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VIA ELECTRONIC FILING

Twinkle Andress Cavanaugh, President
Alabama Public Service Commission
100 N Union St.
RSA Union
Montgomery, AL 36104



RE: Docket No. 32694 – Generic Proceeding to Determine the Commission’s Jurisdiction Over Electric Vehicle Charging Stations

Dear President Cavanaugh,

Attached are reply comments filed on behalf of ChargePoint. Please let me know if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'David Schatz'.

Signed

David Schatz
Director, Public Policy
ChargePoint

FOR THE ALABAMA PUBLIC SERVICE COMMISSION

DOCKET NO. 32694

REPLY COMMENTS OF CHARGEPOINT, INC

I. INTRODUCTION

ChargePoint thanks the Commission for the opportunity to provide reply comments in Docket No. 32694, *Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations*. On December 15, 2017, in accordance with the Commission's Order requesting comments from interested parties,¹ ChargePoint filed initial comments to address the regulatory questions raised in this proceeding and presented its perspective as the largest commercial electric vehicle charging network in the world. In its comments ChargePoint noted the significance of clarifying the regulatory framework surrounding electric vehicle (EV) charging infrastructure, as it directly pertains to the success of the growing, competitive and dynamic EV charging market. In summary, in addressing the Commission's essential question of the Commission's regulatory jurisdiction over charging stations, ChargePoint presented the following key resolutions:

1. Pursuant to the criteria in Title 37, *Code of Alabama* (herein *Title 37*), electric vehicle charging stations do not satisfy the definitional test of a "utility". Charging station equipment and associated transactions between station owners and EV drivers fall outside of Alabama PSC jurisdiction.
2. The retail sale of electricity takes place at the utility meter with the customer of record, whether it be a residential or commercial customer. As such, charging stations are located beyond the utility meter. Therefore, the Commission should find that charging stations provide a charging service that is not considered the retail sale of electricity.

¹ See *Generic Proceeding to Determine the Commission's Jurisdiction Over Electric Vehicle Charging Stations*, Docket No. 32694, October 30, 2017.

3. Charging stations offer a competitive service that is market-based. When site hosts are able to set pricing to drivers for charging services, site hosts can optimize the utilization of stations and tailor the driver experience to the local use case.

In supporting these resolutions, ChargePoint assessed the applicability of the *Title 37* and the definitional tests for utilities subject to Commission jurisdiction. ChargePoint also responded to each of the Commission's EV charging scenarios, as well as provided answers to additional questions regarding the EV markets, models, and charging activities generally. ChargePoint believes that the record presented in these initial comments showed a clear case for a determination of no regulatory jurisdiction over charging equipment and transactions.

The Commission received initial comments in Docket No. 32694 from eleven (11) interested stakeholders. To the extent that interested stakeholders offered an analysis on the question of regulatory jurisdiction, all comments supported the contention that EV charging owners and operators should not be subject to *Title 37* regulatory oversight. In addition, a majority of comments received addressed the importance of growing and supporting the existing competitive market for EV charging stations. ChargePoint will summarize the arguments the full record of comments advanced, as well as clarify comments regarding the competitive market for EV charging.

II. LEGAL ANALYSIS IN INITIAL COMMENTS SUPPORTS A FINDING OF NO REGULATORY JURISDICTION OVER EV CHARGING

Several commenters spoke to the legal rationale for making a determination that EV charging would not be subject to Commission regulatory jurisdiction. This position is largely underpinned by the baseline understanding of site hosts of EV charging as providing a service of charging a battery in an electric vehicle. ChargePoint stated that site hosts are third-party owners and operators of EV charging stations, and do not generate, transmit, distribute, or sell electricity

to end users. Instead, third-party owners and operators use electricity to provide EV charging services to their customers. This use of electricity is incidental to the provision of EV charging service with a privately-owned charging station. Whereas utilities transmit and distribute electricity over system wires or circuits, EV charging service providers deliver services by specialized cords and connectors, specific to the activity of charging. This understanding was supported in comments from, among others, the Alabama Office of the Attorney General, who asserted that, “Although the customer is using electricity, that electricity is incidental to the transaction and the equipment is not designed to provide traditional electric utility services.”²

Similarly, comments from Southern Environmental Law Center and Alabama Power provide analysis of the underlying case law and statute, and found that neither the Commission nor the courts construe the utility definitional statutes so broadly as to include activities like EV charging.³ Moreover, the Alabama Office of the Attorney General suggested that a finding of jurisdiction in the case of EV charging could set a serious precedent for regulation of any market involving incidental electricity use in transactions.⁴ ChargePoint agrees that EV charging stations do not diverge from any number of service transactions involving electricity, including laundromats, hotels, and airport mobile phone charging plugs. This list of transactions is not exhaustive.

In taking up the question of regulatory jurisdiction, many other state commissions have correctly identified the ways EV charging site hosts and activities differ from utility provision of electricity. Comments from Plug-in America and Southern Alliance for Clean Energy and ChargePoint note the many states that have already made such a determination, either through

² See Alabama Office of the Attorney General Comments, Page 3.

³ See Southern Environmental Law Center Comments, Page 8. Alabama Power Company Comments, Page 7.

⁴ See Alabama Office of the Attorney General Comments, Page 7.

statutory change or regulatory proceedings.⁵ Several commenters cited the examples of regulatory clarification of EV charging jurisdiction from New York, Massachusetts, New Hampshire, and Missouri commissions.⁶ In many cases the definitional tests from other jurisdictions mirrors those derived from *Title 37*, and therefore the rationale forwarded in those cases may be appropriately applied to the Commission’s consideration in Alabama. These cases show that the overwhelming consensus among utility commissions that owners and operators of EV charging equipment should not subject to commission jurisdiction.

III. ELECTRIC VEHICLE CHARGING REPRESENTS A COMPETITIVE MARKET THAT MUST CONTINUE TO BE FOSTERED

Several commenters observed that the deployment of EV charging infrastructure and related services is a highly competitive market. There are multiple providers of charging infrastructure operating in the State of Alabama, all offering a competitive solution at market-driven prices.⁷ Site hosts currently choose from a number of EV charging station providers and technologies. For example, Greenlots notes that businesses invest in, “[...] owning and operating [electric vehicle charging stations] on their premises as a service or amenity to their customers and/or employees. Business may do this for a wide array of reasons, including employee satisfaction, social/environmental responsibility, attracting customers or otherwise differentiating themselves in the marketplace. There is no shortage of [EV charging] suppliers that will sell [EV charging] products and services to such entities.”⁸ ChargePoint agrees with this description of a successful business model for EV charging, as it points to the degree to which site hosts manage charging stations on their properties as they would any other service offering. In addition,

⁵ See Plug-in America and SACE Comments, Page 12.

⁶ See Alabama Office of the Attorney General Comments, Page 3-6. Southern Environmental Law Center Comments, Pages 9-10.

⁷ See Plug-in America and SACE Comments, Page 14.

⁸ See Greenlots Comments, Page 4.

ChargePoint supports Alabama Power Company's position that the ultimate goal for the EV charging is to spur development of that market so that it fosters a thriving, competitive environment.⁹

Comments from business groups shared that the local economy directly benefits from a growing electric vehicle market. Automakers are investing in EV development and deployment nationwide. Some automakers are siting electric vehicle manufacturing facilities in Alabama, and still more are exploring opportunities to locate similar operations. Commenters also suggested that a finding of regulatory jurisdiction over charging stations could negatively impact the growth of the electric vehicle sector.¹⁰ ChargePoint agrees that Alabama and its growing electric vehicle market only stand to benefit from an appropriate determination that charging stations do not fall under the Commission's regulatory oversight.

IV. UTILITIES HAVE A FUNDAMENTAL ROLE IN ADDRESSING BARRIERS TO ELECTRIC VEHICLE CHARGING DEPLOYMENT

In its initial comments, ChargePoint recognized utility investment in charging infrastructure can foster and support a long-term, scalable competitive market for charging equipment and networks. ChargePoint strongly supports utility investment in electric vehicle charging infrastructure, and notes that there are many different models of investment that can and should be considered when evaluating a utility program. The comments presented the three primary models for utility investment – ownership, make-ready, and rebate-based – but indicated that the right model for utility investment in EVCS markets can take many forms, and no single solution is appropriate for every jurisdiction and use case. ChargePoint supports all three utility roles for charging and maintains that a portfolio of offerings may most adequately address the

⁹ See Alabama Power Company Comments, Page 6.

¹⁰ See Business Council of Alabama Comments, Page 2. Manufacture Alabama Comments, Page 1.

needs of different site hosts and uses cases. Importantly, ChargePoint believes that each utility investment model can foster and complement the competitive market, and incorporating a site host's choice and control of charging assets into program designs ensures that dynamic, innovative market is maintained. A portfolio approach leverages the strengths of each model, provides for program flexibility, and aligns investments with the most appropriate use case.

Several commenters joined ChargePoint in welcoming utility investment programs to facilitate the competitive market for EV charging. The Alabama Office of the Attorney General suggested that utility policies encourage investment in EV charging. Those comments also stated that the natural pressures of the competitive market would ensure quality service at a just and reasonable price to consumers, without the rate regulations set forth in *Title 37*.¹¹ ChargePoint agrees that investments designed to support the competitive market will lead to successful charging deployments and drive innovation long-term. Comments from the National Federation of Independent Business posed that the Commission could support initiatives to increase the number of charging stations in Alabama and provide for utility involvement that can bolster the market through incentive programs, rebates, as well as education to consumers.¹² ChargePoint supports these program designs and recommends the Commission thoroughly examine the benefits of smart EV charging and how utilities may invest in supporting deployment of these technologies.

V. RECOMMENDATION AND CONCLUSION

ChargePoint recommends that the Alabama Public Service Commission provide a determination that EVCS facilities and electric vehicle charging services are not subject to Commission jurisdiction. This determination would align with rulings and decisions by Commissions in many other jurisdictions. Furthermore, ChargePoint encourages the Commission

¹¹ See Alabama Office of the Attorney General Comments, Page 11-12.

¹² See National Federation of Independent Business Comments, Page 2.

to support and facilitate the dialogue surrounding the utility's role in supporting electric vehicle charging, as well as implementation of utility programs to promote EV adoption.