Retail Primer on Electric Vehicle Charging Stations

Brian W. Blaesser
Robinson & Cole LLP
Boston, MA

Sorell E. Negro
Robinson & Cole LLP
Hartford, CT

Retailers and shopping center landlords across the country are installing electric vehicle (EV) charging stations to attract customers while providing an increasingly needed service as EV sales rise. The EV charging stations bolster a retailer's and center's "green" image and allow customers to recharge while shopping. They encourage drivers of EVs to shop at the host retailers' locations and encourage longer shopping stays. According to the U.S. Department of Energy's 2011 Vehicle Technologies Report, released in February, there are currently over 4,400 EV charging stations in the United States. About 30 different models of EVs are either on the market or will soon be available, and these numbers are growing.

Retail stores and shopping centers are in many ways ideal locations for public charging stations because the time generally needed for meaningful charging—an hour or two—is also a suitable length of time for shopping. Retail locations for EV charging stations are more useful than airports or hotels for people who are in transit. Certain retailers have already sought to ramp up their commitment to sustainability and capitalize on the "first-mover" advantage by installing EV charging stations at many of their locations. For example, Walgreens plans to install EV charging stations at 800 of its stores. Menno Enters, Director of Energy and Sustainability for Walgreens, explains that these stations are not a way for the store to make money, but rather to encourage customers to come to its stores and to emphasize wellness and sustainability. Kohl's is installing EV charging stations at more than 30 locations to start, and Best Buy is installing them at a dozen stores.

EV charging stations typically cost $2,000 to $6,000, and installation can cost as much or more, depending on the station's location and the complexity of the installation. How much, if anything, a retailer ends up paying—for the charging stations and/or installation—depends on several factors, as explained below. Initially, EV charging stations were substantially subsidized through a federal tax credit, but this tax credit expired at the end of 2011. Nevertheless, some states and municipalities are developing ways to encourage, or require, the establishment of EV charging infrastructure. For example, Hawaii has enacted a statute requiring that parking facilities with at least 100 publicly available parking spaces designate 1 percent of those spaces to EVs, provided that at least one of those designated spaces has an EV charging station. Haw. Rev. Stat. § 291-71 (2011).

There are various types of EV charging stations, but the type that is projected to be the most common in the foreseeable future

is a "Level 2" charger. The Level 2 charger has an alternating current (AC) of 208-240 volts at up to 80 amps. A Level 2 charger will charge an EV between 80 and 100 percent in 2 to 3 hours. While a faster charger, called the DC Fast Charge, is available and can charge an EV between 50 and 80 percent in about half an hour, it is more expensive and puts a much higher strain on the electrical grid and on the car's battery. *See* Advanced Energy, *Charging Station Installation Handbook for Electrical Contractors and Inspectors* 7 (2011). The Level 2 charger safely and efficiently charges an EV, and pairing Level 2 chargers with retailers conveniently allows customers to shop while charging.

If a retailer wants to join this growing green trend, what should it do? In addition to practical considerations such as whether to purchase, how to purchase and where to locate the chargers, there are legal issues to address. Some states, e.g., Hawaii, have enacted statutes requiring a certain number of chargers per parking spaces. There are documents, such as the host-provider agreement, that should include certain provisions.

This article describes the steps and considerations involved in installing an EV charging station at a retail location, whether it is a stand-alone store or a shopping center. The information below applies to retailers who lease their premises, retailers who own their store location, and shopping center landlords.

Part I of this article will explain what a provider is, the costs associated with the provider's service, what a retailer should consider when choosing a provider, and the key elements of an agreement with a provider. Part II, appearing in the next issue of *Retail Law Strategist*, will discuss important considerations in deciding where to install EV charging stations, both in terms of store location and the parking lot. It will then provide tips on lease considerations, depending on whether the retailer who seeks to provide an EV charging station owns or leases the premises. It also will discuss considerations in dealing with the utility. Finally, it will explain key regulatory compliance issues, such as permitting, accessibility, lighting and safety.

Hooking Up With a Provider

Determining the Right Match. A retailer may choose to purchase a charging station from a manufacturer, but many retailers prefer to offer, but not own, an EV charging station. Whether the retailer owns or leases the premises, and whether the store is a stand-alone or part of a shopping center, the retailer that contracts with a provider to offer an EV charging station is called a host. Providers are companies that install, operate and usually own the charging stations, and they vary significantly with respect to the maintenance services they offer, their pricing of charging stations for purchase and/or installation, and features offered to customers. A key decision for any retailer seeking to provide EV charging stations is which provider to select. A provider may be both a manufacturer as well as the installer of the charging stations, while other providers purchase the charging stations from a manufacturer and then assemble them. Providers offer a range of approaches and services to address retailers' needs. Following are some examples:

- Miami Beach–based Car Charging Group is the largest public car-charging company in the United States. This nationwide, and

soon to be worldwide, company's partners include Walgreens, Mall of America and other shopping centers. It purchases charging stations from the manufacturer Coulomb Technologies ("Coulomb"), and it provides installation, maintenance, and all related services at no cost whatsoever to the host. According to Andy Kinard, president of Car Charging Group, the company currently charges EV customers an average of $2.49 per hour and shares revenues with the hosts. It also reimburses the hosts for the cost of electricity.

- San Francisco–based ECOtality has been involved in electric transportation since 1989. It owns and manufactures charging stations that it installs. Its charging stations are also connected to an online network that provides customers with monitoring services including updates on charging status, mobile apps and maps. ECOtality is currently partnering with the U.S. Department of Energy to implement the EV Project, a nationwide deployment of EV charging infrastructure, initially targeting major cities in six states and the District of Columbia.
- Honolulu-based Volta Charging ("Volta") is a start-up that has received attention for its innovative business model and eye-catching charging stations. Volta offers customers free charging. The site owner may share the cost of installation, but there are no other costs to the host. Volta provides free quarterly maintenance and reimburses electricity costs to the host. It covers its costs by offering sponsors advertising space on the charging stations. According to Christopher Ching, Volta's cofounder, Volta has not been supported by any subsidies; its model is completely self-sustainable. Its charging stations are attention grabbing to further the company's goals of promoting advertisements and enthusiasm for new technology. Volta owns its charging stations; it out-sources its electrical components and manufactures and assembles the charging stations in-house. Volta currently has 30 charging stations in Hawaii and plans to have 200 to 400 throughout the nation by the end of this year.
- Alternatively, a retailer may prefer to purchase the charging stations directly from a manufacturer like Coulomb Technologies. Coulomb provides the ChargePoint Network, "the largest network of independently-owned charging stations in the world." The ChargePoint Network offers customers information through mobile applications, including locations of charging stations and text messages notifying EV drivers when their cars are charged. Coulomb also allows charging station owners to monitor electricity use and process payments from customers. Charging station owners pay an annual subscription fee for their particular service plan. For example, Coulomb will charge the customers and then send a check to the charging station owner each month that goes toward the electricity and costs of the stations. Because Coulomb offers such services through the ChargePoint network, it can be considered a type of provider.

The Price of Power. The retailer must consider its costs in offering charging stations to customers. The provider may, or may not, charge the host an initial installation fee. However, most providers do charge customers a "charging" fee to cover costs. Providers may reimburse the host for the costs of electricity. If the retailer chooses to purchase

the charging stations, there will certainly be higher upfront costs, and the retailer may also have to pay for their installation on top of the purchase price.

In all but four states—California, Oregon, Washington and Virginia—only utility companies may sell electricity. Therefore, customers using EV charging stations generally cannot be charged on a per kilowatt basis. As a result, providers generally charge based on the hour, rather than the kilowatt. Unfortunately, some EVs charge more quickly than others, so customers whose vehicles take longer to charge end up paying more when they are charged on an hourly basis. As Kinard explains, the electric Ford Focus charges twice as fast as the Nissan Leaf and Chevy Volt, so when charged by the hour, drivers of the Leaf and the Volt pay twice as much per kilowatt. Those four states that do allow sales based on kilowatts have made an exception for public electric charging facilities in order to expedite the development of charging stations and to allow for equitable pricing.

The charging of the customer is a transaction that usually is between the provider and the customer, and the host is not part of that transaction. The provider may charge a customer a fixed amount per charging session, for example $2 or $3, or by the hour. As noted above, Car Charging Group charges an average of $2.49 per hour. Alternatively, the provider may offer a variety of payment plans, such as a monthly payment of $70 or $80 for unlimited charging at its stations. As explained above, Volta is unusual in that it covers all costs through advertising and thus is able to offer free charging to its customers and free operation and maintenance to its hosts.

Practice Tips for Choosing a Provider

- **Services.** Be sure to know exactly what services the provider offers. Does the provider offer a turnkey product and handle all installation, operation, and maintenance of the charging station? Does the provider install the charging station, but leave all or most of the subsequent maintenance responsibilities to the host? Or does the provider simply sell the charging station and not provide any installation or maintenance services? Any services the retailer is responsible for should be factored into its costs.
- **Flexibility in Written Contract.** To what extent will the provider tailor its agreement to suit the host's goals and needs?
- **Permitting.** Will the provider obtain all requisite approvals and permits? As explained below, permitting requirements vary from jurisdiction to jurisdiction, and the process can be cumbersome.
- **Costs.** How will the provider cover its costs and what, if anything, will it charge the host? Will the provider reimburse the host for the costs of electricity?
- **Features.** Does the charging station offer convenient features for customers such as Wi-Fi or the sending of a text message notification when the charging is complete?

The Host-Provider Agreement. The host and provider should enter a written agreement that outlines the terms and conditions of installing, operating and maintaining the EV charging stations. The agreement should clearly articulate each party's responsibilities and obligations. Some providers have standard agreements that they offer hosts, while other providers will significantly tailor an agreement to meet the needs of the retailer or landlord. The agreement should in-

clude liability provisions and require both the provider and the host to carry commercial insurance in amounts and scope to cover all reasonably foreseeable events. The agreement should require that the provider has insurance coverage for any damage to the stations and equipment.

Practice Tips for Retailer in Negotiating Contract Provisions With Provider

- **Services and Responsibilities.** The agreement should clearly define the provider's services, including installation, maintenance, and related obligations. The contract should also state clearly which party is responsible for obtaining the necessary permits and any requisite permission, if any, from a landlord, including for signage and advertising.
- **Verification.** Require a performance verification in the agreement whereby, following installation, the provider (or the provider's subcontractor) verifies that the charging station is properly installed and functioning.
- **Costs.** The agreement should specify who is responsible for costs related to the charging station, including maintenance and repairs, and whether the provider will reimburse the host for the cost of electricity.
- **Revenue Sharing.** The agreement should specify whether the host will share in any of the provider's revenues and, if so, at what percentage.
- **Liability.** The agreement should define each party's respective responsibilities and the amounts of insurance coverage each is required to have.
- **Term of Contract.** Because an EV charging station is a long-term investment, so long as the provider assumes maintenance and servicing responsibilities, and liability for the charging station, the longer the term of the contract, the less risk there is to the host.

BRIAN W. BLAESSER, a LEED Accredited Professional, LEED AP BD+C, is a partner in the Boston office of Robinson & Cole LLP where he heads its Land Use and Real Estate Development Practice Group. His practice areas include commercial real estate development, leasing, environmental law and litigation.

SORELL E. NEGRO is an attorney in the Hartford, CT, office of Robinson & Cole LLP where she is a member of the Land Use and Environmental Law Practice Groups. Her practice areas include land use and zoning, real estate, environmental law and related litigation.