

Before the House Committee on Energy, Utilities and Telecommunications

February 15, 2017

Testimony in Opposition  
On House Bill 2166

Submitted by Jeff McClanahan, Director, Utilities Division  
On Behalf of  
The Staff of the Kansas Corporation Commission

Chair Seiwert, Vice Chair Garber, Ranking Minority Member Kuether, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today on behalf of the Staff of the Kansas Corporation Commission (Commission).

HB 2166 would amend current law regarding electric vehicle charging services and stations by changing the descriptions of entities excluded from designation as “public utilities” and “retail electric suppliers.”

First, the bill would exclude from the description of “public utility” any entity that “furnishes electric vehicle charging services” on premises owned or operated by the entity. Second, the bill excludes from the designation of “retail electric supplier” any entity that furnishes electric vehicle charging services on premises owned or operated by the entity. Entities currently under the jurisdiction of the Kansas Corporation Commission are not excluded from being either “public utilities” or “retail electric suppliers.”

Excluding certain entities from “public utility” status allows private businesses to provide electric vehicle charging services without becoming a public utility and submitting to Commission jurisdiction. Excluding private businesses from “retail electric supplier” status allows entities that are not “public utilities” to charge a fee for electric vehicle charging services without violating the Retail Electric Suppliers Act.

As proposed, the bill would not prevent a public utility from using its monopoly power to enter what should be a competitive market. By not exempting all sales for end use as a motor fuel, a public utility will continue to be able to seek recovery of its investment in electric vehicle charging stations and the associated operating and maintenance costs in its regulated rates charged to its captive customers. This would enable cross-subsidization and provide a dramatic

cost advantage for public utilities over potential competitors, resulting in the ability of a regulated utility to set prices lower than potential competitors.

Commission Staff is opposed to the proposed bill based on a previous Commission Order in Docket No. 16-KCPE-160-MIS (16-160 Docket) that addressed Kansas City Power & Light's application to include electric vehicle charging stations in its Commission jurisdictional rates.<sup>1</sup> Specifically, the Commission's Order states:

The Commission denies KCP&L's request to have ratepayers finance the CCN. The evidence demonstrates the CCN is not necessary. To the contrary, private businesses are already installing stations to incentivize customers, employees, and guests. Rather than burden the ratepayers, the Commission believes either KCP&L shareholders or private businesses should bear the costs of building and operating EV charging stations, as they are the beneficiaries of increased EV ownership. Relying on the private sector to finance an EV network also eliminates concerns of cross-subsidization. [Order Denying KCP&L's Application for Approval of It's Clean Charge Network Project and Electric Vehicle Charging Station Tariff at paragraph 35].

The Commission's decision in the 16-160 Docket was based on a number of concerns. Most relevant to the proposed statutory revision in this bill were the concerns that: 1) businesses have already demonstrated a willingness to install charging stations to attract and retain employees, customers or tenants and ratepayers should not be subsidizing the cost of charging stations for the benefit of businesses; 2) most vehicle charging takes place at home and there is insufficient evidence that there is enough demand for a charging network to be funded by ratepayers; 3) the current charging network technology may become obsolete prior to becoming fully depreciated if it is included in a utility's rate base; and 4) including an electric charging network in rates will create cross-subsidy issues between customers in different geographic areas, between customers with and without electric vehicles, and between higher income earners who tend to own electric vehicles and lower income earners unable to afford an electric vehicle.

Regulated public utilities will also have a competitive advantage due to their access to cheaper internal financing and a lower risk profile than non-regulated entities. The public utility can then leverage its investment advantage to create additional advantages. For example, the investment advantage can be leveraged to acquire choice locations for charging stations. Locking-up of choice locations creates a barrier for vehicle charging customers that limits customer switching and handicaps late arrivals in the market. The result is an unfair financial advantage and the

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<sup>1</sup> See, Staff Direct Testimony of Joshua Frantz

(<http://estar.kcc.ks.gov/estar/ViewFile.aspx/S20160606160644.pdf?Id=73cc8297-c409-42c6-8b53-3631443f0a8d>),

Staff Direct Testimony of Robert Glass

(<http://estar.kcc.ks.gov/estar/ViewFile.aspx/S20160606164028.pdf?Id=a5b67ba3-e394-4b72-ac73-60ecdbaa5c6d>),

and Order Denying KCP&L's Application for Approval of its Clean Charge Network Project and Electric Vehicle Charging Station Tariff

(<http://estar.kcc.ks.gov/estar/ViewFile.aspx/20160913110134.pdf?Id=4b0556f3-425d-4469-8eb1-a105109511ec>).

possibility of preventing the development of a potentially competitive market.

While Commission Staff is opposed to the proposed current revisions, we do support a simpler, deregulated approach to the electric vehicle charging services market as we recommend below. The electric vehicle charging station market should be open for all to invest in and operate charging stations. If a regulated utility wants to be part of the market, then it should use a non-regulated subsidiary to invest in and operate charging stations.

The Commission Staff believes that the appropriate method for deregulating the electric vehicle charging station market is to mirror the current statutory exemption for the marketing or sale of compressed natural gas as a motor vehicle fuel. Specifically, Commission Staff recommends the Committee consider the following amendment to subsection (d), which would eliminate the need for the language proposed in subsection (d)(2):

(d) The term "public utility" shall not include:

Any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas *or electricity* for end use as motor vehicle fuel.