



October 18, 2017

Via Electronic Filing

Carlotta S. Stauffer
Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 20170183-EI – Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

Dear Ms. Stauffer,

Attached for filing in the above-captioned docket is the Petition to Intervene of ChargePoint, Inc.

Please contact me with any questions or concerns regarding this matter.

Sincerely,

/s/ Thadeus B. Culley

Thadeus B. Culley
Keyes & Fox LLP
401 Harrison Oaks Blvd., Suite 100
Cary, NC 27513
(919) 825-3477
tculley@kfvlaw.com

Qualified Representative of
ChargePoint, Inc.

Enclosure

cc: Certificate of Service

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for limited proceeding to approve)
2017 second revised and restated settlement)
Agreement, including certain rate adjustments,)
By Duke Energy Florida, LLC)
_____)

DOCKET NO.: 20170183-EI
FILED: October 18, 2017

**PETITION TO INTERVENE OF
CHARGEPOINT, INC.**

ChargePoint, Inc. (“ChargePoint”), by and through its undersigned qualified representative, respectfully submits this Petition to Intervene, pursuant to Sections 120.569 and 120.57(1), Florida Statutes and Rule 25-22.039 and, Florida Administrative Code. ChargePoint states the following in support of its Petition:

1. The name and address of the agency affected by this Petition is:

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

2. The name and address of Petitioner are:

ChargePoint, Inc.
254 East Hacienda Ave.
Campbell, CA 95008

3. The name and address of Petitioner’s qualified representative to receive all notices, pleadings, and other communications related to this docket is:

Thadeus B. Culley*
Keyes & Fox LLP
401 Harrison Oaks Blvd., Suite 100
Cary, NC 27513

Phone: (919) 825-3477
Email: tculley@kfwlaw.com

* Authorized to appear as ChargePoint's qualified representative in Order PSC-2017-0350-FOF-OT.

4. Founded in 2007, ChargePoint is the nation's largest electric vehicle charging network with more than 41,000 total independently-owned and operated Level 2 and DC fast charging spots. According to the U.S. Department of Transportation's Alternative Fuels Data Center ("AFDC"), ChargePoint has 1,021 public charging ports in Florida, including charging ports located within the service territory of Duke Energy Florida, LLC ("DEF").

5. ChargePoint is an industry leader in networked charging stations that proactively engages regulatory and legislative policy dialogues involving the rapidly growing and inherently competitive market for electric vehicle charging equipment and services. Accordingly, ChargePoint regularly engages in regulatory proceedings before utility commissions across the country where issues related to electric vehicle charging infrastructure, networks, and rates are noticed within the scope of such proceedings.

6. On August 29, 2017, DEF filed its *Petition for Limited Proceeding to Approve 2017 Second Revised and Restated Stipulation and Settlement Agreement, Including Certain Rate Adjustments* ("Stipulation"). Among other features, the Stipulation includes an "Electric Vehicle Charging Station Pilot Program" that would authorize DEF to "purchase, install, own, and support" 530 charging stations (Electric Vehicle Service Equipment or "EVSE").

7. Upon approval of the Stipulation, DEF would own and operate EVSE in the first large scale, public facing program to leverage ratepayer funds for charging stations, and would occupy significant market share of the emerging market for EV charging services. As of this date, according to AFDC, ChargePoint understands that there are roughly 1,986 Level 2 and DCFC public charging ports in the State. If DEF's pilot EVSE is approved, it could have upwards of 25% market share across the State of Florida, and a significantly greater percentage market share within its own territory.

8. Prior to DEF's filing of the Stipulation, ChargePoint did not have notice that electric vehicle charging matters would be included in any of the underlying dockets implicated by the Stipulation. ChargePoint seeks to intervene for the opportunity to be heard on matters of vital importance to the company and the future of the competitive market for electric vehicle charging services within DEF's service territory and Florida, as a whole.

STATEMENT OF AFFECTED INTEREST

9. ChargePoint has a direct and substantial interest in the manner in which the market for electric vehicle charging infrastructure develops in Florida. At its core, the market for EV charging services in Florida is competitive. As provided in Section 366.94, Florida Statutes, the Legislature established a model where nonutility providers of electric vehicle charging to the public would not be regulated as a public utility engaged in retail sales to the public. This express exemption from regulation

reflects the Legislature's intent to support a competitive industry by removing regulatory barriers and limiting the regulatory footprint in the market.

10. A subsidized and regulated EV charging program, such as the one proposed by DEF, poses direct harm to the value of ChargePoint's services and network if it is implemented in a way that supplants the fundamental characteristic of the free market: customer choice to select and control the product offering that best fits their needs. As charging equipment is a consumer product that is available in a competitive marketplace, ChargePoint has concerns over DEF's potential ability to unilaterally choose and deploy charging solutions as a non-competitive market participant. The essential character of the EVSE Pilot—that the utility will install and provide an equipment package to a host customer free of charge—will disrupt the existing competitive market conditions.

11. ChargePoint identifies that DEF's proposal lacks key market considerations, such as a site host's ability to control, manage, and operate a charging station according to the specific needs of their sites and properties. These considerations implicate the success of the proposed program and the projected utilization of deployed charging assets. In segments featured in DEF's proposed program, fleet and multifamily, site hosts' ability to control access to charging equipment is essential to optimize utilization of charging assets. The opaque nature of the EVSE implementation process—as described in the Stipulation—puts DEF in a position to unilaterally define and control a single customer solution (combination of equipment and network) in ways that may be counter to site hosts' objectives and business models.

12. The certain disruption to the competitive market, itself, is a legally cognizable injury and is capable of redress. In its consideration of the stipulation, ChargePoint asks the Commission to provide guidance that incorporating two essential elements of program design would advance the public interest. Specifically, ChargePoint asks for Commission guidance that the EVSE pilot would provide the most benefit and best protect the public interest if it is implemented in a manner providing host customers: (1) the choice of equipment from multiple qualified vendors; and (2) control of charging assets on their property, including control of access and pricing for use of the equipment.

13. To be clear, ChargePoint's interest in the proceeding is to ensure that the Stipulation is in the public interest, in its entirety. As written, the EVSE pilot lacks parameters to ensure that the pilot accomplishes the objectives¹ without creating undue harm to the current legislative intent to encourage a **free market** basis for EV charging services in the state. Indeed, DEF's stated objectives appear possible even without the implementation of the pilot EVSE program, as DEF could work with existing customers with charging ports to install a load research device and work collaboratively with the industry to understand market dynamics and customer charging behaviors. ChargePoint wishes to be heard for the purpose of expressing how the EVSE Pilot could be implemented in a manner that is: (1) fully consistent with, and not in conflict with, the letter of the Stipulation; and (2) designed to preserve the element of host customer choice and control of onsite EVSE that is fundamental to the continued operation of a free market.

¹ DEF response to Staff Data Request No. 8 (Q. 57) states that "[t]he objective of the EV Charging Station Pilot Program is to install a foundational level of EV

14. For these reasons, the Commission should find that ChargePoint satisfies the standard for intervention laid out in Agrico Chemical Company v. Department of Environmental Regulation.² First, the competitive market for ChargePoint’s services will be substantially affected by the EVSE Pilot. ChargePoint’s interest in protecting the very existence of a competitive market (and its industry) from an improvident regulatory intervention is distinct from the Agrico court’s holding that a competitor’s economic interest is insufficient to grant standing. Accordingly, ChargePoint has sufficiently alleged an injury to satisfy the threshold for intervention in Agrico. Second, even though EV charging issues were not before the Commission in any of the underlying dockets addressed by the Stipulation, this type of proceeding—a limited proceeding for expedited consideration of a Stipulation that is not opposed by any party to the underlying dockets—is precisely the type of proceeding that provides a procedural failsafe to give interested persons one last opportunity to be heard.

15. The need to be heard in a proceeding such as this is even more acute when the Stipulation presents a new issue (utility-owned and -operated EVSE) that bears no relation to the subject matter or scope of the underlying dockets. In these circumstances, ChargePoint will suffer a procedural due process injury if it is not allowed to intervene and be heard at the noticed hearing for this matter. Moreover, ChargePoint’s intervention would benefit the Commission’s deliberations, as the complexity of the market involved needs to be further considered. Indeed, there are

² Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981).

several examples in other jurisdictions where separate proceedings have been created to examine and investigate the issues associated with utility-ownership of EVSE.

16. No other party will adequately represent the rights and interests of ChargePoint in this docket.

17. ChargePoint accepts the record as it stands and its participation will not expand the scope of issues under consideration in this docket and will not delay the Commission's administration of the proceeding.

18. ChargePoint's Petition is timely pursuant to Rule 25-22.039, Florida Administrative Code.

STATEMENT OF DISPUTED ISSUES OF FACT

19. ChargePoint is not aware of any disputed issues of fact.

STATEMENT OF DISPUTED LEGAL ISSUES

20. ChargePoint is not aware of any disputed legal issues.

STATEMENT OF ULTIMATE FACTS

21. ChargePoint alleges that the ultimate facts include whether the Stipulation is in the public interest, in its entirety, whether approval of the Stipulation will result in rates that are fair, just and reasonable, and whether implementation details for the EVSE pilot programs called for under the Stipulation require additional implementation parameters to assure that such programs will be in the public interest and result in rates that are fair, just and reasonable. ChargePoint anticipates that

additional alleged ultimate facts may be identified through the remainder of this proceeding.

STATUTES AND RULES THAT REQUIRE THE REQUESTED RELIEF

1. Section 366.94, Florida Statutes (providing a retail sale exemption for the provision of electric vehicle charging by a nonutility and delegating the promulgation of rules governing labeling and pricing for EV charging to the Department of Agriculture and Consumer Services to allow for “consistency for consumers and the industry.”).

2. Rule 25-22.039 (Persons whose substantial interests are subject to determination in, or may be affected through an agency proceeding are entitled to intervene in such a proceeding.)

WHEREFORE, for the foregoing reasons, ChargePoint respectfully requests that the Commission grant its Petition for Intervention and afford ChargePoint full party status in this proceeding so that ChargePoint may fully participate at the noticed hearing and exercise all other rights afforded to parties in this proceeding.

Respectfully submitted this 18th day of October, 2017.

BY /s/ Thadeus B. Culley
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Qualified Representative of ChargePoint,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 18, I sent a true and correct copy of this ***Petition to Intervene of ChargePoint, Inc.*** via electronic mail or US Mail to the following:

Duke Energy (17 St. Pete) Dianne M. Triplett 299 1st Avenue North St. Petersburg FL 33701 dianne.triplett@duke-energy.com	Duke Energy (17 Tall) Matthew R. Bernier 106 E. College Avenue, Ste. 800 Tallahassee FL 32301 matthew.berier@duke-energy.com	Florida Industrial Power Users Group (17b) Jon C. Moyle, Jr c/o Moyle Law Firm, PA 118 North Gadsden Street Tallahassee FL 32301 jmoyle@moylelaw.com
Gardner Law Firm (17b) Robert Scheffel Wright/John T. LaVia, III 1300 Thomaswood Drive Tallahassee FL 32308 schef@gbwlegal.com jlavia@gbwlegal.com	George Cavros 120 E. Oakland Park Blvd., Ste. 105 Fort Lauderdale FL 33334 george@cavros-law.com	Kyesha Mapp Margo DuVal Suzanne S. Brownless Danijela Janjic Lee Eng Tan Rosanne Gervasi Stephanie Cuello Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 kmapp@psc.state.fl.us mduval@psc.state.fl.us asoete@psc.state.fl.us sbrownle@psc.state.fl.us djanjic@psc.state.fl.us ltan@psc.state.fl.us rgervasi@psc.state.fl.us scuello@psc.state.fl.us

Dated: October 18, 2017 at Cary, North Carolina.

BY /s/ Thadeus B. Culley
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CA Bar No. 271602
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**DUKE ENERGY FLORIDA, LLC'S RESPONSE TO STAFF'S EIGHTH DATA REQUEST
(NOS. 57-60) REGARDING DEF'S APPLICATION FOR LIMITED PROCEEDING TO
APPROVE 2017 SECOND REVISED AND RESTATED SETTLEMENT AGREEMENT,
INCLUDING CERTAIN RATE ADJUSTMENTS
DOCKET NO. 20170183-EI**

Refer to Paragraph 17 for the following questions:

57. What are the objectives of the EV Charging Station Pilot Program?

RESPONSE

The objective of the EV Charging Station Pilot Program is to install a foundational level of EV infrastructure within the DEF service territory in order to gather information about DEF customer charging behavior and grid impacts of increasing EV adoption.

58. Please specify the specific existing DEF rate schedules (e.g. GST-1, GSDT-1) which are applicable to the EV Charging Station Pilot Program referenced in DEF's response to Staff Data Request No. 17.

RESPONSE

All non-demand DEF tariffs would be applicable to the EV charging station pilot program but we expect, given the types of locations being considered, that the majority of the facilities would be using GST-1.

59. Is it correct that customers of proposed Electric Vehicle Charging Station Pilot Program, under each of the types of program installations identified in response to Staff Data Request No. 17, will not pay any of the incremental expenses of the program (i.e. customers will pay only DEF's tariff rate of electricity) for the duration of the pilot program? If this is not correct, please explain.

RESPONSE

Partially correct. To the extent that the facilities are used, those customers will pay the tariffed rates for their consumption and the base rate component of those rates will be applied as a reduction in the regulatory asset associated with his pilot. In the absence of this pilot program there would be no revenues therefore any base rate revenues generated by this program are in fact contributing to address the incremental costs of the pilot. Per Paragraph 17.c., charges may also include nominal administrative or processing fees.

60. If the answer to Data Request No. 59 is affirmative, such that the program is fully subsidized, how is such subsidization expected to impact the objectives of the program?

RESPONSE

The degree to which the pilot is subsidized will have no impact on the objectives.


AFFIDAVIT

STATE OF FLORIDA

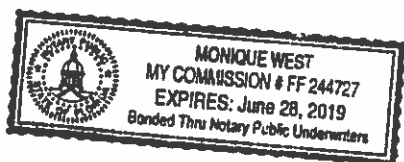
COUNTY OF PINELLAS


I hereby certify that on this 13th day of October, 2017, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAVIER J. PORTUONDO, who is personally known to me, and he acknowledged before me that he provided the responses to questions 57 through 60, from STAFF'S EIGHTH DATA REQUEST (NOS. 57-60) TO DUKE ENERGY FLORIDA, LLC in Docket No. 20170183-EI, and that the responses are true and correct based on his personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 13th day of October, 2017.



Javier J. Portuondo





Notary Public
State of Florida

My Commission Expires:
June 28, 2019