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ENVIRONMENTAL LAW

Powering Up Parking Lots: A Primer on the EV Charging Network

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Special to the Legal

With gas prices rising, electric vehicles (EVs) and plug-in hybrid electric vehicles (PHEVs) are hot commodities once again. According to Bloomberg News, the Chevy Volt posted record sales in March 2012 as gas prices hit their highest levels since 2008. Moreover, by 2020, some analysts project that EVs and PHEVs will account for 10 percent of all vehicles sold in the United States.

As more EVs and PHEVs hit the road, commercial properties will be uniquely impacted as tenants, shoppers and other building users will increasingly come to expect access to an EV charging station. Even if a commercial property resists voluntary changes, some local governments may require the installation of charging stations as a condition of land use approval. Commercial property owners would be wise to begin thinking about the challenges and opportunities associated with an EV charging network that will likely extend into their parking lots and garages. This article is intended to provide lawyers working with commercial property owners, parking lot owners and other parties interested in owning/operating EV charging stations with a primer on charging station technology, and the practical and legal issues associated with owning and hosting a station.

BACKGROUND ON EVS AND CHARGING STATIONS

Nearly every major automobile manufacturer has either introduced or has an EV or a PHEV in its product pipeline.



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By now, many people are familiar with the Chevy Volt or the Nissan LEAF, but Ford, Mitsubishi, BMW, Toyota and Tesla, among many others, are in various stages of introducing EVs and PHEVs to the U.S. market.

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According to Nissan, approximately 70 percent of Americans drive less than 40 miles per day, and 95 percent drive less than 100 miles per day. Based on these driving habits, today's EVs are more than capable of meeting the daily roundtrip commuting needs of most Americans. Because electricity is generally cheaper when supplied to a residence, most EV owners are expected to charge their vehicles at home. Nonetheless, many experts predict that there will be a significant demand for commercial charging stations, if only to provide EV owners with peace of mind before driving home. In one commercial

deployment of EVs, the host site found that several charging station users plugged in for only 5 or 10 minutes at a time to get a "quick charge" to ensure enough power to get home.

EV charging stations come in three basic varieties referred to as Level 1, Level 2 or Level 3 stations. Level 1 stations have the lowest cost of about \$500 to \$1,500 per unit, and typically provide only 4.5 miles of battery range for every hour of charging (charging times may vary depending on weather conditions, the on-board charger and other variables). However, because of their low cost, Level 1 stations are the primary choice for residential installations, and the extended charge time is generally not an issue for those owners that charge their cars at home overnight.

Level 2 and 3 stations are the preferred options in commercial settings. Level 2 stations generally cost anywhere from \$4,000 to \$20,000 (the wide disparity is attributable to varying installation requirements). Most Level 2 stations can provide approximately 26 miles of battery range per hour of charging. Certain Level 2 stations can even provide up to 70 miles of range per hour. Level 3 (DC Fast Charging) stations generally cost \$70,000 to \$100,000 to install, but are capable of adding up to 40 miles of battery range in just 10 minutes of charging.

PRACTICAL AND LEGAL CONSIDERATIONS

Commercial property owners may choose to install EV charging stations for a variety of reasons. EV charging stations can attract tenants to office space or shoppers

to a retail center, or a charging station may be necessary simply to keep up with competitors down the street. In addition, EV charging stations may be eligible for points toward LEED certification and may provide the building owner with an excellent marketing opportunity.

EV charging stations may also provide the owner with an additional revenue source by charging for the electricity consumed and/or selling advertising space on the station. While the usage of the charging stations will likely be minimal over the next couple of years, each charging station may ultimately provide a reasonable payback, or at a minimum, the stations may be cost neutral. For those property owners not interested in getting into the business of owning, operating and maintaining charging stations, several companies are now offering charging stations at no cost to the property owner (some companies even offer to share a small percentage of profits generated by the station). In those situations, the property owner may enter into a lease or a “host” agreement with the charging station provider who then takes responsibility for operating and maintaining the charging station.

Whether a commercial property owner directly purchases a charging station or contracts with a service provider to own/operate the station, there are several practical and legal issues to consider, including the following:

- *Location, location, location:* The most basic consideration is to select an appropriate location for the charging station. To minimize the costs of the installation, it is important to locate the charging stations as close as possible to an electric panel that is capable of supplying the necessary voltage. If the building needs an electrical upgrade, or an extended conduit, the costs of the system can soar. At the same time, it is also important to locate the stations in an area that will incentivize/maximize their use while not disrupting existing parking. For example, the stations could be placed in a convenient location such as near a building entrance or near a transit hub.

- *Will users have to pay for the ability to charge?* Some property owners may choose to install charging stations and

make them available free of charge to authorized users as an amenity (think validated or valet parking). Other property owners may charge users, or allow the third-party owner of the station to charge users for the electricity consumed by the EV. If the property owner chooses to charge users for the electricity, it is important for the owner to understand the triggers for utility regulation. In general, only a utility company may sell electricity directly to users. To avoid potential regulation, some charging station owners charge a fee for the right to park in the spot serviced by the station.

- *What approach do you want to take with unauthorized users?* In most cases, charging stations will simply be designated with a sign that establishes who is authorized to park in the spot and for how long. But what happens if a non-EV owner uses the space, or when an EV owner uses the space beyond the time needed to charge his or her vehicle? For an EV owner who needs a charge to get home, the lack of availability is a significant concern. In addition, the lack of availability could lead to traffic problems as EV owners wait in line for a chance to charge up. Many of the options for enforcing usage rules for EV charging stations are ineffective, or even counterproductive (e.g., towing or ticketing). Consequently, some property owners may choose not to enforce parking rules and simply rely on good-faith and nonpunitive measures (e.g., warnings). Alternatively, a few property owners have established valet-type charging services, where a parking attendant will move the EV once it is done charging.

- *Does an EV charging station conflict with any tenant agreements or local ordinances?* Some tenant lease agreements may include use restrictions that could, among other things, impact the property owner’s desired location for a charging station, or prohibit the owner

from recovering any costs associated with the station. Similarly, local ordinances could, among other things, restrict the locations of the charging stations, require permitting or limit advertising.

- *Lease/host agreements:* For property owners choosing to contract with a third party to install, operate or maintain the charging station, the parties must address contractual concerns such as whether the station owner gets exclusive rights to install charging stations, how the parking restrictions will be enforced, maintenance obligations, advertising, revenue sharing, vandalism concerns, as well as more typical issues such as indemnities, insurance and term.

In sum, lawyers advising commercial property owners should be aware of the expected surge in EV usage and be prepared to assist clients in evaluating the challenges and opportunities associated with charging infrastructure. Commercial properties that install charging stations in the near term can take advantage of the positive PR and provide their tenants, shoppers and other building users with an amenity that may ultimately become the standard. •

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