



ChargePoint, Inc.
254 East Hacienda Avenue | Campbell, CA 95008 USA
+1.408.841.4500 or US toll-free +1.877.370.3802

March 1, 2019

Michael J. Schmitt, Chairman
Public Service Commission
Commonwealth of Kentucky
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RE: Case No. 2018-00372

Dear Chairman Schmitt,

Attached are comments filed on behalf of ChargePoint. Please let me know if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "David Schatz". The signature is fluid and cursive, with a large, stylized initial "D".

David Schatz
Director, Public Policy
ChargePoint

**FOR THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 2018-00372
COMMENTS OF CHARGEPOINT, INC**

I. INTRODUCTION

ChargePoint thanks the Kentucky Public Service Commission (“PSC” or “the Commission”) for the opportunity to provide these comments in Case No. 2018-00372, *Commission Jurisdiction Over Electric Vehicle Charging Stations*. In opening this proceeding, the Commission recognizes the significant growth of electric vehicles (“EVs”), the importance of charging infrastructure in EV adoption, and the need to clarify regulatory barriers to electrification.

ChargePoint is a leading commercial electric vehicle charging network, with charging solutions for every charging need and all the places EV drivers go: at home, work, around town, and on the road. With more than 61,000 independently-owned charging spots nationwide, including over 58 public stations in Kentucky, ChargePoint has thousands customers – workplaces, cities, retailers, apartments, hospitals, and fleets – who have deployed charging solutions on their properties.

ChargePoint is the only charging technology company on the market that designs, develops, and manufactures hardware and software solutions across every market segment. Leading EV hardware makers, automakers, and other partners rely on the ChargePoint network to make electric vehicle charging station (“EVCS”) details available in mobile apps, online, and in navigation systems for popular EVs. ChargePoint drivers have completed more than 50 million charging sessions, saving upwards of 53 million gallons of fuel, and driving more than 1.2 billion electric miles.

In ChargePoint’s primary business model, the company sells its smart, networked charging station equipment directly to site hosts, and site hosts own and operate the charging stations on their properties. For a subscription, ChargePoint provides network services, or data-driven and cloud-enabled capabilities that enable site hosts to better manage their charging assets and optimize

services. For example, with those network capabilities, site hosts can view data on charging station utilization, frequency and duration of charging sessions, set access controls to the stations, and set pricing for charging services. These features are designed to maximize utilization and align charging activities onsite with site hosts' particular objectives for investing in charging technologies. In addition, we have designed the network to also allow other parties, such as electric utilities, the ability to access charging data and conduct load management to enable the most efficient load integration with the grid.

II. SUMMARY OF COMMENTS

The Commission's Notice in Case No. 2018-00372 invites comments regarding the Commission's jurisdiction over EV charging activities. In addressing the Commission's inquiry, ChargePoint presents the following findings and recommendations:

1. Pursuant to the criteria in KRS 278.010(3)(a), electric vehicle charging stations do not satisfy the definitional test of a "utility". Charging station equipment and associated transactions between station owners and EV drivers fall outside of Kentucky PSC jurisdiction.
2. The retail sale of electricity takes place at the utility meter with the customer of record, whether it be a residential or commercial customer. As such, charging stations are located beyond the utility meter. Therefore, the Commission should find that charging stations provide a charging service that is not considered the retail sale of electricity.
3. Charging stations offer a competitive service that is market-based. When site hosts are able to set pricing to drivers for charging services, site hosts can optimize the utilization of stations and tailor the driver experience to the local use case.

III. EVALUATING THE STATUTORY DEFINITION OF A UTILITY UNDER KENTUCKY STATUTE AS APPLIED TO EVCS

Based on criteria in KRS 278.010(3)(a), EVCS must meet all three of the following definitional tests in order to be deemed a utility subject to the jurisdiction of the Commission:

1. An EVCS must be a “facility used or to be used for or in connection with” the “generation, production, transmission, or distribution of electricity”;
2. An EVCS must be a “facility” that provides electricity “for lights, heat, or power, or other uses”; and,
3. An EVCS must be a “facility” engaged in providing electricity “to or for the public, for compensation” in order to be subject to the jurisdiction of the Commission.

ChargePoint maintains that EVCS clearly does not satisfy any of the above definitional tests and EV charging cannot be deemed a utility function under statute. Site hosts are third-party owners and operators of EV charging stations, and do not generate, transmit, distribute, or sell electricity to end users. Instead, third-party owners and operators use electricity to provide EV charging services to their customers. This use of electricity is incidental to the provision of EV charging service with a privately-owned charging station. Whereas utilities transmit and distribute electricity over system wires or circuits, EV charging service providers deliver services by specialized cords and connectors, specific to the activity of charging. The service site hosts provide to EV drivers is the charging of a battery in an electric vehicle.

Transactions between an EV service provider and an EV driver cannot be compared to a traditional sale of electricity by a regulated electric utility to a consumer. Moreover, third-party owners and operators of EV charging stations are retail customers themselves that purchase electricity from a regulated utility. The electricity purchased to provide for charging services will in most cases include granting the user access to the charging station, use of related metering and communications software, participation in a network, billing, and various other options. The

relationship between EV charging service provider and EV driver is much closer to that of a cell phone battery-charging kiosk at the airport than with a regulated public utility operating a grid and selling electricity to local businesses and households.

Additionally, EV charging services constitute a competitive market, where site hosts set pricing to drivers to encourage greater utilization. Site hosts may decide to charge fees for the charging service using several different methodologies – by session, minute, flat fees, and kilowatt-hours, among many other pricing models. Every site host has a specific set of circumstances onsite, which helps a site host determine the appropriate charging pricing model for that site. A big box retail establishment may choose to offer EV charging free-of-charge, but impose a fee after two hours to encourage drivers to relocate. A small business may impose a low kWh-based fee for all charging, which may encourage drivers to stay onsite longer. Regardless of the pricing model site hosts employ, each is assessed as a measure of the charging service and not the distribution of electricity by a utility. As EV charging is outside of Commission jurisdiction, a site host is able to assess fees in a competitive manner and as they deem appropriate for their business.

The Kentucky Public Service Commission should determine that a third-party owner or operator of an EV charging station is not a regulated utility as defined in KRS 278.010(3)(a). In light of this, the Commission does not have role in regulating the sale of EV charging equipment or services by non-utility providers. In making this clarification, the Commission would reduce uncertainty in the market for third-party owners or operators of EVCS – municipalities, retail establishments, hotels, workplaces, educational institutions – and open up new business models for charging in Kentucky.

In its order opening the subject investigation, the Commission introduced the possibility that EVCS operation may violate the Electric Territorial Boundary Act, codified in KRS 278.016-278.018. ChargePoint asserts that the Commission should determine that EVCS activities are not

considered the retail sale of electricity, and therefore the provision of charging services would not be subject to that section of law. However, should the PSC find that third-party provided charging services do not fall under regulatory jurisdiction, it would not preclude the Commission's authority over utility initiatives to support transportation electrification. A regulatory exemption for third-party providers does not prevent the consideration and/or approval of utility EV charging programs, should they be pursued in Kentucky.

IV. REGULATORY PRECEDENT FOR A DETERMINATION OF NO JURISDICTION OVER ELECTRIC VEHICLE CHARGING

Regulatory commissions across the country have determined that companies purchasing electricity at retail from regulated utilities and using it to provide charging service to EVs (regardless of the business context) are not performing the function of an electric utility or an electricity supplier, and should not be subject to regulation. Explicitly exempting non-utility EV charging services from the statutes defining and prescribing rules applicable to public utilities and competitive suppliers of electricity will remove regulatory uncertainty about the jurisdictional status of EV charging services and foster innovation, competition, and private investment. Currently, 25 states and the District of Columbia exempt EV charging from regulatory jurisdiction.¹

In a recent example, the Public Service Commission from Alabama completed a generic proceeding on regulatory jurisdiction over EV charging infrastructure operation, concluding that no case exists where EV charging could be considered a utility activity or electric supply:

¹ Alabama PSC Order in Docket No. 32694; Arkansas Code § 23-1-101(9); Cal. Pub. Util. Code, § 216(I); Colo. Rev. Stat. § 40-1-103.3(2); CT Section 16-1 of the 2016 supplement to gen. statutes; D.C. Code §§ 34-207, 34-214; Fla. Stat. § 366.94; Haw. Rev. Stat. § 261-1(2); Idaho Code § 61-119; 220 Ill. Comp. Stat. §§ 5/3-105(C), 5/16-102; Me. Rev. Stat. Ann. Tit. 35, §§ 313-A, 3201(5), 3201(8-B); Md. Code Pub. Utils. §§ 1-101(J)(3), 1-101(X)(2); Michigan PSC Order in Case No. U-17990; Minn. Stat. § 216B.02 (Subd. 4); Nevada SB145, NRS 704.021; New Hampshire RSA 236:133; NYPSC Case No. 13-E-0199; OAC 165:35-13-1; Or. Rev. Stat. § 757.005(1)(B)(G); PA PUC Policy Statement M-2017-2604382; Utah Code §§ 54-2-1(7)(C), 54-2-1(19)(J); Va. Code Ann. § 56-1.2:1; Wash. Rev. Code § 80.28.310; W. Va. Code § 24-2D-3.

Upon consideration of the comments and our review of the governing authorities, we cannot at this time discern a circumstance where the operation of an [EV charging station], in and of itself, gives rise to utility status or implicates the jurisdiction of the Commission. This is so whether the [EV charging station] is situated on an employer's premise and available for use only by employees, is housed in a public parking garage and offered for free to those who otherwise pay to park in the garage, or is located in the parking lot of a large retail chain that permits use of the [EV charging station] on a cents-per-kWh basis.²

In California, one of the first states to take up this issue of policy, the public utilities commission ("California PUC") determined that:

Facilities that are solely used to provide electricity as a transportation fuel do not constitute "electric plant" pursuant to Pub. Util. Code § 218. Thus, an entity owning, controlling, operating, or managing electric vehicle charging facilities is not an "electric corporation" pursuant to Pub. Util. Code § 218 and not a "public utility" pursuant to Pub. Util. Code § 216, unless an entity falls under § 216 and § 218 for other reasons. As such, the Commission would not have regulatory authority regarding the price that an electric vehicle charging facility operator charges for charging services or other aspects of the operation of such facilities unless the charging facility operator is a public utility by reason of its operations other than providing electric charging.³

The New York Public Service Commission ("NYPSC") ruled that EV charging stations are not utility plant, and charging services are not subject to its jurisdiction, by distinguishing between the nature of the sale of electricity and charging services:

Charging Stations do not fall within the definition of "electric plant" because Charging Stations are not used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light heat or power. Instead, and as urged by several commenters, Charging Stations are used to provide a service, specifically, charging services. This service requires the use of specialized equipment and allows the customer to do only one thing, charge a [EV]'s battery. The primary purpose of the transaction between Charging Station owners/operators and members of the public is the purchase of this service and the use of this specialized equipment. While the customer is using electricity, this is incidental to the transaction.

² State of Alabama Public Service Commission. Docket No. 32694. "Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations." June 22, 2018. <https://www.pscpublicaccess.alabama.gov/pscpublicaccess/PSC/PSCDocumentDetailsPage.aspx?DocumentId=7a8be751-8e39-410a-b215-811efd182024&Class=Order>

³ *Order Instituting Rulemaking to Consider Alternative-Fueled Vehicle Tariffs, Infrastructure and Policies to Support California's Greenhouse Gas Emissions Reductions Goals*, Assigned Commissioner's Scoping Memo at 4-5 (P.U.C. Rulemaking No. 09-08-009, filed Aug. 20, 2009).

Furthermore, the NYPSC held that “the method of calculating the transaction fee, specifically, the use of a per kWh price, will not confer jurisdiction where none otherwise exists.”⁴

The Massachusetts Department of Public Utilities (“MA DPU”) followed the same rationale and found that EV charging equipment does not constitute a distribution facility, because the “equipment component of EV[CS] used to supply the electricity is in the nature of a connector or cord, not a line” and “ownership or operation of EV[CS] does not transform an entity that otherwise is not a distribution company into a distribution company.” The MA DPU also found that EVCS owners or operators are not “selling electricity” within the meaning of the Massachusetts public utility statute, because:

[...] an EV[CS] owner or operator is selling EV charging services, i.e., the use of specialized equipment – EV[CS] – for the purpose of charging an EV battery. EV[CS] allows the customer do to only one thing, charge an EV battery. This result is true regardless of the business model the EV[CS] owner/operator uses to charge customers for charging services, even if the charge is by a per-kilowatt hour basis or other volumetric energy basis.

The MA DPU also found that the practice does not constitute submetering, because submetering involves a resale of electricity, not the sale of a service; in this case, EV charging service. For the same reason, the MA DPU found that EVCS owners/operators are not competitive suppliers of electricity.⁵

There is a clear and consistent record of determinations in the matter of regulatory jurisdiction over electric vehicle charging stations and services, with regulators across the country concluding that EVCS is not considered a “utility” under state statutes.

⁴ *In the Matter of Electric Vehicle Policies, Declaratory Ruling on Jurisdiction over Publicly Available Electric Vehicle Charging Stations* at 4 (NYPSC Case No. 13-E-0199, issued Nov. 22, 2013).

⁵ *Investigation by the Department of Public Utilities upon Its Own Motion into Electric Vehicles and Electric Vehicle Charging*, Order on Department Jurisdiction over Electric Vehicles, the Role of Distribution Companies in Electric Vehicle Charging and Other Matters (Mass. D.P.U. 13-182-A, issued Aug. 4, 2014).

V. RECOMMENDATION

ChargePoint recommends that the Kentucky Public Service Commission find that EVCS activities do not constitute utility activities and the provision of retail electricity, as defined in KRS 278.010(3)(a). ChargePoint believes that this finding would remove regulatory barriers to installing, owning, and operating EV charging infrastructure in the Commonwealth. Moreover, this change will support and foster a growing, competitive, and innovative market for EVs and EV infrastructure in Kentucky.

VI. CONCLUSION

Thank you for the opportunity to provide comments. ChargePoint looks forward to continuing the discussion and working with the Commission, utilities, and other stakeholders on EV and EV charging issues in the Commonwealth of Kentucky.