

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Petition for limited proceeding to approve)
2021 settlement agreement, including general rate base) DOCKET NO. 20210016-EI
increases, by Duke Energy Florida, LLC) FILED: March 17, 2021
)

PETITION TO INTERVENE OF CHARGEPOINT, INC.

Through counsel and pursuant to Florida Statutes Chapters 120 and 366, and Florida Administrative Code Rule 28-106.205, ChargePoint, Inc. (“ChargePoint”) hereby respectfully petitions the Florida Public Service Commission (the “Commission”) for leave to intervene in the above-captioned proceeding on the petition filed by Duke Energy Florida, LLC (“DEF”). In support of this petition, ChargePoint states as follows:

1. The name, address, and telephone number of ChargePoint are:

Chargepoint, Inc.
254 E Hacienda Ave.
Campbell, CA 95008
Attn: Justin Wilson, Director, Public Policy
(479) 283-2995 justin.wilson@chargepoint.com
2. All notices, pleadings, orders, correspondence and other communications should be directed to and be served upon ChargePoint’s representatives:

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3. The agency affected by this petition to intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

4. ChargePoint is one of the world's largest electric vehicle ("EV") charging networks, with scalable solutions for every charging need and for all of the places that EV drivers go: home, work, around town, and on the road. With customers that include workplaces, cities, retailers, apartments, utilities, hospitals, and fleets, ChargePoint provides an integrated experience enabling consistent performance, efficiency and reliability at every touchpoint whether one is using a mobile app, plugging into a charger, managing the station or analyzing charging data.

ChargePoint delivers scalable solutions that enable businesses to support more drivers, add the latest software features, and expand their electric vehicle and fleet needs with minimal disruption to overall business. Hardware offerings include Level 2 (L2) and DC fast charging (DCFC) products, and ChargePoint provides a range of options across those charging levels for specific use cases including light and medium duty and transit fleets, multi-unit dwellings, residential (multi-family and single family), destination, workplace, and more. ChargePoint's software and cloud services enable site hosts to manage charging onsite with features like Waitlist, access control, charging analytics, and real-time availability. ChargePoint products are

UL-listed, ENERGY STAR® and CE (EU) certified, and the modular design minimizes downtime and makes maintenance and repair more seamless.

ChargePoint's primary business model consists of selling its smart charging solutions directly to businesses and organizations while offering tools that empower site hosts and station owners to deploy charging designed for their individual application and use case. ChargePoint provides charging network services and 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 the EV driver experience with the specific use case associated with the specific site host. Additionally, ChargePoint has designed its network to allow other parties, such as electric utilities, the ability to access charging data and conduct load management to enable efficient EV load integration onto the electric grid.

5. Statement of Affected Interests. In this docket, the Commission will consider the proposal by DEF to establish a permanent EV charging program that would use approximately \$65 million of ratepayer funds to establish DEF-owned Fast Charging stations throughout DEF's territory, credits to residential non-TOU customers for off-peak charging, and rebates to C&I customers on a new GST-1 non-TOU tariff. This is very different from the limited EV charging pilot program that DEF proposed in Docket No. 20170183-EI. In that docket, the Commission denied a petition to intervene by ChargePoint finding that "ChargePoint has failed to allege any facts that can support its claim that the pilot program would impact ChargePoint's current market share or customers, or interfere with 'the very existence of a competitive market'."¹ The

¹ *Order Denying ChargePoint, Inc.'s Petition to Intervene*, Order No. PSC-2017-0397-PCO-EI (Oct. 20, 2017), p.3.

Commission also found that “ChargePoint’s alleged injury to its economic interests and the free market are not what the governing statutes of this proceeding were meant to protect.” *Id.*

However, not only is the current EV charging proposal much broader than the earlier pilot, a new governing statute is in effect that directs the Commission to do just that – protect private economic interests and the free market from distortion from involvement of regulated monopolies in that market.

As mentioned above, DEF’s broad proposal to use \$65 million in ratepayer funds would greatly expand DEF’s incursion into the EV charging marketplace. Some DEF proposals could encourage market growth while others could harm it. For example, a significant portion of the ear-marked ratepayer funds would allow DEF to own and operate EV charging infrastructure thereby competing with non-regulated market providers of EV charging infrastructure. This constitutes a direct threat to ChargePoint’s ability to sell its products in DEF’s service territory, as described more fully below. Further, since the 2017 order cited above, the Florida legislature has added substantially to the Commission’s jurisdiction and responsibilities by directing the Commission to oversee the participation of electric utilities in the development of the EV charging market in Florida. In particular, SB 7018 charged the Commission with, among other things,

Identifying the type of regulatory structure necessary for the delivery of electricity to electric vehicles and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace.

FL. STAT. § 339.287(2)(c)4. Thus, the Commission now has the specific legislative mandate to protect the interest of a free EV charging market in Florida, including the interest of ChargePoint, by taking into consideration and carefully weighing evidence of the impact of large regulated-utility advances into the unregulated marketplace.

In its petition, DEF proposes that the Commission broadly allow DEF to participate in the EV charging marketplace with programs geared toward DEF residential customers, DEF commercial and industrial (C&I) customers, and drivers of electric vehicles that are not DEF customers and that do not reside in DEF's service territory. Further, DEF does so via a petition that has very little program information or detail whereby parties, market participants or the Commission can evaluate whether the substance of the proposal is competitively neutral or whether this type of regulatory structure is necessary, beneficial, or even harmful to the legislative goal of "ensuring the prompt installation of adequate, reliable charging stations is in the public interest." *Id.* at §339.287(1)(g). Nor does it appear that any party to the settlement agreement that was filed as part of the petition has experience or expertise in the EV charging marketplace (except DEF through its limited EV charging pilot program). Indeed, the focus of a rate case (and of ratepayer groups/parties in a rate case) is on regulated utility costs and how those costs are allocated to customer classes. But in this rate case, a program for the future investment by the regulated utility using ratepayer funds in the unregulated EV charging market has been included via a proposed rate case settlement. In such context, ratepayer groups (such as those signing the proposed settlement) are likely to have a significantly different focus as well – i.e., on rate issues under the Commission's broad traditional jurisdiction rather than the new marketplace issue and jurisdiction the legislature recently conferred on the Commission. It is in this context that parties such as ChargePoint with expertise in the EV charging marketplace could provide valuable assistance to the Commission in its legislative mandate of ensuring that participation of this public utility is consistent with the legislature's clear endorsement of free-market solutions (with cooperation from utilities and state agencies to meet the need of the State of Florida for a robust EV charging network).

By way of example, with respect to the proposed Residential EV charging program, ChargePoint could provide information on appropriate technical requirements for charging equipment, such as requirements for “smart” or networked charging equipment, for ENERGY STAR certified equipment that ensure electrification efforts are beneficial to ratepayers, and for appropriate technology platforms for determining if a non-TOU customer has charged on-peak during a given month. This information could also be important to designing appropriate requirements for charging equipment and technology for use in the C&I program, for example the quantity and amount of rebates that are appropriate to support and protect the private market for EV charging services. Finally, as it relates to DEF’s proposal to own and operate charging infrastructure, ChargePoint could suggest program design elements that align with the legislative direction for competitively neutral policies. It is with this goal in mind that ChargePoint already has engaged as an interested party in initial discussions with DEF and DEF has graciously provided answers to a number of ChargePoint’s initial questions. This discussion has demonstrated that DEF, EV infrastructure providers, ratepayers, and the Commission itself would benefit from broader ChargePoint involvement in this important proceeding.

With respect to actual injury that DEF’s proposed program would have on ChargePoint or its customers, it is clear that DEF’s ownership and operation of DCFC stations would directly compete with ChargePoint’s customers that own and operate commercial charging stations. Furthermore, potential customers of ChargePoint’s could have new offerings to consider from DEF. If those offerings are designed to be more advantageous to DEF’s owned and operated stations, it could interfere with a competitive marketplace and hinder ChargePoint’s ability to sell its products in DEF’s service territory. This actual direct impact is precisely the harm the new legislative mandate requires the Commission to consider and protect.

DEF may oppose this request to intervene, as it did with respect to DEF's EV charging pilot program in 2017 and say this current docket is a proceeding limited to consideration of a settlement agreement affecting electric rates and the EV charging portion of the settlement is itself only a limited portion of that settlement. But simply tacking a large EV charging program onto a rate settlement, particularly where little information on the program is provided, cannot be used to avoid the type of serious review of EV charging proposals by regulated utilities that is required by the legislature. Indeed, it is plain from SB 7018 that expertise of market participants is vital to determining what policies and programs are competitively neutral and how public utilities (in this case, DEF) can beneficially participate in the EV charging market. Simply put, ChargePoint seeks leave to intervene in order to improve the record and work with the Commission, DEF and other interested participants to develop a robust EV charging market in Florida. In this way, the Commission can better determine whether and how a \$65 million investment of ratepayer funds in the EV charging marketplace is or can be made consistent with the public interest and the mandate of ensuring that DEF's proposed program is competitively neutral.

Further, ChargePoint is mindful that the proposed rate case settlement and this rate proceeding address numerous issues other than EV charging issues. Accordingly, ChargePoint is willing to have its intervention and participation in this proceeding limited to issues directly related to EV charging. A number of state utility commissions employ this limited participation approach in rate cases, thereby gaining the benefit of an intervener's expertise on a given subject matter without bogging down the proceeding.²

² See, e.g. Minnesota Power rate case docket E-015/GR-16-664, orders granting AARP's "petition to intervene limited to specific issue" and "petition for limited intervention by Citizens Utility Board of Minnesota" (Minnesota PUC 2017).
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bB2>

Therefore, ChargePoint not only meets the standard for intervention, its participation in this case would advance the goals of the legislature of ensuring that participation by both regulated utilities and market participants create a robust market and supportive regulatory structure that would benefit all Floridians for generations to come. ChargePoint's participation in this proceeding will not unduly broaden the issues in the proceeding, unduly prejudice other parties, or unduly delay the proceeding, and is consistent with the public interest.

6. Disputed Issues of Material Fact.

Is the proposed EV charging program consistent with competitively neutral policies as required by statute?

What is the objective of DEF's continued investment in DCFC infrastructure that it will own and operate?

Is the ownership and operation of DCFC charging stations by DEF limited to what is "necessary for the delivery of electricity to electric vehicles and charging station infrastructure?"

What safeguards are needed to ensure that the proposed EV program is consistent with competitively neutral state policies?

Is the rate DEF is proposing to charge EV drivers at the stations it owns and operates appropriate and competitively neutral?

Are the quantity and amount of rebates sufficient to support non-regulated EV charging installations and meet the threshold of being competitively neutral?

7. Pursuant to applicable rules, ChargePoint has conferred with other parties to this docket concerning this request for leave to intervene. DEF indicates it will oppose the petition, the Office of Public Counsel indicates it does not support intervention, PCS Phosphate indicates

[CAFE2-242D-4975-9E64-317E77493C39%7d&documentTitle=20174-131268-01](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bD5C94CAC-4124-4C0B-8D14-5DD35026DB75%7d&documentTitle=20174-131268-01) (AARP-April 26, 2017)
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bD5C94CAC-4124-4C0B-8D14-5DD35026DB75%7d&documentTitle=20175-131811-01> (CUB-May 12, 2017)

it takes no position on the petition, and other parties did not provide a response as of noon on Wednesday March 17, 2021.

CONCLUSION

WHEREFORE, ChargePoint respectfully requests that the Commission grant it intervenor status as a full party of record and allow it to participate fully in these proceedings (or at least as much of the proceedings as involve electric vehicle charging).

Respectfully submitted, this 17th day of March, 2021.

/s/ Alan R. Jenkins

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ATTORNEYS FOR INTERVENOR,
CHARGEPOINT, INC.

CERTIFICATE OF SERVICE

I certify that a copy of the Petition to Intervene in Docket No. 20210016-EI has been served on each party of record by electronic mail (e-mail), hand delivery, or by depositing a copy in the United States mail, postage prepaid.

This 17th day of March, 2021.

/s/ Alan R. Jenkins

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