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August 1, 2018

British Columbia Utilities Commission  
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Our reference  
18-2489

Dear Sir:

**BCUC Inquiry into the Regulation of Electric Vehicle Charging Services  
ChargePoint Inc. Argument re Phase One Issues**

We are counsel to ChargePoint Inc. and enclose its written argument for this phase of the proceeding. Please contact the writer if you have any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Matthew D. Keen".

Matthew D. Keen

MDK/roe

encl.

can\_dms: \121471756\1

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**BRITISH COLUMBIA UTILITIES COMMISSION**

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

**PROJECT NO. 1598941**

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**CHARGEPOINT INC.**

**ARGUMENT RE PHASE ONE ISSUES**

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**August 1, 2018**

**CHARGEPOINT INC.**  
**INQUIRY INTO THE REGULATION OF ELECTRIC VEHICLE CHARGING SERVICES**  
**Argument re Phase One Issues**

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**I. INTRODUCTION AND OVERVIEW**

This is ChargePoint Inc.'s (ChargePoint) argument concerning the Commission's preliminary "phase one" issues, following the first evidentiary phase of its Electric Vehicle Charging Services Inquiry (Inquiry).

ChargePoint is the leading electric vehicle (EV) charging network in the world, with charging solutions in every category EV drivers charge, at home, work, around town and on the road. With more than 52,000 independently owned public and semi-public charging spots, including over 600 public and semi-public charging spots in British Columbia, and thousands of customers (businesses, cities, agencies and service providers), ChargePoint is the only charging technology company on the market that designs, develops and manufactures hardware and software solutions across every use case.

More specifically, ChargePoint develops and sells smart, networked electric vehicle charging stations (EVCS) to third parties, who then own and operate the charging stations on their properties. Those third parties include utilities, municipalities, office buildings, strata and apartment towers, and parking lot operators. For a subscription, ChargePoint also provides network services, or data-driven and cloud-enabled capabilities that allow third parties to manage charging assets, optimize services and communicate with EV drivers.

In this proceeding, the Commission has requested the parties to address the following "phase one" questions:

- *Do the words "for compensation" in the definition of public utility mean that a person who does not expressly require customers to pay for charging services but instead recovers the cost of charging from other services provided to the customers is a "public utility"?*
- *Should entities not otherwise public utilities supplying electricity to EV end users be regulated at all.*
- *Inasmuch as public utilities such as BC Hydro and FBC to participate in the EV market as owners or operators of EV charging stations, clarity is needed on whether BC Hydro and FBC are permitted to invest in EV charging stations*
- *The legal interpretation regarding the "for compensation" wording within the definition of a public utility under the UCA.*
- *Interpretation of section 18 of the Clean Energy Act and section 4 of the GGR as a prescribed undertaking, thereby enabling existing public utilities such as BC Hydro and FBC to provide EV charging services with the inclusion of EV charging stations in their regulated rate base.<sup>1</sup>*

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<sup>1</sup> Exhibit A-35.

In response, ChargePoint's submission is organized as follows:

- I. INTRODUCTION AND OVERVIEW
- II. BRIEF CONCLUSIONS
- III. ANALYSIS
  - A. Strawman Regulatory Framework:
    - (i) Are EVCS owners and operators public utilities in the jurisdiction of the Commission?
    - (ii) If EVCS owners and operators may be public utilities in the Commission's jurisdiction, should the Commission "forbear" from regulating?
    - (iii) If EVCS are public utilities, is an exemption from aspects of Part 3 of the Utilities Commissions Act appropriate?
  - B. Additional Issues:
    - (i) What is the scope of the "for compensation" wording within the "public utility" definition in the *Utilities Commission Act*?
    - (ii) Are BC Hydro and FortisBC permitted to invest in EV charging stations as a prescribed undertaking under section 18 of the Clean Energy Act and section 4 of the *Greenhouse Gas Reduction (Clean Energy) Regulation*?
- IV. CONCLUSION

## II. BRIEF CONCLUSIONS

Following this proceeding, ChargePoint submits that the Commission should conclude it should not actively regulate EVCS owners and operators, because EVCS provide a specialized battery charging service, and not the sale of electricity for general use. EVCS also do not present natural monopoly circumstances for EV drivers. If necessary, the Commission should seek and issue a broad class exemption from Part 3 of the *Utilities Commission Act (UCA)* to achieve this end. The Commission's involvement should therefore largely be confined to supervising the investments of existing electric utilities into the sector. This conclusion flows from a principled approach to the *UCA* and regulating EVCS owners and operators, but also yields a highly pragmatic outcome.

Suggestions that the Commission must protect customers in a not-yet-competitive market, or get involved for technical safety-related reasons, should be rejected:

- The market may be young, but it does not present natural monopolies. Consumers have choices and options in BC that can and will discipline charging providers. Some parts of the market may not have a strong economic case at this stage, but that is due to capital costs associated with that infrastructure. The Commission should encourage subsidies, rather than regulation, to promote the adoption of this technology.

- Commission “protection” at this stage would bias and distort the market rather than support it. Advantaging incumbents by creating regulatory and investment barriers for subsequent entrants will lessen the positive effects of market competition, which include customer choice, competitive service and pricing, and more innovative service offerings.
- Other regulatory authorities deal with tenants, strata co-owners, consumer protection, electrical standards, safety, and metering,<sup>2</sup> and there is no need for the Commission to usurp or duplicate their functions.

It is an exciting time for EV adoption, and electric utilities have an important role to play in supplying electricity to new EVCS customers, supporting the deployment of EVCS, and managing the load and grid demands they will pose. The appropriate role of the Commission relative to EVCS now is to supervise existing utilities in the normal course and, in so doing, allow a diverse and strong EVCS market to grow.

### **III. ANALYSIS**

#### **A. Strawman Regulatory Framework**

##### **(i) Are EVCS owners and operators public utilities in the jurisdiction of the Commission?**

EVCS typically comprise the use of a parking space and specialized fixtures, hardware and software to charge an EV battery (and only an EV battery, with no other use possible).

In BC, public utilities are persons who, among other things, “[own or operate]...equipment or facilities for...the production, generation, storage, transmission, sale, delivery or provision of electricity...to or for the public or a corporation for compensation....”<sup>3</sup>

ChargePoint submits that a careful application of the statutory definition to the full circumstances of EVCS should lead the Commission to conclude that EVCS owners and operators and EV charging services are not public utilities within the Commission’s jurisdiction because they do not reflect a *sale* of electricity, but instead provide a service that *uses* electricity. The word “electricity” in the *UCA* should be read as limited by the entire context of this provision, encompassing only the sale, delivery or provision of electricity service (e.g., a customer’s connection to the generation/transmission/distribution network so that they can be provided with electricity), rather than any situation where electricity is used ancillary to the sale, delivery or provision of a different service. Many North American jurisdictions, including Ontario, New York, Massachusetts, and Missouri have reached this conclusion.<sup>4</sup>

Through the Bakerfield Ecodairy exemption order, the Commission has previously recognized EVCS sales to the public as satisfying the public utility definition. That proceeding did not, however, feature contending points of view. ChargePoint submits that the Commission should take into account the fuller context of this Inquiry, and reconsider its earlier interpretation. The fact that electricity is consumed by EVCS owners and operators and EV charging services to provide this service does not bring their operations into the scope of Commission jurisdiction.

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<sup>2</sup> E.g., see BC Hydro’s response to BCUC IR 1.4.3, exhibit C1-4, p. 29.

<sup>3</sup> *Utilities Commission Act*, RSBC 1996, c. 473, s. 1, subject to a number of exemptions that are not relevant in the circumstances.

<sup>4</sup> ChargePoint’s written evidence, exhibit C-25-2 at p. 10.

**(ii) If EVCS owners and operators may be public utilities in the Commission’s jurisdiction, should the Commission “forbear” from regulating?**

The interpretation that EVCS are not “public utilities” is bolstered by considering the purpose and scheme of the *UCA*. The Commission considered the interpretation of the “public utility” definition in the “Inquiry Into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives” (AES Inquiry). It found that a strict, literal interpretation could lead to an absurd result that encompasses a host of services and technologies available in a competitive marketplace. The Commission found it must therefore do its best to interpret the legislation using the modern approach to statutory interpretation, which includes reading the words harmoniously with the purpose and scheme of the *UCA*.

In the AES Inquiry the Commission considered whether it should forbear from regulating TES as public utilities under the *UCA* because they satisfied the statutory definition (selling an agent for the provision of heat for compensation), but largely escaped natural monopoly circumstances (there was competition to provide TES services, but once constructed TES customers were captive). To manage the “lack of clarity”, the Commission determined that tiered exemptions were appropriate.

The Commission held that the “literal interpretation of the definition of ‘public utility’ in the *UCA* could lead to the absurd result [that] a host of services and technologies that are available in a competitive marketplace would require regulation”. The Commission confirmed that its interpretation and application of the *UCA* should take into account the market context, specifically the “degree to which natural monopoly characteristics are present and whether the consumer requires protection.”

Notably, there was no question the thermal energy system (TES) providers were selling an agent for the provision of heat to the public for compensation in the same manner as electric utilities, yet the Commission still had concerns with applying the public utility definition to those providers. Here, EVCS owners and operators do not clearly meet the criteria of selling, delivering or providing electricity, and that finding is only reinforced by a purposive interpretation that considers the objects of the *UCA* as found in the AES Inquiry.

ChargePoint submits that there is therefore no comparable “lack of clarity” for EVCS circumstances relative to TES. By parallel reasoning, if the Commission considers that EVCS may reflect the sale of electricity rather than a charging service (which ChargePoint denies), it should nevertheless “forbear” from regulating by purposively interpreting the public utility definition so that EVCS owners and operators are not caught by it. It makes little practical sense to, for example, distinguish between using electric current to separate the anions and cations in an EV battery at a charging station, and using electric current to heat coils and produce a magnetic field in a hair dryer at a blow-dry bar station.<sup>5</sup>

Participants in the AES Inquiry noted that the Commission forbears regularly, in fact. There are a myriad of everyday items whose sale reflects the operation of “facilities for the...sale...of...[an] agent for the production of light, heat, cold or power to or for the public...for compensation”. Grocery store sales of propane, charcoal and batteries would all satisfy the definition, for example, but the Commission quite properly does not assert jurisdiction over charcoal sales.<sup>6</sup>

EVCS are no different. EVCS owners and operators provide competitive services that are market based.

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<sup>5</sup> E.g., <https://blomedry.com/locations/blo-yaletown/> (Omitting that the hairdryer itself may otherwise qualify as “facilities... for the production of...heat”).

<sup>6</sup> Related speculation arises in BC Hydro’s response to BCUC IR 1.30.4, exhibit C1-4, p. 242, regarding gas stations and hydrogen fuelling.

Customers have access to diverse product and service offerings in a working market,<sup>7</sup> i.e., do not face the anti-competitive risks faced by customers of natural monopolies.

For these reasons as well, the Commission should revise its conclusion concerning the Bakerfield Ecodairy circumstances. Based on both technical and purposive interpretations, the Commission should conclude that EVCS are not public utilities under the *UCA*.

Many Inquiry participants share ChargePoint's view that EVCS and charging services do not display the characteristics of a natural monopoly. For example, BC Hydro notes that both DCFC and Level 2 charging services are "not a true natural monopoly service",<sup>8</sup> and specifies:

*DC fast charging service entails relatively low capital costs, installations can be readily duplicated and there are competitive elements associated with the siting of the best locations, the technology choices available, and the forms of service offered in respect of rental or parking space and other value-add products.*

Tesla and CEC echo these views, respectively:

*[T]he provision of EV charging services is not a monopoly service and does not represent distribution or retail of electricity.<sup>9</sup>*

*[M]any entities are already actively participating in the electric vehicle charging market, and the EV market is growing rapidly with significant change. There is no natural monopoly.<sup>10</sup>*

The Commission should reject the views of participants who suggest that EVCS customers require the same protection that they would from an electric utility providing a monopoly service, and have confidence that the absence of natural monopoly and market power circumstances allows the Commission to conclude the *UCA* is not triggered.

All of the "captive customer" claims<sup>11</sup> provided are miscast:

- While there may be areas that are underserved by DCFC stations, or even Level 2 stations, NRCan's Electric Charging and Alternative Fuelling Stations Locator<sup>12</sup> shows that EV drivers in BC can choose between a number of public charging locations and levels. Simon Fraser University's Canadian Plug-In Electric Vehicle Study<sup>13</sup> further shows that 97% of EV drivers in BC report home charging access and 67% of non-EV drivers in Canada report potential home charging access.
- The fact that EV customers may benefit from additional EVCS investment and utility and government support is different than requiring protection from natural monopoly abuse. The Commission does not need to artificially assert jurisdiction as a means to catalyze investment where customer costs are driven by capital costs, e.g. funding for rural DCFC. Government can

<sup>7</sup> ChargePoint responses to BCUC IR 1.1 and CEC IR 4.1, exhibits 25-7 at p. 1 and C25-9 at p.5.

<sup>8</sup> BC Hydro written evidence, exhibit C1-2 at p. 8.

<sup>9</sup> Tesla written evidence, exhibit C28-2 at pp. 4-5

<sup>10</sup> CEC written evidence, exhibit C24-2 at p. 27.

<sup>11</sup> E.g., BC Hydro's written evidence, exhibit C1-4, p. 10; Greenlots' written evidence, exhibit 15-2 at p. 2-3; Tesla's written evidence, exhibit 28-2 at p. 4.

<sup>12</sup> <https://www.nrcan.gc.ca/energy/transportation/personal/20487#/find/nearest>

<sup>13</sup> [https://sfustart.files.wordpress.com/2016/10/electrifying-vehicles-final-v2-8-july-10-high-res-download-rgb-no-bleeds\\_executivesummary.pdf](https://sfustart.files.wordpress.com/2016/10/electrifying-vehicles-final-v2-8-july-10-high-res-download-rgb-no-bleeds_executivesummary.pdf)

and does subsidize EV infrastructure, as have utilities. And, as discussed in the section below concerning prescribed undertakings, there is no barrier to existing electric utilities investing in EVCS development with third parties. Any need to accelerate EVCS deployment should be dealt with as a subsidy issue and not a regulation issue.

- Similarly, being held “captive” by a landlord or strata council in a multi-unit residential building<sup>14</sup> is not the same as being captive to the market. Those EV drivers may choose to charge at a different location. In any event, the Commission’s role should not be to second-guess pricing decisions made by landlords and strata councils, because there are well-developed structures to manage tenant and strata owner disputes.<sup>15</sup> The Commission need not intervene.

**(iii) If EVCS are public utilities, is an exemption from aspects of Part 3 of the *Utilities Commissions Act* appropriate?**

***General comments***

If the Commission determines that EVCS owners and operators and EV charging stations are “public utilities” under the *UCA* such that some level of regulation is justified, then the Commission should take a light-handed approach to regulation and broadly exempt the application of most provisions of the *UCA*.

The Commission took a similar approach for TES installations<sup>16</sup> in the AES Inquiry, and established indicia to consider when assessing the need for and intensity of regulation. None of those indicia suggest a need for regulation here. Indeed, regulation of the competitive market at this stage may have the opposite of its intended effect, harming customers by imposing compliance costs and imposing regulatory burdens (costs and delays) that limit competition and customer options. Accordingly, minimal conditions should apply to any EVCS class exemption.

The AES Inquiry principles identified for determining whether to regulate are (pp. 6-7):

- Only regulate when required.
- Regulation should not impede competitive markets.
- “Regulation is costly, time-consuming, and limited by informational asymmetries,” and “a fundamental principle [is] that regulation is only appropriate where required and is driven by the inability of competitive forces to operate...”.
- “Regulation exists to protect consumers against the abuse of monopoly power but...the superior protection for consumers is the competitive market place.”
- Regulation is required when natural monopoly characteristics are present and there is a need to protect the public interest and/or legislation requires an activity to be regulated.

Using these principles, regulation of EVCS owner and operator and EV charging services is not required for two broad reasons:

- There are no significant natural monopoly characteristics in the EVCS market (e.g., large initial

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<sup>14</sup> Exhibit 19-2 at p. 11: the City of Vancouver states homeowners should be able to “complain to the Commission under the *UCA* that the terms and conditions of the “public utility” are unfair or unreasonable.”

<sup>15</sup> VEVA response to BCUC IR 2.1, exhibit 35-6 at p.6; City of Vancouver responses to ChargePoint IRs 2.1-2.3, exhibit C5-5 at p. 2-3.

<sup>16</sup> ChargePoint written evidence, exhibit C25-2, Section IV.

capital costs; significant barriers to entry; infrastructure which is not cost-effective or otherwise amenable to duplication; subadditivity of costs meaning output demanded can be produced most efficiently by only a single firm; and economies of scale). EVCS require limited capital investment compared to regulated industries, and there are no substantial barriers to entry into the market.

- Regulation is costly, and would be a significant disincentive to non-public utility market participants. Financial regulation and reporting and compliance demands a significant investment in overhead and human capital. If BC becomes the most regulated EVCS market on the continent, as some of the current options imply, EVCS innovators are likely to first invest in other jurisdictions. The delays and potentially expensive compliance conditions that regulation creates are barriers to entry, and the system designed to protect customers from the effects of limited competition would, perversely, *limit* competition and impede the development of the competitive EVCS market. Conversely, absent such a regulatory burden, a competitive EVCS environment should continue to grow and develop, because EVCS are operated by diverse entities, including developers, residences, property managers, retailers, municipalities, utilities, and parking lot operators.

In sum, the Commission should “do no harm” and avoid regulating EVCS owners and operators and EV charging services.

Other Inquiry participants have taken different views, opposing forbearance because consumers purportedly require protection for the first number of years of a developing market, or certain levels of charging require protection. These views are flawed because:

- Concerns about market failure or DCFC gouging have no air of reality, and reflect speculation premised on incorrectly segmenting the market to imply that customers are captive, and overlooking the broader charging ecosystem.
- They conflate a poor current economic case in some parts of the market with a need for regulation, when these concerns are more appropriately addressed through subsidies.
- They fail to recognize, or ignore, that imposing a Commission regulatory burden now will bias the developing market against new entrants.

ChargePoint addresses these concerns below.

### ***Consideration of market conditions***

Some interveners have noted that the determination of Commission forbearance should consider the stage of market development for different categories of charging service, i.e., whether there is enough “competitiveness”, rather than consider whether the adverse effects of natural monopolies / captive consumers are present. For example, the City suggests regulation is warranted because the market is new:

*Commission should adjust its approach to regulation based on the different categories of EV charging service, based on the extent to which the EV owner or user has access to competitive alternatives. While this emerging market grows, the Commission will have a role to play to ensure EV owners have recourse to resolve complaints when EV*

*charging service providers are able to exert undue market power in segments of the market where service options are limited.<sup>17</sup>*

And on page 1 of Exhibit C5-3, the City suggests that:

*[T]he Commission should retain jurisdiction to regulate the rates and terms of service for EV charging service where the market is not competitive, but adopt a complaint-based approach.<sup>18</sup>*

By approaching the issue from the wrong direction, this analysis ignores that competitive forces can still constrain the exercise of market power in nascent markets. Indeed, nearly every market should be expected to develop so that at the initial stages there are a limited number of competitors that may have the appearance of having market power, but do not in fact because exercises of market power are disciplined by capital attraction, i.e., excess returns serve to attract capital to compete away their economic profits (assuming no natural monopoly type barriers to entry). The core question for the Commission is therefore whether inherent natural monopoly characteristics are present, i.e., the *type* of market at issue, and not the *stage* the market is at.

It is unclear whether the City means the Commission should establish multiple levels of regulation for EVCS, varying by location and technology, or simply respond to complaints about rates and service. Regardless, applying differentiated approaches to regulation for different levels of EVCS would create confusion and costs and result in a barrier to entry.

Likewise, BC Hydro implies that DCFC should be regulated for DCFC outside of the urban core:

*Currently in B.C. there are a limited number of DCFC stations, and outside of urban areas in particular there is not a fully competitive environment; that is, one in which charging stations can compete and fully differentiate by price, location and other attributes. While there are elements of competition in the provision of DC fast charging services, there remain barriers to true competition largely related to current economics and regulation.*

*...*  
*At some point in the future when it is economic to do so, the private sector may be able to take over the fast charging marketplace under a fully competitive landscape. As a result, the public fast charging market may have elements of monopoly service until such time as the economics and regulation allow for a competitive market.<sup>19</sup>*

At a principled level, BC Hydro appears to conflate the fact that DCFC stations are expensive to install, and therefore require high prices to justify capital expenditures, with a need for regulation. If the economic case for DCFC stations is not strong at this stage, then that only means that customers are not willing to pay the high prices required to justify investments in DCFC technology. High prices due to expensive capital do not reflect an exercise of market power, and the market concerns expressed do not reflect significant barriers to entry such as infrastructure too expensive to duplicate or captive consumers, that justify regulation.

Instead, BC Hydro's evidence instead establishes the need for subsidies for the installation of DCFC stations to the extent DCFC stations are a justified policy end, to lower the cost to serve, and thereby reducing the cost to consumers. There is evidence that many EVCS owners and operators already

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<sup>17</sup> City of Vancouver written evidence, exhibit C5-2, pages 12-13.

<sup>18</sup> City of Vancouver responses to BCUC IR 1.1, exhibit C5-3, page 1.

<sup>19</sup> BC Hydro written evidence, exhibit C1-2, page 11.

receive subsidies, and evidence that additional subsidies are used to build out BC's charging network. Ironically, Commission efforts to "protect" consumers from the (often subsidized) DCFC networks installed to date could actually make them worse off. The additional burden and cost to EVCS owners and operators associated with regulation would likely create a barrier to EVCS investment and reduce consumer choices. As Tesla notes, requiring Commission approval for EVCS or specifying a price of charging services through a regulated model would delay and disincentivize EVCS deployment.<sup>20</sup> Individual businesses, landlords, employers, and parking lot operators will likely avoid offering charging services if doing so entails filing a rates application with the Commission,<sup>21</sup> or annual reports concerning service and finances.<sup>22</sup> The consequence of those obligations is likely an EVCS field dominated by a small number of players.

Fundamentally, there is no evidence of any EVCS owner or operator exercising market power in BC.<sup>23</sup> Nor is there evidence that any EVCS owner or operator is likely to exercise market power in BC. Absent barriers to entry or other natural monopoly characteristics, it is difficult for a market participant to exercise market power simply because the market is thinly populated. To the extent that such a market participant tries to exercise market power, their initial success will attract competition by way of new entrants, and market forces will discipline the attempt to exercise market power.

### ***Consideration of charging levels***

Some interveners have also noted that Commission forbearance or exemptions should consider different levels of EVCS separately and should differentiate regulation for all three levels of EVCS (Level 1, 2 and DCFC). MEMPR suggests that "different regulatory schemes could be considered for Level 1 and 2 charging services versus Level 3", noting that regulating Level 1 and 2 EVCS would have a negative impact on EVCS deployment in BC (implying forbearance) but that some form of regulation for DCFC ("Level 3") "may be sufficient to address concerns regarding fairness of rates."<sup>24</sup>

A situation such as the one proposed by the MEMPR could cause EVCS owners and operators confusion and be costly with respect to compliance, paradoxically creating a monopoly or oligopoly situation for entities well positioned to manage regulatory compliance, such as incumbents and public utilities. It can be a significant barrier to investment, especially when owners and operators have EVCS of varying levels at the same site or within the same network. For example, Level 2 stations are often co-located with DCFC stations. In these cases, the EV charging services provided by the owner or operator would be regulated by two separate processes, which would create a regulatory burden for both DCFC and Level 2 EVCS.

In addition, this reasoning ignores that the three levels of EVCS are substitutes for one another, allowing for price discipline even absent competition in relation to one class of service. For example, Drive Energy recommends:

*However, there would be a need to regulate the DCFCs, since there are so few, and since they are essential to commuters travelling longer distance in a time sensitive manor. [sic]  
Therefore, an organization who provides the only DCFC within 15 km range could easily increase the price as there are no competitors around. As the DCFC network develops,*

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<sup>20</sup> Tesla written evidence, exhibit C28-2 at p. 6.

<sup>21</sup> UCA, s. 61(3). See, e.g., BC Hydro's response to BCUC IR 1.4.6, exhibit C1-4, p. 35.

<sup>22</sup> E.g., UCA, ss. 42, 43, 49.

<sup>23</sup> E.g., exhibit 19-8, p.1: "MEMPR has not observed fairness issues with DCFC rates with the infrastructure currently in place."

<sup>24</sup> MEMPR written evidence, exhibit C19-2, p. 10. Also see VEVA, *supra* note 15.

*regulation won't be as necessary as people will have the choice to go to one place or another just like gas stations today. That being said, it would be worthwhile to keep a close look for collusion between parties offering DCFC in the same region so they don't come together to set higher pricing.<sup>25</sup>*

Drive Energy's comment is telling. It recognizes that even in the case of DCFCs, there is no real opportunity for the abuse of a natural monopoly position, given the presence of Level 2 and home charging. The only "vulnerable" population identified is EV drivers who travel long distances *and* are too pressed for time to use Level 2 chargers. Of course, DCFC utilization by drivers that are neither travelling long distances nor pressed for time would likely discipline the price set, since DCFC owners and operators could not easily price discriminate between these classes of customers.

As ChargePoint indicated on page 5 of Exhibit C25-7, consideration should also be given to the utility and Commission staff time required to administer such a regulatory structure, which represent costs ultimately paid for by customers of one rate class or another – regulating EVCS in this way would increase the cost of monitoring, evaluation and designing regulation. For EVCS owners and operators, regulation implies professional fees, staff time and risk associated with navigating the legal and regulatory framework, and assessing and managing exemption compliance and reporting obligations, all of which are a material disincentive to investment.

#### ***EVCS owned by otherwise public utilities***

If the Commission is to consider any differentiation in regulation, it should focus on utility and non-utility owned and operated EVCS, where utility-owned EVCS would be subject to regulation in a manner consistent with similar infrastructure utilities currently own and operate. BC Hydro and FortisBC have both invested in Level 2 and Level 3 charging installations, and both reasonably justify these investments.<sup>26</sup> The Commission has general supervision of these utilities' plant investments (subject to the Commission's conclusions concerning prescribed undertakings under the *Clean Energy Act*, addressed below).

Public utility investment in EVCS does not depend upon whether or not the Commission regulates EVCS services as a public utility. Each utility's investment into EVCS is the proper subject of utility-specific mandates and applications to the Commission. That would include whether utility's investment and pricing practices are inappropriately affecting the development of the EV market, are an appropriate use of ratepayer funds, and the justification for and effects of any cross-subsidies.<sup>27</sup> ChargePoint believes that utilities should be allowed to invest in charging infrastructure, particularly in underserved or disadvantaged areas, so long as those investments support a competitive market, enable customer choice in charging equipment and services, and support grid benefits.

#### ***Potential non-exempt sections from Part 3 of the UCA***

The Commission has suggested sections 25, 26, 38, 42, 43, 44, and 49 as potential carve-outs from a class exemption order under section 88(3) concerning Part 3 of the *UCA*.<sup>28</sup> These are the same

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<sup>25</sup> Drive Energy written evidence, exhibit C3-2 at p. 3.

<sup>26</sup> E.g., with reference to government and legislative mandates, etc.: see exhibit A-35 at p. 7.

<sup>27</sup> ChargePoint agrees with BC Hydro, for example, that utility pricing of EVCS services should be done at market prices. See BC Hydro responses to BCUC IRs 1.2.1 & 1.2.2, and BCOAPO IR 1.3.1.2; exhibit C1-4, pp. 4, 16, and 252.

<sup>28</sup> Section 25 empowers the Commission to, after a hearing, order a public utility [charging station] to provide "reasonable, safe, adequate and fair" service, should the hearing find that any of those elements are absent. Likewise, section 26 empowers the Commission to set service standards following a hearing. Section 38

provisions retained by the Bakerview Ecodairy exemption order, plus the addition of section 26. ChargePoint opposes carving out most of those provisions from a Part 3 exemption because retaining them would impose burdensome elements of regulation, dis incent investors, or create an apprehension of future regulatory action. Those carve-outs would erode much of the benefit of issuing a Part 3 exemption order in the first place.

Specifically, sections 25 and 26 create the prospect of complaints and hearings inquiring into whether charging station rates are just and reasonable. Section 38 both creates an obligation to serve the public and limits that service to just and reasonable rates. For the reasons above, there is no need to regulate the individual rates of charging stations. Charging station owners and operators should be able to charge whatever rate the market will bear, restricted to whatever subset of potential customers makes business sense. EV drivers are able to go elsewhere, because they can charge in a myriad of locations and there are no natural monopoly circumstances in BC that would justify micromanagement.

ChargePoint does not object to carving out section 42. ChargePoint suggests, however, that the duty to follow Commission Orders is sufficient concerning any limited and discrete information requests that the Commission might have. Broader reporting obligations, as under sections 43, 44 and 49, including maintaining detailed accounts in a form prescribed by the Commission, at a physical office in BC, again create the prospect of a regulatory burden that could discourage potential investors in new infrastructure. As noted above, that level of regulation would also impose additional administrative burden on Commission staff.

## B. Additional Issues

(i) **What is the scope of the “for compensation” wording within the “public utility” definition in the *Utilities Commission Act*?**

To avoid any uncertainty, ChargePoint maintains its views that charging services are not the resale of electricity, and also do not occur in any sort of natural monopoly context. For both of those reasons, EVCS are not public utilities, and the Commission need not analyze the scope of “for compensation”.

If the Commission disagrees, then ChargePoint submits that “for compensation” should be read to reasonably capture activities that reflect a commercial exchange. Whether the compensation is in-kind service, in currency, or reflects flow through/break-even calculations does not matter. Consistent with the above submissions concerning a purposive interpretation, however, the Commission may ignore *de minimis* transactions. For example, free charging to grocery store customers (and only those customers) where parking is paid for might qualify as compensation, whereas charging a phone at a café would not.

(ii) **Are BC Hydro and FortisBC permitted to invest in EV charging stations as a prescribed undertaking under section 18 of the *Clean Energy Act* and section 4 of the *Greenhouse Gas Reduction (Clean Energy) Regulation*?**

The *Greenhouse Gas Reduction (Clean Energy) Regulation* (GGRR) encourages electric utilities to leverage private capital and enter into third party partnerships to deploy electrifying technologies, including EVCS. Doing so encourages competition and promotes customer choice. The GGRR recognizes that utilities are well-placed to (i) bundle electrification content into existing fuel switching, demand-side management, and electrification information campaigns, and (ii) undertake technology

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obligates a public utility to provide “adequate, safe, efficient, just and reasonable service”. Sections 42-44 require the public utility to obey Commission orders, provide information, and keep records that the Commission may require at a physical office within BC, respectively. Section 49 requires public utilities to keep records and accounts that the Commission may specify, including according to any specified uniform system of accounting.

research, development and testing (pilot programs). As BC Hydro suggests, these aspects of EV charging are prescribed undertakings.<sup>29</sup> General utility investment in EV charging plant is not, however. That fact does not prevent public utilities like BC Hydro and FortisBC from making investments to support EVCS deployment. Utilities have an important role to play in further developing the EVCS market, and should present proposals to the Commission.

Specifically, section 18(3) of the *Clean Energy Act* prohibits the Commission from exercising a power “in a way that would directly or indirectly prevent a public utility referred to in subsection (2) from carrying out a prescribed undertaking.” Prescribed undertakings are defined by subsections 4(3) and (4) of the GGRR (reproduced in Appendix A). Here, they are limited to specific activities designed to promote fuel-switching towards electricity, provided certain financial criteria are met: providing funds to third parties, education, awareness and training programs, research and development, and technology pilot programs.

FortisBC asserts that general DCFC investments are prescribed undertakings, stating:

*Projects or programs respecting technology that may enable a utility's customers to use electricity instead of other sources of energy that produce more greenhouse gas emissions are considered to be a prescribed undertaking for the purposes of section 18 of the Clean Energy Act. Specifically, section 4(3) of the GGRR establishes several prescribed undertakings in subsections (a) through (e). Subsections (c) and (e) as follows, are those most pertinent to the EV Charging Service Inquiry....<sup>30</sup>*

Subsection (c) relates to research and development and technology pilot programs. To the extent that FortisBC refers to researching and testing technology, via a small scale and temporary deployment of EV charging technology, ChargePoint agrees it is a prescribed undertaking under subsection (c).

Concerning subsection (e), it must be interpreted congruent with subsections (a) – (d). Rather than broadly define electrification plant investments as prescribed undertakings, the legislature linked them to specific undertakings, and imposed three further sets of financial hurdles: a crystallized load serving obligation expectation, a cost-effective investment under the GGRR’s criteria, and a \$20 million cap for individual projects. Absent a tight link between the undertakings in (a) through (d) and any project funded through (e), subsections (a) through (d) will be undermined.

The focus of the GGRR is to provide programs and funding. While the ability to invest in plant absent Commission approval is limited, some discrete investments would qualify as a prescribed undertaking under subsection (e).

#### IV. CONCLUSION

The Commission’s task in this Inquiry is important. The adoption of EVs has the potential to play a central role in supporting greenhouse gas emissions reductions, and the availability of EVCS can in turn be expected to be a significant driver for the adoption of EVs. The market for EVCS and EV charging services is budding, and the Commission’s public interest mandate requires it to achieve a delicate balance that both ensures that customers are protected and that the regulatory burden imposed does not harm the developing market.

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<sup>29</sup> See BC Hydro at ex. C1-4, p. 133.

<sup>30</sup> FortisBC written evidence, exhibit C12-2, pp. 9-10; also see response to BCUC IR 1.4, exhibit C12-3, p. 152.

To support the development of the EVCS and EV charging services market, ChargePoint's position in this Inquiry is threefold:

- First, there is no need for the Commission to regulate EVCS owners and operators and EV charging services that are not otherwise public utilities. The providers of EVCS do not meet the definition of "public utility" in the *UCA*, because they reflect the provision of a service that requires electricity, rather than the sale of electricity itself. The Commission should interpret the *UCA* to only regulate where doing so furthers the object of the legislation. Here the traditional indicia to justify regulating are not present, with the market for EVCS mirroring the characteristics of a competitive market rather than a natural monopoly.
- Second, and in the alternative, if the Commission determines that some level of regulation is required, the Commission should issue an exemption that minimizes the regulatory and compliance burden, to avoid harming the development of a competitive market. Although segments of the market may be immature at this stage, that should not be confused as a monopoly that requires regulation – indeed, regulating at this stage is likely to stifle competition that would otherwise benefit customers and risks entrenching monopoly providers by creating a regulatory barrier to entry. Similarly, customers that appear captive when the market is finely sliced are not captive when one considers the myriad of EV charging options already available in the market, let alone those that can be anticipated in the coming years as the market continues to develop. Thus the Commission has a limited role in protecting EVCS customers.
- Third, where EVCS owners and operators and providers of EV charging services are otherwise public utilities, the Commission continues to have a role in supervising those utilities' investments into EVCS as part of their standard infrastructure and rate applications. ChargePoint expects that utilities will continue to play a key role in the further development of the EVCS market, but the Commission's oversight will ensure that customers are not harmed through improper utility cross-subsidies or exercises of market power.

ChargePoint therefore respectfully requests that the Commission find as follows:

- EVCS and EV charging services are not "public utilities" as defined within the *UCA*.
- In the alternative, the Commission should apply the definition of "public utility" purposively, to avoid regulating EVCS owners and operators and EV charging services, based on the principles from the AES Inquiry.
- In the further alternative, the Commission should issue an exemption that broadly exempts EVCS owners and operators and EV charging services from regulation, including exempting the application of sections 25, 26, 38, 44 and 49 of the *UCA*.
- In addition, the definition of "for compensation" in the *UCA* definition of "public utility" should be interpreted broadly, but again purposively.
- Finally, EV charging is generally not a prescribed undertaking under section 18 of the GGRR. Discrete elements of EV charging are prescribed, however, relating to third party funding, information programs, technology development and testing, and some plant investments required to support those elements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1<sup>st</sup> DAY OF AUGUST, 2018.

## Appendix “A”

### Greenhouse Gas Reduction (Clean Energy) Regulation, ss. 4(3) and (4)

4(3)(a) a program to encourage the public utility's customers, or persons who may become customers of the public utility, to use electricity, instead of other sources of energy that produce more greenhouse gas emissions, by

- (i) **educating or training** those customers respecting energy use and greenhouse gas emissions, carrying out **public awareness campaigns** respecting those matters, or providing **energy management and audit services**, or
- (ii) **providing funds** to those persons to assist in the acquisition, installation or use of equipment that uses or affects the use of electricity;

(b) a program to encourage the public utility's customers, or persons who may become customers of the public utility, to use electricity instead of other sources of energy that produce more greenhouse gas emissions, by

- (i) **educating, training, providing energy management and audit services** to, or carrying out **awareness campaigns** respecting energy use and greenhouse gas emissions for, or
- (ii) **providing funds** to persons who
  - (iii) design, manufacture, sell, install or, in the course of operating a business, provide advice respecting equipment that uses or affects the use of electricity,
  - (iv) design, construct, manage or, in the course of operating a business, provide advice respecting energy systems in buildings or facilities, or
  - (v) design, construct or manage district energy systems;

(c) a project, program, contract or expenditure for **research and development of technology**, or for conducting a **pilot project respecting technology**, that may enable the public utility's customers to use electricity instead of other sources of energy that produce more greenhouse gas emissions;

(d) a project, program, contract or expenditure supporting a standards-making body in its **development of standards** respecting

- (i) technologies that use electricity instead of other sources of energy that produce more greenhouse gas emissions, or
- (ii) technologies that affect the use of electricity by other technologies that use electricity instead of other sources of energy that produce more greenhouse gas emissions;

(e) a project for the **construction, acquisition or extension of a plant or system**, that the public utility reasonably expects is necessary to meet the public utility's **incremental load-serving obligations** arising as a result of an undertaking defined in paragraph (a), (b), (c) or (d), if the public utility reasonably expects any one such project to cost **no more than \$20 million**.

[emphasis added]

(4) An undertaking is within a class of undertakings defined in paragraph (a) or (b) of subsection (3) only if, at the time the public utility decides to carry out the undertaking, the public utility reasonably expects the undertaking to be cost-effective.