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

Attention: Patrick Wruck, Commission Secretary

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. in this matter and enclose its reply argument for this phase of the proceeding. Please contact the writer if you have any questions.

Yours very truly,

Matthew D. Keen

MDK/roe

encl.

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BRITISH COLUMBIA UTILITIES COMMISSION

INQUIRY INTO THE REGULATION OF ELECTRIC VEHICLE CHARGING SERVICES

PROJECT NO. 1598941

CHARGEPOINT INC.

REPLY ARGUMENT RE PHASE ONE ISSUES

August 22, 2018

CHARGEPOINT INC.

INQUIRY INTO THE REGULATION OF ELECTRIC VEHICLE CHARGING SERVICES

REPLY ARGUMENT RE PHASE ONE ISSUES

I. INTRODUCTION AND OVERVIEW

This is ChargePoint Inc.'s (ChargePoint) response to interveners' final arguments concerning "Phase One" issues in the Commission's Electric Vehicle Charging Services (EVCS) Inquiry (Inquiry). The primary issues addressed by participants in their final arguments included:

- *Should the Commission regulate non-utility EVCS owners and operators, and if so, should they be exempt from all or part of Part 3 of the UCA?*
- *What is the scope of the "for compensation" wording within the "public utility" definition in the Utilities Commission Act?*
- *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 Regulation?*
- *Should the Commission provide recommendations to the Government regarding amendments to the GGRR to include all EVCS investments as prescribed undertakings?*

ChargePoint's position, and responses to participants, can be distilled into four key points:

- EVCS owners and operators are not "public utilities" under a purposive interpretation of the *Utilities Commission Act* (UCA) because they do not engage in the general resale of electricity under natural monopoly circumstances, but instead provide a charging service to the public in a competitive market place with limited barriers to entry.
- If the Commission determines that EVCS owners and operators *are* "public utilities", it should forbear from regulation through the broadest possible class exemption under section 88 of the UCA. Direct, or even partial, regulation is expensive and poses a regulatory risk, discouraging private investment and inhibiting EVCS market growth.
- While most interveners correctly urge a purposive interpretation of "for compensation", the Commission should first ensure a purposive interpretation of "public utility".
- Only some BC Hydro / FortisBC EVCS investments are GGRR prescribed undertakings, but utilities should still be encouraged to make EVCS investments in a manner that supports competition, innovation and customer choice.

II. REPLY ARGUMENT

A. Regulation of EVCS Owners and Operators and EV Charging Services

ChargePoint's argument submitted that EVCS owners and operators are not "public utilities" as defined under the UCA because they provide a specialized battery charging service, not the resale of electricity for general use under natural monopoly circumstances, and that the Commission should therefore forbear from regulation. Alternatively, if the Commission finds that it is required to regulate, it should apply the AES Inquiry principles concerning where and when to regulate and issue a broad class exemption from Part 3 of the UCA, after seeking the Minister's advance approval.

ChargePoint responds to related participant submissions directly below. There is broad agreement that the Commission ought to issue an exemption order in some form that applies to at least Level 1 and 2 charging, but opinions diverge concerning the breadth of any exemption and whether DCFC charging should fall outside any exemption.

(1) EVCS owners and operators are not public utilities

ChargePoint's evidence and argument demonstrate that EV charging is a service, rather than the resale of electricity, and therefore outside the UCA's "public utility" definition. Likewise, a purposive analysis and the absence of natural monopoly conditions should cause the Commission to conclude the public utility definition does not apply. This conclusion is shared by Tesla, VEVA, and the BC Sustainable Energy Association / Sierra Club of BC (BCSEA-SCBC).[1]

While other parties simply assert that charging is a regulated activity, they do so without analyzing the nature of the service provided.[2] Again, ChargePoint submits that the Commission should revisit its Bakerview precedent based on this Inquiry's record, given the absence of contending points of view in that proceeding. Neither regulation nor exemption orders are necessary. Regulators in 24 other jurisdictions have determined that EVCS owners and operators are not public utilities, and the Commission should aspire to regulatory consistency with other jurisdictions.[3]

(2) Conditions of any Part 3 Exemption Order

The Commission proposed a "strawman" exemption order whereby sections 25, 26, 38, 42, 43, 44, and 49 would be "carved out" of a Part 3 Exemption Order. ChargePoint argued that the carve-outs were far too broad and would defeat the purpose of an exemption order, by leaving potential investors leery of a looming regulatory burden out of step with other North American jurisdictions. Section 42 possibly merits being carved out of any Part 3 exemption order, to

[1] Exhibits C28-2 and C28-6 (Tesla evidence and argument, respectively), Exhibit C-20-2, p.6 (VEVA evidence), Exhibit C6-15, p.3 (BCSEA-SCBC reply argument).
[2] Exhibits C1-2 at p. 3 and C1-5 at para. 30 (BC Hydro's evidence and argument, respectively).
[3] Exhibit C19-10 p. 4 (MEMPR argument).

facilitate any (unlikely) Commission remedial orders or inquiry. Otherwise, the Commission should leave the market to function without any spectre of rate adjudication or scrutiny of service delivery.[4]

Retaining the other strawman "carved out" provisions would create a substantial barrier to investment. This argument is similarly supported by multiple interveners, notably including the BCSEA-SCBC, Clean Energy Association of BC (CEABC), Tesla and VEVA who argue that all EVCS (i.e., Level 1, Level 2 and DCFC) should be exempt from Part 3 with only limited carve-outs. Both VEVA and BCSEA-SCBC provide detailed analyses of the proposed strawman Part 3 carve out provisions and, like ChargePoint, conclude that many are not appropriate for EVCS owners and operators:[5]

- Both VEVA and BCSEA-SCBC argue that there is no need for the Commission to apply sections 25, 38, or 49 (ordering improved service, the provision of service, or the keeping and provision of accounts and reports) because, given the diversity of providers, service access and quality are both best addressed by the competitive market.[6] VEVA also notes that section 49 could impose a significant regulatory burden and discourage investment in EVCS.[7]
- VEVA argues that section 42, 43, 44 (duty to obey orders, to provide information, to keep records) would create an administrative burden for both EVCS owners and operators and the Commission, while providing no benefit to the public.[8]

Most interveners that support the proposed strawman carve-outs do so absent detailed analysis and largely ignore the adverse effects that would result from the associated regulatory burden.[9]

Some interveners claim that the proposed strawman scope would impose little or no regulatory burden. One such claim, for example, is that obligations consisting of providing information to the Commission and being subject to potential Commission hearings would impose little burden.[10] But hearings are expensive and time consuming, and any party investing will have to ensure *on the front end* that sufficient regulatory information, resources, and personnel will be available should the Commission exercise this power. It cannot be overstated that those obligations constitute a material barrier to investment, which could tilt the EV charging field in favour of public utilities who already have those resources in place.

[4] Exhibit 25-10, p. 12 (ChargePoint argument).
[5] Exhibit C30-8, p.7-12 (VEVA argument); Exhibit C6-14, Section 4.7.8 (BCSEA-SCBC argument).
[6] Exhibit C30-8, p.7, 9 & 12 (VEVA argument); Exhibit C6-14, p. 36 (BCSEA-SCBC argument).
[7] Exhibit C30-8, p.12 (VEVA argument).
[8] Exhibit C30-8, p.10-12 (VEVA argument).
[9] E.g. C9-7, p. 1-2 (UDI argument); C15-5, p.3-4 (Greenlots argument); Exhibit 34-6, p. 2 (CEA argument); Exhibit C5-7, p. 4-6 (CoV argument).
[10] Exhibit C19-10 p. 6 (MEMPR argument).

(3) DCFC should be treated identically in any exemption order

Some interveners argued that while Level 1 and 2 EVCS merit an exemption from all aspects of the UCA, more Commission oversight is necessary for DCFC.[11] ChargePoint's position is that, to the extent an exemption order is required, a broad exemption with limited carve outs should apply equally to all levels of EVCS. Opposing arguments concede that for Level 1 and 2 EVCS there are no barriers to entry or monopoly circumstances, that consumers have choice and are not captive, that regulation will be a detriment to investment, and that other bodies protect consumers. For DCFC, however, MEMPR argues that uneconomic investment costs[12] for DCFC justify regulatory oversight,[13] while the Community Energy Association argues that the need for the maintenance of high availability to DCFC stations in small communities similarly justifies regulatory oversight.[14]

The arguments made in favour of differentiated DCFC regulation amount to imposing regulation based on speculation about customer harm in areas that are currently underserved from EVCS investments, i.e., charging contexts where utilization is low and economics are poor. Those circumstances may support subsidies, but do not compel protective regulation.

As ChargePoint's argument showed,[15] arguments that depict relatively high DCFC initial costs (as compared to Level 1 and 2 chargers), coupled with potentially low utilization, as a "barrier to entry" demanding regulation, are mistaken. If accepted, then virtually *any* new industry or product would encounter a barrier to entry justifying a regulatory response. The reason that does not happen, in BC or elsewhere, is the capital-attracting effect that any commercial success will have. A lucrative new business with unduly large margins will soon experience competition, both from new DCFC capital investment and the availability of alternatives, and market forces will discipline the prices and service customers encounter.

The exception is in natural monopoly circumstances, and no intervener has shown any such characteristic to justify the Commission's intervention here. There is no suggestion, for example, that the capital costs of DCFC are sufficiently high to drastically limit the number of potential competitors in the market, leading to market power.

The concerns with DCFC are either that there is an underinvestment in infrastructure where there is a limited customer base, or that the prices for site hosts are "expensive" due to relatively high capital costs. Regulation on its own will not resolve either of those issues, and there are other means for government or other parties to address these concerns.

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[11] E.g., Exhibit C19-10, p. 5 (MEMPR argument); Exhibit C34-6, p.2 (CEA argument); Exhibit 35-7, p.3 (VicEVA argument); Exhibit C12-4, p. 2 (FortisBC argument).
[12] Citing MEMPR's argument in Exhibit 19-10, p.5, "the capital expenditures of $492,000 to build 5 DCFC stations as significant barriers to entry".
[13] MEMPR evidence and argument, exhibits C19-4 and C19-10, pp. 8 and 5, respectively.
[14] Exhibit C34-6, p.2 (CEA argument).
[15] Exhibit C25-10, p. 9 (ChargePoint argument).

In any event, also as argued, applying differentiated approaches to regulation for different levels of EVCS would create confusion and costs and result in a barrier to entry.

B. Scope of "for compensation" in the UCA

Most interveners urge a purposive interpretation of "for compensation", taking into consideration market context, past Commission decisions and other legislation.[16] ChargePoint agrees. A purposive interpretation of compensation is appropriate, and should lead to common sense conclusions about whether there is a *bona fide* commercial exchange.

Some submissions[17] appear to suggest further that interpreting "compensation" broadly or narrowly can be a mechanism to manage the scope of the "public utility" definition, e.g., a free charging station for supermarket customers or apartment tenants might escape public utility status that way.

As above, and consistent with both its argument and that of MEMPR,[18] ChargePoint submits that the Commission should focus on the primary issue of interpreting "public utility" instead. As above, ChargePoint submits EVCS fall outside the definition of "public utility" based on a purposive interpretation, and the definition of "for compensation" is therefore of lesser concern.

C. Prescribed activities under the GHG Reduction Regulation

Utilities are well-placed to promote electrification, and under the *Greenhouse Gas Reduction Regulation (GGRR)*, are encouraged to support fuel switching through investments that provide funding for incentives, education, public awareness, training programs, research and development, and technology pilot programs.[19] Multiple interveners, such as BC Hydro, BCSEA-SCBC, MEMPR and the Community Energy Association[20] recognized that the scope of investments that qualify as prescribed undertakings excludes general investment in EVCS. As a result, utilities must justify EVCS investments to the Commission in the normal course.

ChargePoint submits that obligation is an important part of ensuring a balance between public and private participation in the EV market. ChargePoint supports public utility participation in the EV market, at market prices where site hosts have choice over equipment and network services as well as pricing to drivers.[21] Indeed, utilities have an important role to play in the EVCS market and should be encouraged to invest.

[16] E.g., Exhibit C12-4, p. 4 (FortisBC argument); Exhibit C1-5, p. 5-8 (BC Hydro argument).
[17] E.g., Exhibit C5-7, p. 8 (CoV argument); Exhibit C12-4, p. 4 (FortisBC argument); Exhibit C1-5, p. 5-8 (BC Hydro argument).
[18] Exhibit C25-10, p.12 (ChargePoint argument); Exhibit C19-10, p.2 (MEMPR argument).
[19] As indicated in ChargePoint's final argument on p.12 of Exhibit C25-10.
[20] Exhibit C1-5, p.10-12 (BC Hydro argument); Exhibit 6-14, p.40 (BCSEA-SCBC argument); Exhibit 19-10, p.8 (MEMPR argument); Exhibit 34-6, p. 3 (CEA argument).
[21] Exhibit C25-10, p. 13 (ChargePoint argument).

D. Proposed Amendments to the GGRR

BC Hydro, FortisBC, and City of Vancouver (CoV) have proposed that the Commission provide recommendations to the Government on amendments to the GGRR, which would include EVCS investments as prescribed undertakings.[22] More specifically, BC Hydro proposes a new class of undertaking specific to investments in EV charging plants and provides amendment text for consideration by the Commission and other interveners.[23] BC Hydro also suggests that this class could be subject to temporal or financial limitations.

ChargePoint supports the underlying goal of GGRR amendments, to remove uncertainty for public utilities and accelerate EVCS investment, and supports CoV's recommendation that the government initiate consultation on any proposed amendments.[24]

If the Commission provides recommendations to the government concerning GGRR amendments, the Commission may wish to consider the following legislation adopted in California and Oregon:

- California Senate Bill 350 Section 32 (2015), which requires Commission consideration of competitiveness, non-utility impacts and ratepayers' interests when reviewing investments in EVCS.[25]

- Oregon Senate Bill 1547 (2016), which requires the Commission to consider system benefits and innovation, competition and customer choice when evaluating utility investments in EVCS.[26]

If the Commission considers it should fully retain its current powers to scrutinize public utility EVCS investments, it could nevertheless issue guidelines for utility investment to ensure regulatory and market certainty. In that case, the Commission should consider:

- the impact on competition in the EVCS market, including the ability for non-utilities to operate and grow sustainably;

- consumer choice to ensure site hosts are empowered in the selection of equipment and network services, and pricing to drivers, when utilities invest in EVCS; and

- ratepayer and/or system wide grid benefits to ensure that investments result in a material benefit to all ratepayers and are being made in areas that will support the EVCS sector. at large.

[22] Exhibit C1-4, Appendix B (BC Hydro argument); Exhibit C12-4, p.7 (FortisBC argument); Exhibit C5-7, p.10 (CoV argument).
[23] Exhibit C1-4, Appendix B.
[24] Exhibit C5-7, p.10 (CoV argument).
[25] Senate Bill 350 Clean Energy and Pollution Reduction Act of 2015: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350
[26] Senate Bill 1547, 2016: https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled

III. CONCLUSION

The record of this phase of the Inquiry shows that there is a competitive and growing EV charging landscape in BC. Government, the public, and public utilities are embracing EVs, and private service providers are responding. The task before the Commission is to consider what its appropriate role ought to be in the circumstances, within the constraints of its governing legislation.

ChargePoint submits that a purposive analysis of the legislation, considering the nature of EV charging, leads to the conclusion that EVCS are not public utilities. Or, if they are, then the Commission should issue the broadest possible exemption to not only ensure a common sense outcome, but ensure that BC EV charging continues to receive private sector investment. An exemption riddled with carve-outs would defeat the purpose of the exercise. These principles extend to DCFC as well as Level 1 and 2 stations.

Existing public utilities should, however, be encouraged to invest in EVCS, and justify those investments to the Commission in the normal course. The Commission can smooth that path and remove uncertainty for public utilities concerning whether EV charging projects qualify as appropriate utility investment by issuing guidelines, or potentially recommending GGRR amendments. Oregon and California offer ready examples of related principles to adopt, either in a future phase of the Inquiry, or as part of the next applicable FortisBC or BC Hydro application.