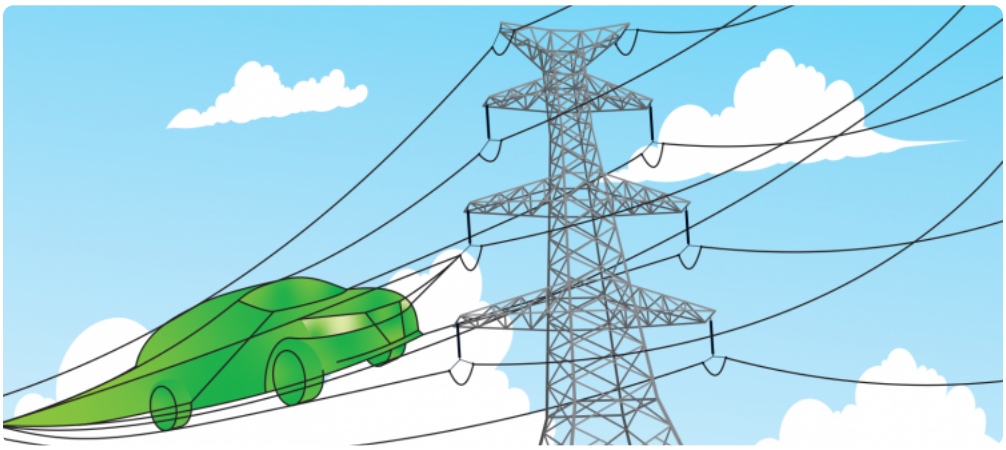

January 2019

FEATURE

Charging Back

Fuel retailers investing in an EV infrastructure seek a level playing field with utility companies when it comes to reselling electricity.

BY JERRY SOVERINSKY

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In 2016 , we detailed the growth of electric vehicle (EV) adoption among consumers, presenting the trend as an emerging alternative fuel sales opportunity for retailers. The investment in an EV charging infrastructure was considerable, we noted—installing a charger cost as much as $50,000, while upgrading a power panel could reach $25,000 when retrofitting an existing site. These high costs made the financial return speculative at best. Still, we concluded, "Ignore the evolving EV market at your peril," as staying ahead of a potential shift in fuel-type consumption could provide retailers long-term benefits.

Slightly more than two years later, we reflect on our earlier position with a revised perspective. Electric vehicle sales (both battery and plug-in EVs) have continued to grow, increasing 26% between 2016 and 2017, according to The Fuels Institute (to be clear, the 20% increase resulted in total electric car sales of just 1.1% of all vehicle sales—hardly the popularity of, say, a new iPhone). From October 2017 to October 2018, the increase in sales reached 58%, or a combined 1.7% of all vehicle sales.

The long-term forecast for electric vehicle sales projects that battery electric vehicle sales will reach 12% of all U.S. vehicle sales in 2050, according to the U.S. Information Administration's *Annual Energy Outlook 2018*. Fuels Institute and Navigant research forecasts that battery-powered and plug-in electric vehicles could total 5.5% to 8.7% by 2025. And many forecasts put EV sales at 20% of all vehicles sold sometime in the 2030s.

This all spells positive news for those investing in an EV infrastructure. Or does it?

"Many states don't even allow you to resell electricity," said Anthony Lambkin, who was the EV infrastructure and business development manager for Nissan North America, when we spoke with him in 2016. (Today, Lambkin is senior manager, charging operation for Electrify America, the company set up by Volkswagen that's investing $2 billion to build a nationwide charging network.) For those retailers already investing in EV or considering the move, reselling electricity has come up against numerous legislative hurdles. Here's what NACS and your colleagues are doing to make sure your interests are represented as the EV infrastructure conversation evolves.

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> We want electricity to be treated like any other product, and for us to have the same opportunities to resell it.

GOVERNMENT-LED CHARGE

"Government policy is outpacing consumer demand," said Paige Anderson, NACS director of government relations, acknowledging, "Electric vehicles are still a niche market." And while the environmental benefits of cars that run on electricity rather than gasoline are still being examined ("it depends on how the electricity is generated in the first place," she said), government policy has progressed ahead of any final analysis, a move that Anderson said has created new challenges. "It can be dangerous for a government policy to pick technological winners and losers, because it's prone to mistakes and then can't keep up with the changing state of technology," she said.

"We're much better off if government policy is based around performance-type goals, letting industries then figure out the most efficient ways to get there," said Doug Kantor, a partner at the Steptoe & Johnson law firm and NACS legal counsel. "Any time you can have innovation and competition, that's a preferred way to go."

UNRESOLVED CONCERNS

As lawmakers promote EV adoption, they've ceded substantial control to utility companies, respecting their distribution experience. "Policy makers believe that electric utilities will play a key role in [EV charging station] expansion regardless of their EV-promotion programs, because EV charging stations will connect to utilities' distribution systems, and utilities will have to manage any resulting increase in electricity demand," according to a Foley Hoag LLP report prepared for fuel marketing association SIGMA. A less compelling argument for allowing utilities to control the resale of electricity recognizes the relationship between utilities and their customers as fostering the promotion and education about EVs, the report notes.

Regardless of these intentions, Kantor said, policymaking is moving ahead of practicalities, creating untenable, long-term conflicts—namely, a viable infrastructure. "Utility companies don't have a way to build out an EV infrastructure to compete with more than 100,000 gas stations," Kantor said, and this will impede consumer adoption. "If the private sector [convenience stores] isn't involved in building out the electric vehicle infrastructure and making a profit on it, there's never going to be enough infrastructure to satisfy consumers," Kantor said.

For now, he said, stations that build an electric charging station often partner with an auto manufacturer, receiving incentives for providing the service but little else. "Often in those situations, they're just giving away the electricity, because many states don't allow retailers to sell electricity to consumers." And that's not a sustainable formula for cultivating investment.

NACS is focused on ensuring that whatever the government ultimately decides, its members are treated on a level playing field. "We want electricity to be treated like any other product, and for us to have the same opportunities to resell it. We want to make sure that we're not excluded from anything," Kantor said.

COMPETITIVE DISADVANTAGE

A few states already have put retailers at a disadvantage, having budgeted funds toward the utilities developing EV charging stations. In California, which strongly supports eco-friendly initiatives, the state Public Utilities Commission last May instructed its largest utilities to construct an EV infrastructure that will cost more than $775 million. Whether such a move advances the state's green goals is debatable; the more pressing question for NACS and industry members is who will foot the bill for the development. "The biggest funding is coming from ratepayer-based investments, approved by the Public Utilities Commission," said Samuel Bayless, regulatory issues specialist for the California Fuels and Convenience Alliance. "This is a lot of ratepayer money flowing to EV infrastructure."

> Even if c-stores are allowed to compete with utility companies, they must do so against an entity that bears minimal financial risk.

Therein lies the inherent disadvantage for convenience store retailers, who even if they are allowed to compete with utility companies, must do so against an entity that bears minimal financial risk. "From our perspective, that's an unfair situation," Anderson of NACS said. While other states are considering similar arrangements as in California, they're being met with industry resistance.

When Colorado's regulated utilities were attempting to treat the costs of erecting EV charging stations as part of its backbone infrastructure, passing along these costs to all of its customers in the form of additional monthly fees, the Colorado Wyoming Petroleum Marketers Association (CWPMA) opposed the move. A bill introduced in 2017, HB1i7-1232, Public Utilities Alternative Fuel Motor Vehicles, would have allowed utilities to build facilities to support EVs and recover costs. "We've managed to stop that legislation," said Grier Bailey, director of CWPMA, "preventing them from allowing their investments to be recouped from ratepayers at a guaranteed rate of return."

With a disproportionately small percentage of electric vehicles in the state, charging all utility customers a fee to build out an EV infrastructure would have benefitted the utilities unfairly, Bailey said. "Why should EVs get the benefit? There are a lot of other things that taxpayers can invest in for the public good—like X-rays, for instance—that provide greater benefits and that impact more people."

Other industry associations also are taking a stand, with several speaking out at utility commission meetings in the Midwest earlier this year, maintaining that utility customers should not be stuck with funding an EV charging infrastructure via a ratepayer increase.

"Consumers and taxpayers should not be forced to pay more in taxes, fees and/or electric utility rates so that someone else can purchase and operate an expensive electric vehicle," said James Watson, executive director of the Illinois Petroleum Council, to the Illinois Commerce Commission, according to *Energywire*.

> We can't go to a rate base like the utilities do to get free money to deploy an EV infrastructure. And why should we?

ON THE HILL

The battle recently found its way to Washington, D.C. Testifying last year on behalf of NACS before the U.S. House Committee on Energy and Commerce, Subcommittee on Environment, Dylan Remley, senior vice president, terminal operations, for Global Partners LP, urged lawmakers to provide a level playing field when it comes to developing an EV infrastructure. "The single greatest concern that many of the association's members have with the push to transition to EVs arises from efforts by state public utility companies to enter the alternative fuel recharging space with an unfair market advantage," Remley said. "To be clear, we have no problems with a public utility company entering the electric fuel recharging business, provided it is competing for that business on equal footing with the private sector. Global has partnered with and is actively seeking additional partners in the EV refueling space."

Remley noted the high cost for retailers to add charging stations to their facilities, expenses they must bear alone. “We can’t go to a rate base like the utilities do to get free money to deploy an EV infrastructure. And why should we?” Besides, he added, even with financial backing, utilities still aren’t well-positioned to provide the infrastructure needed for EV adoption. “Why would you skip over the best corners in town [convenience stores] to deploy an [EV] infrastructure somewhere else that doesn’t even meet current driving patterns?”

STAYING AHEAD OF THE DEBATE

With consumer adoption of electric vehicles still modest, the dispute with utility companies isn’t pressing, yet it still should be top-of-mind. “Retailers should be aware of what’s going on, because we don’t want government policy to run ahead of where it should,” Kantor said.

For that, he offered two ways that retailers can get involved. “First, go to your utility commissions and make sure that utility companies are not getting unfair subsidies,” he said. And second, “Talk to your state and federal legislators to make sure that they aren’t pushing electricity over liquid fuels.”

In the meantime, NACS is actively monitoring and engaging at the federal level with legislators, commenting on federal rulemaking—U.S. Environmental Protection Agency regulations, for instance—and working with state associations to bring a substantial mass to its advocacy efforts. “Much of that requires ongoing education,” Anderson said, “for all parties involved.”

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ABOUT JERRY SOVERINSKY

Jerry Soverinsky is a Chicago-based freelance writer and a *NACS Magazine* contributing writer. Visit his work at www.jerrysoverinsky.com (https://www.jerrysoverinsky.com/).

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