

March 28, 2019

British Columbia Utilities Commission  
6<sup>th</sup> Floor – 900 Howe Street  
Vancouver, BC V6Z 2V3

Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, BC V6B 0M3 CANADA

F: +1 604.641.4949  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Matthew D. Keen**  
+1 604.641.4913  
[matthew.keen@nortonrosefulbright.com](mailto:matthew.keen@nortonrosefulbright.com)

Assistant  
+1 604.641.4527  
[rosalind.endo@nortonrosefulbright.com](mailto:rosalind.endo@nortonrosefulbright.com)

Our reference: 18-2489

**Attention: Patrick Wruck, Commission Secretary**

Dear Sir:

**BCUC Inquiry into the Regulation of Electric Vehicle Charging Services  
ChargePoint Phase Two Final Argument**

We are counsel to ChargePoint Inc. and enclose its Phase Two final argument. Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen

MDK/roe

encl.

CAN\_DMS: \126399068\1

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada.

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are at [nortonrosefulbright.com](http://nortonrosefulbright.com).

**BRITISH COLUMBIA UTILITIES COMMISSION**

**INQUIRY INTO THE REGULATION OF ELECTRIC VEHICLE CHARGING SERVICES  
PHASE 2**

**PROJECT NO. 1598941**

---

**CHARGEPOINT INC.**

**PHASE 2 FINAL ARGUMENT**

---

**March 28, 2019**

## CHARGEPOINT INC.

### INQUIRY INTO THE REGULATION OF ELECTRIC VEHICLE CHARGING SERVICES

#### SUBMISSION TO PHASE 2 QUESTIONS

---

#### 1. INTRODUCTION AND OVERVIEW

The Government's recent CleanBC plan sets out ambitious targets for both greenhouse gas (GHG) reductions and zero emissions vehicle (ZEV) sales. Achieving these targets will require significant investment in transportation electrification, including charging services, from all market actors positioned to do so. As discussed below, it would be imprudent for the Commission to underestimate the potential benefits that could accrue to the market by fostering a competitive investment climate, i.e. one that is inviting to non-utility private investment.

Government has told Inquiry participants that it is considering legislative or regulatory changes to address non-exempt utilities' involvement in the EV charging services industry. In the procedural conference<sup>1</sup> the BC Government clearly acknowledged the important role non-exempt utilities should play in developing the EV charging market. ChargePoint shares its view that the role of non-exempt utilities in accelerating transportation electrification and growing the EV charging market is important. However, utility investment should nonetheless run parallel to, and be complementary of, private sector investment.

In this regard, ChargePoint supports clarifying the rules and oversight mechanisms surrounding non-exempt utilities' EV charging investments and activities. This regulatory environment must be carefully curated though, to preserve diversity and competitiveness in the marketplace.

The Commission has invited final arguments on a revised Inquiry scope addressing scope items 13 (electrical safety standards) and 14 (prescribed undertakings under the Greenhouse Gas Reduction Regulation), requesting that parties avoid unnecessary repetition of arguments made in previous submissions. In complying with this request, ChargePoint will not provide additional evidence or submissions concerning item 13, and instead refers the Commission to ChargePoint's evidence in both Phases 1 and 2.<sup>2</sup>

ChargePoint therefore focuses this final argument on scope item number 14. Specifically, these submissions respond to statements made by the BC Government in the procedural conference on February 27, 2019, that indicate Government will pass regulations to support non-exempt utility EV charging investments.<sup>3</sup> Given the Government's statements, ChargePoint reframes and addresses the issue as follows: Should the Government support utility investment through amendments to the GGRR, or other legislative or regulatory changes?

---

<sup>1</sup> Exhibit A41, p. 691-693.

<sup>2</sup> Exhibits C25-2, p. 8 and C25-12, p. 14, respectively.

<sup>3</sup> Transcript Volume 10, p. 691-692

## 2. ISSUE 14: NEW EV REGULATIONS

Interveners are divided on whether investment in transportation electrification requires amending the Greenhouse Gas Reduction Regulation (GGRR). For example, FortisBC states that “GGRR amendments specific to EV charging service would help to make the ground rules applicable to non-exempt public utility participation in the sector clear to all stakeholders”, and then “public utilities would be able to proceed more effectively and efficiently to help achieve provincial policy goals....”<sup>4</sup> BCSEA-SCBC agrees, but only in relation to Direct Current / Fast Charging (DCFC) infrastructure.<sup>5</sup> ChargePoint agrees with these interveners in that there is a need for clarity around investments, but like others, ChargePoint considers that a “GGRR amendment is not required to justify rate-based investment by non-exempt public utilities.”<sup>6</sup>

ChargePoint has no concern with government establishing appropriate ground rules for non-exempt utility participation, but submits that the Commission should continue to oversee non-exempt utility investment. Cities in BC have experienced robust investment from multiple private EV charging providers, but a GGRR amendment to limit Commission oversight would risk non-exempt utilities exerting market power. Unconstrained, that situation would discourage private investors from seeking to compete in BC’s EV charging space, and also be dangerous for ratepayers, who would be exposed to the risks of stranded and/or imprudent costs. On the other hand, Commission oversight provides transparency and accountability to ratepayers and safeguards against non-exempt utilities making the EV charging market less competitive. It does not preclude Government from taking steps to encourage non-exempt utility participation in transportation electrification – action that ChargePoint supports, as discussed below.

Accordingly, the Commission should recommend to Government that the Commission’s key functions over non-exempt utilities’ EV charging investments ought to remain in place. The Commission’s report should highlight the important role the Commission should play in maintaining an efficient and competitive market.

### (i) States as a precedent model

Justice Brandeis of the Supreme Court of the United States famously referred to the various US states as the laboratories of democracy, with the ability to try novel social and economic experiments without risk to the rest of the country. In this case the Commission can look to multiple US states as such laboratories, particularly those that have successfully secured utility EV investment by taking advantage of regulatory coordination and structure. California, Oregon and New Mexico each legislated that public utility commissions review utility transportation electrification applications.<sup>7</sup> In these instances, the

---

<sup>4</sup> Exhibit C12-6, p.19 – “GGRR amendments specific to EV charging service would help to make the ground rules applicable to non-exempt public utility participation in the sector clear to all stakeholders and the BCUC. With these ground rules being established, public utilities would be able to proceed more effectively and efficiently to help achieve provincial policy goals pertaining to GHG emission reductions in the transportation sector.”

<sup>5</sup> Exhibit C6-16, p.1 – “In BCSEA-SCBC’s view, section 4(3) of the GGR regulation should be amended to add as a prescribed undertaking a program by BC Hydro or by FBC to provide public DCFC service for the purpose of reducing GHG emissions in B.C.”

<sup>6</sup> For example, AddEnergie, on page 3 of its Phase 2 evidence (Exhibit C20-7) notes that “ [A] GGRR amendment is not required to justify rate-based investment by non-exempt public utilities in public EV charging.

<sup>7</sup> California Senate Bill 350 Clean Energy and Pollution Reduction Act of 2015, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB350](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350); ; Oregon Senate Bill

commissions' expertise and forums have been proven to support, not hinder, utility programs and investments in transportation electrification.

At a high-level, these state policies:

- Confirm that transportation electrification delivers environmental and other public benefits and contributes to state EV and GHG targets;
- Indicate the intent of the policy is to support utility involvement in achieving these EV and GHG targets and/or environmental benefits;
- Clarify that utilities have an important role to play in improving access to transportation electrification, and clarify the broad scope of utility activity that can accelerate transportation electrification (e.g. programs, investments);
- Acknowledge a need for utility programs and investments to support grid benefits, innovation, competition, consumer choice, stimulate private capital, or underserved or low-income communities;
- Establish the conditions for rate recovery;
- Are transparent and include public reporting to inform design and Commission policy;
- Direct the commissions to require utilities to submit applications for programs and investments that accelerates transportation electrification; and,
- Clarify the criteria the commission must consider when reviewing utility applications for rate recovery, including that appropriate investments should:
  - Support grid flexibility and management
  - Increase transportation electrification
  - Support consumer choice in EV charging infrastructure and services
  - Be reasonable and prudent, and in the interest of ratepayer
  - Do not impact non-utilities' ability to transact in the market

These policies allow the government to set the policy direction and context (accelerating transportation electrification by supporting utility cost recovery), but leverage the expertise of the Commission to implement policy. Commission roles in the policies noted above are important to ensure that state transportation electrification goals are achieved transparently and in a manner that balances rate payer interests with public climate objectives, long-term market stability and innovation. The BC Government should share these goals.

California's Clean Energy and Pollution Reduction Act of 2015 (SB 350) is a good example of appropriate balancing that the Commission should recommend to government. SB 350 sets ambitious targets for GHG and ZEVs and utility involvement. It provides utilities clarity around their role and their ability to recover costs, but retains CPUC oversight:

*"The commission shall approve, or modify and approve, programs and investments in transportation electrification, including those that deploy charging infrastructure, via a reasonable cost recovery mechanism, if they are consistent with this section, do not*

---

1547 of 2016 <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled>; New Mexico House Bill 521 of 2019, respectively <https://www.nmlegis.gov/Sessions/19%20Regular/bills/house/HB0521.pdf>.

*unfairly compete with nonutility enterprises as required under Section 740.3, include performance accountability measures, and are in the interests of ratepayers as defined in Section 740.8.”*

Under SB 350, over \$800 million in transportation electrification has already been approved since 2016.<sup>8</sup>

**(ii) ChargePoint’s Recommendation**

As Scope Item 14 reflects, BC Hydro and others have recommended amending the GGRR to make EV charging a “prescribed undertaking”. Doing so would leave little role for the Commission, however, and it would be highly awkward for the Commission to recommend fettering some of its key functions. In ChargePoint’s view, the record of this proceeding shows little reason to do so. To the contrary, the expertise the Commission offers is valuable to BC market participants as well as potential investors from outside BC. Commission involvement in grid flexibility, investment prudence, stranded asset risk, and avoiding adverse market impacts is important, and the BC Government’s CleanBC targets will require investment from actors beyond incumbent non-exempt utilities. In any emerging market it is important to foster diversity, competition and innovation, for both market efficiency and customer interests.

Accordingly, based on the experience of US states discussed above, and government’s clear intent to pass some type of additional regulation, ChargePoint submits that the Commission should recommend a legislative direction<sup>9</sup> other than a GGRR amendment to achieve government’s objectives for Phase 2. Specifically, one that:

- states the role of utilities in achieving government GHG and ZEV targets;
- specifies the permitted range of transportation electrification investments and activities utilities can engage in (e.g., EV charging rebates, make-ready investment, charging station ownership, consumer education and outreach, demand management);
- confirms Commission authority to require applications and approve or modify and approve applications upon meeting certain criteria; and
- to improve investor confidence for non-exempt utilities, details the criteria the Commission must apply when assessing whether EV related investments are prudent and eligible for cost recovery.

Government’s goal should be for utility investments to:

- further the province’s Clean BC goals, including health, environmental benefits and job creation;
- contribute to the long-term stability of the *competitive* charging market, and preserve the ability for non-utilities to operate and grow sustainably;
- enable consumer choice competition and innovation, and ensure site hosts are empowered in the selection of equipment and network services (i.e., from multiple vendors), as well as in pricing to drivers;
- contribute to grid flexibility and stability; and
- leverage private capital.<sup>10</sup>

<sup>8</sup> <http://www.cpuc.ca.gov/sb350te/>

<sup>9</sup> Options to provide non-exempt utilities more certainty, but retain important elements of Commission oversight include a special direction under the *UCA* or a specific transportation electrification amendment to the *Clean Energy Act* and related amendment to the GGRR, rather than the prescribed undertaking approach.

<sup>10</sup> See ChargePoint’s Phase 2 evidence at Ex. C25-12, pages 3-6.

Finally, ChargePoint notes that Commission directed policies can also achieve the outcomes noted above. As indicated by the Alliance for Transportation Electrification in its Phase 2 submission, “other state Commissions have acted recently in the United States without specific legislation or statutory direction from the Assembly or legislative body”, and through this process, Commissions have approved a number of utility applications, such as in Maryland and Michigan.<sup>11</sup> However, given the Government’s policy intentions, ChargePoint does not provide any additional submission on this point.

### **3. CONCLUSION**

ChargePoint is excited about the future of BC’s EV charging market, and looks forward to being an active participant. However, the issue of how the current utility incumbents are regulated is of paramount importance to private investment in BC going forward. ChargePoint submits that the appropriate way forward to is to recommend a regime that uses modified standard regulatory practices to address the issues that may arise with non-exempt utility investment in EV charging services, drawing upon the experiences and successes of other jurisdictions to help provide utilities with investment certainty.

---

<sup>11</sup> Exhibit 36-2, p. 9.