

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re. Duke Energy Florida, LLC's Petition
for a limited proceeding to approve 2021
settlement agreement, including general
base rate increases

Docket No. 20210016-EI

Dated: April 29, 2021

**DUKE ENERGY FLORIDA, LLC'S RESPONSE IN OPPOSITION
TO CHARGEPOINT, INC.'S PETITION FOR RECONSIDERATION**

Duke Energy Florida, LLC ("DEF"), by and through undersigned counsel and pursuant to Fla. Admin. Code Rule 28-106.204, hereby responds in opposition to the Petition¹ for Reconsideration filed by ChargePoint, Inc. ("ChargePoint"). ChargePoint fails to meet the standard of review for a reconsideration motion; rather, it is simply re-hashing arguments that it made in its Petition to Intervene. Because ChargePoint has not identified any point of law or fact that the Commission overlooked in its original order, its request for reconsideration should be denied for the same reasons the Commission set forth in its original order. ChargePoint does not meet the standard for intervention set forth in clearly established Commission precedent. DEF in further support of its response, states as follows:

1. On March 17, 2021, ChargePoint filed its Petition to Intervene in Docket No. 20210016-EI, which was opened to address the 2021 Settlement Agreement ("2021 Settlement") between DEF, the Office of Public Counsel ("OPC"), the Florida Industrial Power Uses Group ("FIPUG"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("White Springs") and Nucor Steel Florida, Inc. ("Nucor") (collectively, the "Parties").

¹ DEF notes that ChargePoint improperly characterized their request as a "Petition" for reconsideration rather than a "Motion" for reconsideration, pursuant to Rule 25-22.0376, F.A.C. By doing so, they failed to confer with the parties to this proceeding, as required by the Rule 28-106.204(3), F.A.C. before filing a motion. Nevertheless, DEF is treating this "Petition" as a "Motion" and is responding pursuant to the correct Commission rule. For ease of reference, DEF will refer to ChargePoint's filing as a petition.

2. On March 23, DEF timely filed a Response in Opposition to ChargePoint’s Petition to Intervene, and the Commission issued its Order Denying ChargePoint’s Petition to Intervene (“Order”) on April 12, 2021. *See* Order No. PSC-2021-0126-PCO-EI. ChargePoint filed the instant Petition for Reconsideration on April 22, 2021.

3. Notably, in its Petition for Reconsideration, ChargePoint failed to discuss or even mention the well-established FPSC standard for reconsideration of its orders. The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959) (*citing State ex.rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). ChargePoint’s Petition for Reconsideration raises no new arguments or points of law. All the arguments were already raised in ChargePoint’s Petition to Intervene and were therefore considered, and properly rejected, by the Commission in rendering its order.

4. For example, the Petition for Reconsideration starts with a thorough interpretation and analysis of the facts set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), to explain why ChargePoint meets the standard for standing. Under *Agrico*, to demonstrate a substantial interest in the outcome of a proceeding, a proposed intervenor must show “(1) that he will suffer injury in fact of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his injury is of a type of nature which the proceeding is designed to protect.” 406 So. 2d at 482. The Commission’s order denying

intervention thoroughly discussed the *Agrico* case, and therefore did not overlook that point of law. Furthermore, all the arguments that ChargePoint makes in the Petition for Reconsideration were also raised in their Petition to Intervene. *Compare* Petition for Reconsideration at p. 3 (arguing that DEF’s request is to “use \$65 million of ratepayer funds to broaden the regulated company’s (DEF) incursion into the unregulated EV charging market”) *with* Petition to Intervene at p. 4 (“DEF’s broad proposal to use \$65 million in ratepayer funds would greatly expand DEF’s incursion into the EV charging marketplace.”); *see also* Petition for Reconsideration at p. 4 (“the current DEF EV charging proposal no longer is simply a pilot project with limited impact on the marketplace like the one considered in Docket No. 20170183-EI”) *compared to* Petition to Intervene at p. 4 (“not only is the current EV charging proposal much broader than the earlier pilot...”).

5. ChargePoint’s second point in its Petition for Reconsideration is that DEF cannot keep ChargePoint out of the proceeding by selecting to file under a statute that does not confer intervention rights. Petition for Reconsideration at p. 5. ChargePoint seems to be dissatisfied with the state of the law in Florida, which is that a party cannot simply intervene in any proceeding they choose. Rather, they must demonstrate a right to be there (i.e., standing). ChargePoint argues that the Commission is heading down a slippery slope by denying all attempts to intervene in cases where utilities are seeking approval of proposals that could potentially impact the prospective-intervenor’s business interests. Petition for Reconsideration at p. 5. The Commission should reject this hyperbolic argument. The Commission is not “den[ying] all interventions” – it is denying ChargePoint’s intervention in this docket because ChargePoint has failed to demonstrate its standing to participate. Once again, ChargePoint has not raised a new point of law or overlooked fact, but it is taking issue with the standard for establishing standing. The Commission did not

overlook any point of law in its order denying intervention. It correctly applied the standing requirement that “competitive economic injury may only qualify as an injury if the applicable governing statute is designed to protect against such an interest.” Order at p. 4.

6. The next ChargePoint argument for reconsideration is that DEF’s lack of specificity in the EV program cannot be a basis for denying intervention. Petition for Reconsideration at p. 6. However, the Commission’s order denying intervention did not rely on this fact as a basis for denying intervention. The cited statement appears in the order’s summary of ChargePoint’s Petition to Intervene, but nowhere in the order’s “Analysis & Ruling” section does the Commission rely on this to deny standing. This is therefore not an overlooked point of fact or law that meets the standard for granting reconsideration.

7. ChargePoint’s fourth argument for reconsideration is again to argue that Section 339.287/SB7018 confers jurisdiction on the Commission such that ChargePoint’s economic interests should be protected in this proceeding. ChargePoint already made this argument multiple times in its Petition to Intervene. *See* pp. 4-5 and 7. Further, the order denying intervention clearly addressed, and rejected, these arguments. *See* p. 4 of Order No. PSC-2021-0126-PCO-EI (“that statute does not confer jurisdiction on the Commission; the statute addresses the Commission and the roles of other agencies and their involvement in the planning process.”) ChargePoint raises nothing new here and simply rehashes the same argument, which is not appropriate in a motion for reconsideration.

8. ChargePoint’s final reconsideration argument is that the Commission overlooked its request in the Petition to Intervene that the intervention be limited to the EV issues, because the order denying intervention did not address this argument. Petition for Reconsideration at p. 7. ChargePoint’s proposal essentially amounts to a request that the Florida Commission ignore the

legal requirements of standing and allow ChargePoint to intervene on a partial basis. Irrespective of the practice in other states, in Florida, a party must meet the legal requirements of standing, and then they will be permitted to intervene in a proceeding. ChargePoint has asked for limited standing to participate with regards to the very basis for standing that the Commission has already rejected – i.e., their economic interest in the electric vehicle charging market. This is different than a situation where a customer is denied standing to participate as an industry participant but allowed to intervene based on their status as a customer. *See, e.g.*, Order No. PSC-2021-0151-PCO-EI (granting EVgo standing only in its capacity as a commercial retail customer of DEF, not for purposes of broad competitive business interests). The Commission did not overlook this argument from ChargePoint, they just did not need to address it because they correctly analyzed the main issue, which is whether ChargePoint meets the legal standard for standing.

9. Again, as DEF indicated in its response to the Petition to Intervene, it agrees that interested persons should have an opportunity to be heard at the hearing in this docket and notes that the Commission has provided notice that public comments will be allowed. DEF welcomes ChargePoint to make such comments, and notes that ChargePoint has already submitted written comments.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that the Commission deny ChargePoint’s Petition for Reconsideration because ChargePoint failed to raise any point of law or fact that the Commission failed to consider in its order denying intervention.

Respectfully submitted this 29th day of April, 2021.

/s/ Dianne M. Triplett

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CERTIFICATE OF SERVICE

Docket No. 20210016-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 29th day of April, 2021.

/s/ Dianne M. Triplett

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