

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE: REGULATION OF MUNICIPAL ELECTRIC UTILITIES AND ELECTRIC COOPERATIVES	DOCKET NO. RMU-2020-0027
--	---------------------------------

The Iowa Environmental Council (IEC) and Environmental Law and Policy Center (ELPC) provide the following comments to the Iowa Utilities Board (Board) in response to the Order Commencing Rule Making filed October 30, 2020, in Docket No. RMU-2019-0027. Our comments focus on the proposed rule addressing electric vehicle charging and are consistent with our comments on the parallel rule language proposed to be adopted into 199 IAC 20.20 in Docket No. RMU-2020-2020.

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.

The Board went through 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. The Board issued several subsequent requests for comment. Stakeholders including utilities, the Office of Consumer Advocate, environmental groups, electric vehicle charging industry organizations, and others provided comments during this process. On September 30, 2019, the Board issued a final rule. RMU-2018-0100, Order Adopting Amendment (issued Sept. 30, 2019).

The Iowa Administrative Rules Review Committee objected to the Board's rule at its meeting on November 12, 2019. This objection prompted the Board to revise its rule and commence a new rulemaking. RMU-2020-2020, Order Commencing Rulemaking (issued Oct. 14, 2020).

ELPC and IEC supported the Board's previous 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 agreed 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 be an ancillary service. In its original rule, the Board provided a straightforward rule that gets the regulatory balance right.

The new rule maintains a significant amount of the previous rule. As the Board explains in the order commencing the EV rule making:

In the Board's last EV rule making in Docket No. RMU-2018-0100, all commenters appeared to agree that an entity that acquires its electric power from an incumbent electric utility may provide commercial EV charging services without being considered a public utility. The Board's proposed new rule 20.20 utilizes this universal point of agreement as its centerpiece.

RMU-2020-2020, Order Commencing Rulemaking (issued Oct. 14, 2020). This agreed-to principle that EV charging powered by the incumbent utility does not create a public utility is reflected in the first sentence of the new 27.12. ELPC and IEC continue to support the portions of the Board's new rule that maintains the previous rule and provides clarity on when commercial EV charging services do not make an entity a public utility.

The main change is in the second sentence of new rule is 27.12. This new sentence reads: “If an electric vehicle charging station obtains electric power from a source other than the electric utility, the determination of whether the commercial or public electric vehicle charging station is a public utility shall be resolved by the board.” The Board provides some protection for customers of rate-regulated utilities with the addition of new rule 20.20(3) that states: “A rate regulated utility shall not, through its filed tariff, prohibit electric vehicle charging or restrict the method of sale of electric vehicle charging at a commercial or public electric vehicle charging station.” Because Chapter 27 does not apply to rate-regulated utilities, the proposed 27.12 does not include the sentence in 20.20(3) and therefore does not provide the same degree of customer protection in tariffs.

This new language in both 20.20(1) and 27.12 is consistent with the application of a multifactored test articulated in *SZ Enterprises* in that it allows such an application of the test in the future when the Board makes a determination. However, the Board’s new rule could unnecessarily shift the burden to every customer who may want to pair electric vehicle charging infrastructure and on-site distributed generation if a utility challenges each application. There are many customers who fit in categories that the Board has determined in the previous rulemaking or other dockets would not be a public utility and could now be required to get an individual determination by the Board if the utility pursues it.

ELPC and IEC support the continued application of the multi-factored analysis in *SZ Enterprises*, but we think that the Board should clearly limit the need for a more cumbersome case by case determination. The Board has recently found instances of EV charging that are part of the on-site requirements of a customer with distributed generation. In its November 24, 2020, Order in Docket TF-2020-0235, the Board “determined that there are instances in which electric vehicle

charging should be included in a customer's on-site electric requirements including: . . . non-residential customers with electric vehicle charging that is incidental to the customers' business related requirements." TF-2020-0235, Order at p.8 (issued Nov. 24, 2020)¹. If the Board has found EV charging to be included with on-site requirements of a customer with distributed generation, this category of use will meet the multi-factored test from *SZ Enterprises* and can be categorically excluded from consideration as a public utility without the need for a case by case determination.

In developing its previous rule, the Board provided a rationale and analysis for removing commercial electric vehicle charging from the definition of public utility that applies to the new rule as well:

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.

RMU-2018-0100, Order at 6 (issued Feb. 6, 2019).

¹ The Board's determination is consistent with MidAmerican's analysis as well. From TF-2020-0235, MidAmerican Energy Company Response to Board Order Requiring Additional Information, (filed Oct. 16, 2020)

To be clear, MidAmerican believes there are cases where electric vehicle charging would be included in a customer's on-site electric requirements. In addition to residential customers, MidAmerican believes two types of non-residential customers can properly include electric vehicle charging as part of their on-site electric requirements. The first type is a non-residential customer where electric vehicle chargers are incidental to the customer's business-related electric requirements. An example would be where the generation facility is intended to offset a customers' retail commercial building, and electric vehicle chargers at the same point of service are incidental to the customer's overall requirements. The second type is a non-residential customer using nonpublic chargers to service fleet vehicles used in connection with their own business operations. In this scenario, the non-public nature of the chargers ensures that charging is connected to business operations and, therefore, the activity should rightfully be included in the customer's overall electric requirements.

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 (i.e. incidental) 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 *SZ Enterprises* factors to EV charging). The fact that the factor analysis would not change with the addition of distributed resources to the typical EV charging application that is incidental to the business supports further limiting when the Board requires a case by case determination.

In comments in RMU-2018-0100, ELPC and IEC highlighted examples of electric vehicle charging paired with solar that would be an incidental use such as the Hy-Vee in Urbandale that has charging stations under a few solar panels to draw in environmentally minded customers, 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, the movie theater in Waukee with a solar canopy and EV charging in its parking lot, and the parking garage in Des Moines that has solar panels on its roof and four spots out of four hundred for electric vehicle charging. There are potentially countless other examples of incidental EV charging, and these examples are likely to comprise a significant number of the case by case determinations the Board will be required to make.

In evaluating the factors used in *SZ Enterprises*, these examples of incidental use and many others would not be a public utility, and we have sufficient information to make that determination categorically right now. It is inefficient, unduly burdensome, and unnecessary to require every

grocery store, movie theater, bank, parking garage, restaurant, etc. with a solar array and an EV charger in its parking lot to come to the Board for a determination.

The Board should add a sentence to new rule 27.12 that states “For purposes of this rule, nonresidential customers with on-site generation and electric vehicle charging that is incidental to the customer’s business-related requirements are not public utilities and do not need an individual determination by the Board.” This addition would ensure that the typical commercial EV charging service that is incidental to a business does not repeatedly end up being brought to the Board for a determination.

ELPC and IEC appreciate the Board’s continued application of the multi-factored test in *SZ Enterprises* to affirm that commercial EV charging does not make an entity a public utility when the incumbent utility provides electricity. The Board’s approach in the new rule allows the utility to bring any commercial EV charging paired with electricity from another source to the Board for determination. This approach risks being inefficient and burdensome and could be improved by clarifying that when EV charging is incidental to a business it will not be a public utility.

DATE: December 8, 2020.

/s/ Michael R. Schmidt

Michael R. Schmidt (AT0013962)
Iowa Environmental Council
505 5th Avenue, Suite 850
Des Moines, Iowa 50309
Phone: (515) 244-1194
Email: schmidt@iaenvironment.org

**ATTORNEY FOR IOWA ENVIRONMENTAL
COUNCIL**

/s/ Joshua T. Mandelbaum
JOSHUA T. MANDELBAUM (AT0010151)
Environmental Law & Policy Center
505 5th Avenue, Suite 333
Des Moines, IA 50309
Phone: 515-244-0253
Fax: 515-244-3993
Email: jmandelbaum@elpc.org

**ATTORNEY FOR ENVIRONMENTAL LAW &
POLICY CENTER**