; rather, these end-uses represent a bundled product or service that includes such components as fees for the use of the equipment, the real estate upon which the facility is located, the billing services associated with the facility, as well as the cost of the electric commodity. Alternatively, the charging service may be provided for free to facilitate or incent a customer to purchase other goods or services at the location where the charging service is offered.

Although EV charging equipment outputs electricity, this equipment is not designed to transmit power to an end user customer over transmission or distribution power lines, and does not consist of the elements typically considered to be part of an electric distribution system, such as poles, fixtures and overhead or conduit conductors. Instead, the equipment in question is intended to be used as a battery charger. From a jurisdictional standpoint, an EV battery charger is no different from other appliances that can be plugged into an electrical outlet or otherwise attached to a customer’s circuits behind the meter.

The Massachusetts Department of Public Utilities (MDPU), although interpreting a statute that defines the essential components necessary for the distribution of electricity more narrowly than RSA 362:2's "any plant or equipment or any part of the same," concluded that "[t]he equipment component of EVSE used to supply the electricity is in the nature of a connector or cord, not a line," and noted further that "[i]t is also instructive that a distribution company delivers electricity over its lines at alternating current, while EVSE typically converts the alternating current from the utility to direct current for delivery to an EV." Investigation by the Department of Public Utilities upon its own Motion into Electric Vehicles and Electric Vehicle Charging. D.P. U. 13-182-A, August 4, 2014 at 6.

Second, EVC stations are not engaged in the "sale of electricity ultimately sold to the public" under either RSA 362:2 or the Commission's Rule PART Puc 2002.05 definition of a Competitive Electric Power Supplier. Based on the nature of the use of charging stations and the service they provide (i.e., to "fuel" electric vehicles), the use and operation of charging stations is best characterized as a consumer-charging service and not a sale of electricity. The MDPU reached this very conclusion:

We find that an EVSE owner or operator is not selling electricity within the meaning of Chapter 164. Rather, the EVSE owner or operator is selling EV charging services, i.e., the use of specialized equipment -- EVSE -- for the purpose of charging an EV battery. EVSE allows the customer do to only one thing, charge an EV battery. This result is true regardless of the business model the EVSE owner/operator uses to charge customers for charging services, even if the charge is by a per-kilowatt hour basis or other volumetric energy basis.  
D.P. U. 13-182-A at 7.

The New York Public Service Commission reached a similar conclusion. "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.” See In the Matter of Electric Vehicle Policies, N.Y.P.S.C. 13-E-1099, at 4 (November 14, 2013). This position has been supported by the legislatures and public utility commissions in ten other states, where they have determined that charging stations that operate “for the sole purpose of providing electricity as a transportation fuel do not fall into the definition of a ‘public utility’ and therefore are not subject to regulation as such an entity.”<sup>1</sup>

Finding that EVCs are “selling” electricity to retail customers would result in a broad expansion of Commission jurisdiction over modern services that have evolved without the need for regulation. For example, such services may include cellular phone charging services that are available for a fee at various airports. There is little to distinguish these battery charging services from EVCs. If one battery charging service is construed as selling electricity to retail customers, then other battery charging services may fall within regulatory control as well. This would not be a good use of the Commission’s limited resources and may hinder technological development.

Lastly, Unutil believes that EVCs are not “electricity suppliers” within the meaning of RSA 374-F:2, II. That statute defines electricity suppliers as: “suppliers of electricity generation services and includes actual electricity generators and brokers, aggregators, and pools that arrange for the supply of electricity generation to meet retail customer demand, which may be municipal or county entities.” EVCs do not generate, broker, aggregate or otherwise arrange for electricity supply to meet retail customer demand or load. As described above, EVCs provide electrical outlets that enable electrically powered vehicles to obtain electricity for recharging purposes.

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<sup>1</sup> *Lessons Learned – The EV Project Regulatory Issues and Utility EV Rates*, ECOTality North America (Mar. 14, 2013), <http://www.theevproject.com/cms-assets/documents/103425-835189.ri-2.pdf>, at 4. The ten states noted are California, Colorado, Florida, Hawaii, Illinois, Maryland, Minnesota, Oregon, Virginia, and Washington.

## **B. Changes to Electric Distribution Utility Tariffs Should be Determined on a Case-By-Case Basis**

From a distribution service perspective, EVCs are end-use devices that are installed by utility customers and the electric distribution company's service to those customers is governed by Commission-approved tariffs and service policies. There are generally two types of EVC charging facilities. "Private" EVC charging facilities are typically those installed for exclusive use by the homeowner or business. "Public" charging facilities might require users to pay a fee that incorporates costs other than the cost of electricity delivered by the electric utility to the meter, and in other cases such as at shopping malls, restaurants and other venues, EV charging may be offered at no cost as an amenity to attract customers. As discussed above, the Commission should have no role in regulating these facilities, as it already regulates the provision of distribution service by the utility to these customers, consistent with its jurisdiction over rates and service. The question of whether changes to the utilities' tariffs related to the provision of electric service to EVC operators should be decided on a case-by-case or utility-by-utility basis depending upon the particular circumstances demonstrated.

### **III. Conclusion**

As explained above, Unifil submits that the Commission should not attempt to comprehensively regulate the operation and end use of EV charging. Charging stations operate in the marketplace similar to other businesses that involve the end-use consumption of electricity. The Commission already regulates the provision of distribution service by the utility to these charging station customers, consistent with its jurisdiction over rates and service.

Respectfully submitted,

**By:**

A handwritten signature in black ink, appearing to read "Gary Epler". The signature is fluid and cursive, with the first name "Gary" and last name "Epler" clearly distinguishable.

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