

**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 reply comments in Case No. 2018-00372, *Commission Jurisdiction Over Electric Vehicle Charging Stations*. On March 1, 2019, in accordance with the Commission’s request for comments from interested parties, ChargePoint filed initial comments to address the regulatory questions raised in this proceeding and presented its perspective as the leading commercial electric vehicle charging network in the nation. In its comments ChargePoint noted the significance of clarifying the regulatory framework surrounding electric vehicle (“EV”) charging infrastructure, as it directly pertains to the success of the growing, competitive, and dynamic EV charging market. In summary, in addressing the Commission’s essential question of the Commission’s regulatory jurisdiction over charging stations, ChargePoint presented the following key findings and recommendations:

1. Pursuant to the criteria in KRS 278.010(3)(a), electric vehicle charging stations (“EVCS”) 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.

In supporting these findings, ChargePoint assessed KRS 278.010(3)(a) and the applicability of the definitional tests for utilities subject to Commission jurisdiction. ChargePoint also provided additional details about other commissions' actions on the issue of regulatory jurisdiction over EV charging, its business model, and charging activities generally. ChargePoint believes that the record presented in these initial comments shows a clear case for a determination of no regulatory jurisdiction over charging equipment and transactions.

The Commission received initial comments in Case No 2018-00372 from other interested stakeholders. To the extent that interested stakeholders offered an analysis on the question of regulatory jurisdiction, all comments supported the contention that EV charging owners and operators should not be subject to regulatory oversight. In addition, a majority of comments received addressed the importance of growing and supporting the existing competitive market for EV charging stations. ChargePoint will summarize the arguments the full record of comments advanced, as well as clarify comments regarding the competitive market for EV charging.

## **II. LEGAL ANALYSIS IN INITIAL COMMENTS SUPPORTS A FINDING OF NO REGULATORY JURISDICTION OVER EV CHARGING**

Several commenters spoke to the legal rationale for making a determination that EV charging would not be subject to Commission regulatory jurisdiction. This position is largely underpinned by the baseline understanding of site hosts of EV charging as providing a service of charging a battery in an electric vehicle. ChargePoint stated that 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. This understanding was

supported in comments from, among others, the Kentucky Association of Electric Cooperatives (“KAEC”), who asserted that:

In that light, and on the express assumptions that: (1) an EVCS is not capable of generating or producing electricity; and (2) that the sole use of the EVCS is to charge a battery to be used exclusively in an electric vehicle, the Kentucky Electric Cooperatives believe the sole act of owning or operating an EVCS does not meet the definition of “utility” or “retail electric supplier” because the EVCS owner or operator is providing an electric vehicle charging service, not providing electric service.<sup>1</sup>

Similarly, comments from Duke Energy Kentucky and other EV charging providers echo the assertion that EVCS are providing a non-regulated service of charging a battery in an electric vehicle.<sup>2</sup> Kentucky Utilities Company and Louisville Gas and Electric Company (“LGE-KU”) provide an analysis of the underlying legal framework and statute, and found that the distribution of electricity ends at the EVCS, and that an owner-operator of a charging station would not qualify as a public utility.<sup>3</sup> ChargePoint agrees with Kentucky Office of Energy Policy and Duke Energy that EV charging stations do not diverge from any number of service transactions involving electricity, including airports, military bases, and universities.<sup>4</sup> This list of analogous transactions is not exhaustive.

While it is clear to many commenters that the nature of EVCS transactions does not qualify as public utility activity, the physical characteristics of charging infrastructure also support a finding of no jurisdiction. As KAEC makes note, “[t]he equipment attached to the EVCS is a specialized charging adapter that can only be used to charge an electric vehicle.”<sup>5</sup> The use of specialized cords and connectors, which cannot be provide for multiple purposes in end use, show that third party providers of EVCS do not distribute electricity in the strict sense of utility

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<sup>1</sup> See Kentucky Electric Cooperatives Comments, Page 2.

<sup>2</sup> See Duke Energy Kentucky Comments, Page 8 and Greenlots Comments, Page 3.

<sup>3</sup> See Kentucky Utilities Company and Louisville Gas and Electric Company Comments, Page 3.

<sup>4</sup> See Kentucky Office of Energy Policy Comments, Page 9-10 and Duke Energy Kentucky Comments, Page 8.

<sup>5</sup> See Kentucky Electric Cooperatives Comments, Page 5.

provision. Therefore, EVCS cannot be considered a distribution line, or function in the distribution of electricity.

In contrast to the wide support offered in the record for a finding that operators of EVCS are not public utilities, comments from Kentucky Power Company assert that EVCS does provide electricity to vehicles, and therefore, owners and operators of EVCS would qualify as utilities.<sup>6</sup> ChargePoint respectfully disagrees and notes that in cases where the charging station is located behind a customer of record's meter, the distribution of electricity ends at the meter. This notion is supported in LGE-KU's comments.<sup>7</sup> This use of electricity is incidental to the provision of EV charging service with a privately-owned charging station.

For similar reasons, commenters agreed that electric vehicle charging would not constitute a retail electricity service, deem an EVCS owner a retail electricity supplier, nor violate the Electric Territorial Boundary Act. As KAEC submits, charging stations do not generate, produce, transmit, nor distribute electricity.<sup>8</sup> Therefore, an owner or operator of an EV charging station is not providing retail electric service to an end user; it is providing the exclusive service of charging a battery.<sup>9</sup> Assuming unidirectional charging is taking place behind the meter of a customer of record, the Electric Territorial Boundary Act does not apply to electric vehicle charging activities.

In taking up the question of regulatory jurisdiction, many other state commissions have correctly identified the ways EV charging site hosts and activities differ from utility provision of electricity. Comments from KAEC and ChargePoint note the many states that have already made such a determination, either through statutory change or regulatory proceedings.<sup>10</sup> Commenters cited the examples of regulatory clarification of EV charging jurisdiction from New York, Massachusetts, Alabama commissions, among others. Greenlots commented that at least 23 states

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<sup>6</sup> See Kentucky Power Company Comments, Page 3.

<sup>7</sup> See Kentucky Utilities Company and Louisville Gas and Electric Company Comments, Page 3.

<sup>8</sup> See Kentucky Association of Electric Cooperatives Comments, Page 9.

<sup>9</sup> See Kentucky Office of Energy Policy Comments, Page 11.

<sup>10</sup> See Kentucky Association of Electric Cooperatives Comments, Page 6-7.

had made similar enactments or rulings, citing the Appendix document the Commission provided in its Order, which ChargePoint generated.<sup>11</sup> While the Alliance for Transportation Electrification appears to hold a differing view on the number of states that have resolved this jurisdictional issue and the rationale, Greenlots offers that it “is unaware of any state which has come to a different determination.”<sup>12</sup> State governments, utilities, and industry researchers across jurisdictions have utilized the Appendix document as a useful reference and tracker for legislative and regulatory activities on this topic, and ChargePoint is available to consult with the Commission to provide further information and firsthand experience with this policy.

In many cases the definitional tests from other jurisdictions mirror those derived from KRS 278.010(3)(a), and therefore the rationale forwarded in those cases may be appropriately applied to the Commission’s consideration in the Commonwealth. These cases show that the overwhelming consensus among utility commissions that owners and operators of EV charging equipment should not subject to commission jurisdiction.

### **III. ELECTRIC VEHICLE CHARGING REPRESENTS A COMPETITIVE MARKET THAT MUST CONTINUE TO BE FOSTERED**

Several commenters observed that the deployment of EV charging infrastructure and related services is a highly competitive market. There are multiple providers of charging infrastructure operating in the Commonwealth of Kentucky, and site hosts currently choose from a number of EV charging station providers and technologies. Greenlots notes that attracting private investment helps to sustain a healthy, competitive market for electric vehicle charging infrastructure.<sup>13</sup> Similarly, the Kentucky Office of Energy Policy supports the notion that the EV charging markets are driven by natural market forces and competition.<sup>14</sup> LGE-KU offers that clarifying the law to allow non-utility competitive entities to enter the EVCS market will expand

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<sup>11</sup> See Greenlots Comments, Page 3.

<sup>12</sup> See Alliance for Transportation Electrification Comments, Page 2 and Greenlots Comments, Page 3.

<sup>13</sup> See Greenlots Comments, Page 2.

<sup>14</sup> See Kentucky Office of Energy Policy Comments, Page 16.

EVCS availability generally. Moreover, LGE-KU submit that “[...] treating EVCS ownership or operation as a utility operation, ensuring that only utilities can own and operate EVCSs, would likely result in slower and less pervasive EVCS deployment than permitting competitive entries into the EVCS market.”<sup>15</sup> While utilities have an important role in facilitating transportation electrification, it is clear that maintaining competitive dynamics for EVCS operation is essential to the development of a scalable market for EV charging, near- and long-term. In finding that EVCS activities do not constitute utility activities and the provision of retail electricity, the Commission could set the foundation market conditions that can accelerate competitive activities.

#### **IV. UTILITIES HAVE A FUNDAMENTAL ROLE IN ADDRESSING BARRIERS TO ELECTRIC VEHICLE CHARGING DEPLOYMENT**

A number commenters offered various perspectives on the role of utilities in facilitating the deployment of EVCS. LGE-KU offers a hybrid approach, enabling both non-utilities and utilities to deploy charging infrastructure, and in ways that the company believes will accelerate the market and target certain segments that may be more difficult to serve.<sup>16</sup> The Kentucky Office of Energy Policy points to the education and outreach utilities provide in the Commonwealth, and sees a greater role for the utility in exploring alternative rate structures and programs to “foster market-driven advancements” in EVCS technology.<sup>17</sup> Duke Energy Kentucky sees a direct role for the utility in deploying charging stations to lay a foundation for EVCS market development, including incentives/rebates and utility-owned and operated facilities.<sup>18</sup> Finally, Greenlots “[...] advocates for a regulatory environment that allows for all market participants to develop this critically important backbone of EV charging infrastructure. This implicates a critical role for both utilities and non-utilities to leverage their resources and capabilities in this endeavor.”<sup>19</sup> These

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<sup>15</sup> See Kentucky Utilities Company and Louisville Gas and Electric Company Comments, Page 5.

<sup>16</sup> See Kentucky Utilities Company and Louisville Gas and Electric Company Comments, Page 5.

<sup>17</sup> See Kentucky Office of Energy Policy, Page 20.

<sup>18</sup> See Duke Energy Kentucky Comments, Page 4.

<sup>19</sup> See Greenlots Comments, Page 2.

comments show that the role of utilities in EVCS is critical in accelerating the market, and stakeholders present varying accounts on how utilities provide effective programs to that end.

Consistent with certain elements these commenters introduced, ChargePoint recommends that the Commission discuss and deliberate the role of regulated utilities in deploying charging infrastructure in future proceedings. Smart, networked charging enables additional grid benefits compared to non-networked charging, or even traditional direct load control, and valuable data can be collected to inform better utility planning decisions and help maintain reliability and affordability.<sup>20</sup> Based on the data collected from smart charging stations, new processes can be created to better integrate electric vehicle charging with increasing renewable generation that is coming on the grid – helping balance intermittent loads and reduce costs of providing clean energy. The Commission should thoroughly examine the benefits of smart EV charging and how utilities may invest in supporting deployment of these technologies.

Nationally, utilities in many jurisdictions have supported the adoption of electric vehicles through programs that enable the buildout of charging infrastructure. Those programs can significantly lower barriers to EVCS deployment and accelerate EV charging markets overall. More importantly, utility investment in charging infrastructure can foster and support a long-term, scalable competitive market for charging equipment and networks. To that end, ChargePoint strongly supports utility investment in electric vehicle charging infrastructure.

There are three primary models for utility investment in EVCS:

1. **Ownership:** A utility procures, deploys, and owns charging infrastructure in its jurisdiction.
2. **Make-Ready:** A utility directs investments toward the supporting electrical infrastructure for charging hardware, specifically the interconnection point between a

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<sup>20</sup> *Consistent with Greenlots Comments, Page 2.*

site host's panel and the charging pad or stub. In incenting this work, a utility prepares a site for installation of the charging station itself, which is purchased and operated by a site host.

3. **Rebate-based:** A utility provides rebate incentives to site hosts, which are used toward the purchase of qualifying electric vehicle charging stations onsite. Qualifications standards for EVCS can be determined to ensure capabilities that will enable grid benefits.

The right model for utility investment in EVCS markets can take many forms, and no single solution is appropriate for every jurisdiction and use case. Moreover, each segment of the EVCS market – fleets, multi-unit dwellings, retail establishments, workplaces, municipalities, and corridors – has a different set of circumstances to consider the most effective investment. ChargePoint supports all three utility roles for charging and maintains that a portfolio of offerings may most adequately address the needs of different site hosts and uses cases. A portfolio approach leverages the strengths of each model, provides for program flexibility, and aligns investments with the most appropriate use case.

In evaluating models for utility investment and the portfolio of offerings, Commissions should explore the current conditions of electric vehicle charging markets. Under current market conditions, site hosts have a range of choices of charging technologies and network providers in a competitive market. Site hosts invest in EVCS to attract EV drivers to their sites, and through controls over EV driver access and pricing, they can optimize charging stations for their needs and maximize driver utilization. The choice site hosts have among different charging stations and EV charging networks is an essential element of a competitive market, and that competition leads to greater innovation. Programs that do not account for site host choice and control of EVCS onsite may inhibit the competitive market, affect the EV driver experience, and dampen innovation. Based on active programs in other states, ChargePoint suggests that all three utility investment



models for EVCS can and should accommodate program designs to maintain a site host's choice and control to support the current competitive market for charging.

Commissions assessing a portfolio approach must also examine the appropriate segments of the market for different models of utility investment. Utility investments should be scaled and targeted to the areas where they will have the greatest impact. There are important lessons learned from utility programs across the country. In some jurisdictions rebate-based investments have been deployed to meet the needs of all segments of the market and can be rapidly deployed. Similarly, make-ready investments have enabled utilities to address or offset the variable and potentially prohibitive cost of installing in EVCS. Investments to own charging equipment have been employed in public charging programs and in disadvantaged communities to expand access to EV charging infrastructure. ChargePoint suggests that evaluating current market conditions and future needs will lead to the best fit of portfolio of investments for a given service territory.

## **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.