

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union)
Electric Company d/b/a Ameren Missouri)
for Approval of a Tariff Setting a Rate for) Case No. ET-2016-0246
Electric Vehicle Charging Stations.)

RESPONSE TO ORDER DIRECTING FILING

Comes now ChargePoint, Inc. ("ChargePoint"), by and through counsel, and hereby submits this response to the Commission's October 18, 2016, Order Directing Filing ("the Order").

Background

On October 13, 2016, the Office of the Public Counsel ("OPC") and Consumers Council of Missouri ("Consumers Council") filed motions to reject Ameren's tariff filing, alleging that the Commission lacks jurisdiction to approve the proposed tariff because Ameren Missouri's proposal to install and operate electric vehicle charging stations is not a public utility service. The Commission then issued the Order to allow parties to respond to the respective motions to reject the tariffs. The Commission also invited the parties to comment on three issues:

- (A) What is the statutory authority under which the Commission may approve the tariff filed by Ameren Missouri in this case?**
- (B) Are there any factual questions that must be addressed in determining the Commission's jurisdiction over electric vehicle charging stations?**
- (C) Is a certificate of convenience and necessity required for Ameren Missouri to build, install, and operate the electric vehicle charging stations?**

ChargePoint is pleased to submit this response.

- (A) What is the statutory authority under which the Commission may approve the tariff filed by Ameren Missouri in this case?**
- (B) Are there any factual questions that must be addressed in determining the Commission's jurisdiction over electric vehicle charging stations?**

ChargePoint considers these interrelated and will address both in this section of its response.

OPC and Consumers Council have provided considerable authority in their respective motions on the question of the Commission's statutory authority, and ChargePoint will not duplicate that discussion here. OPC and Consumers Council provide convincing citations from the Commission's enabling legislation which support the conclusion that it lacks jurisdiction. ChargePoint essentially agrees that Ameren, in connection with its proposal to install and operate electric vehicle ("EV") charging stations, does not act in its capacity as a "public utility" under Missouri law, and charging stations do not constitute "electric plant" as statutorily defined.

However, ChargePoint is supportive of public utility investments in electric vehicle ("EV") charging infrastructure. ChargePoint strongly suggests that increasing access to charging stations, in coordination with a competitive EV charging industry, can encourage EV adoption and EV charging, which provides the grid with benefits from increased load, opportunities for load management and balancing with intermittent renewables, and overall downward pressure on electricity rates for all customers, including non-EV drivers.

That said, as a party to this matter ChargePoint is compelled to argue that the Commission must reject any contention that the operation of EV charging stations is a "public utility" service. As explained in subsequent sections of this response a nascent competitive market is developing in Missouri in which non-public utility charging service providers are active.¹ Any decision made by the Commission in this case should be based strictly on its jurisdiction, if any (and ChargePoint asserts the Commission lacks that jurisdiction), over charging stations and not over charging service providers. To be clear, it is ChargePoint's position that the Commission lacks jurisdiction

¹The extent of market activity described in this response illuminates that EV charging services are not a natural monopoly that would in turn justify regulatory oversight at this Commission.

over charging stations and the Commission should not be regulating them. Yet it is just as clear that the Commission has jurisdiction over regulated utility investments of any kind. These investments should be reviewed on a case by case basis for their prudence and impact on ratepayers. Nonetheless, ChargePoint observes that whether or not the Commission has jurisdiction over charging stations is irrelevant to the question of whether utilities can make investments in charging stations.

ChargePoint is particularly troubled by the Commission Staff's response to the Order filed on October 19, 2016. Staff argues that the Commission has statutory authority to approve this tariff because electric vehicle charging stations qualify as "electric plant" under Section 386.250.² In making this argument, Staff has expanded the scope of this case to question the legal authority of a non-public utility to "own and operate" charging stations for non-residential use. While ChargePoint does not wish to question the statutory authority of the Commission to review a tariff filing made by a regulated utility, ChargePoint cannot be silent on the matter of whether or not non-public utilities can operate public charging stations.

As of the date of this filing, ChargePoint has 1,013 charging ports in Missouri on the ChargePoint network. These ports are independently owned and operated by customers of ChargePoint. The majority of these ports are owned by utilities, including more than 850 ports owned and operated by Kansas City Power and Light as part of the Clean Charge Network program. Ameren also owns several of its own charging stations for workplace charging. However, more than 150 ports are owned and operated by non-public utilities such as car dealerships, fleets, municipalities, workplaces, tourist attractions, universities, and the Missouri National Guard. These entities purchased charging stations in order to offer public charging to

² Staff response to Order Directing Filing, October, 19, 2016, pg. 2. Also note that statutory citations in this response are to RSMo 2000 or its current supplement.

their employees, guests, visitors, students, and customers as an amenity. In most cases, the owners of these charging stations do not charge a fee for public use of the stations. A few customers have set an hourly parking fee associated with the charging service. The locations of all public ChargePoint ports, the hours of availability, and any fees to the driver are posted on the ChargePoint website.³ In every case, the owner of the charging station is the customer of record with their local utility and pays for all of the electricity used for their charging station along with any other electricity used on their property including computers, lighting, air conditioning, etc.

As stated in previous comments, the Commission's role in regulation of electricity from a utility to a charging station is the same as in any sale of electricity to a retail customer. Whether the charging station is owned by an individual residential customer, or by a commercial customer providing EV charging service to its employees, tenants or others, the transaction between utility and its customer of record is a retail sale of electricity, and thus is regulated by the Commission. ChargePoint agrees that the legal authority of a non-utility charging station operator to charge per kwh for a charging session requires clarification in Missouri. We disagree that the current law restricts *ownership* of a public charging station to utilities if the charging session is: a) provided to EV drivers free; b) provided in exchange for an hourly session charge; or c) included in a parking fee.

The Commission has authority to regulate the provision of utility services by jurisdictional investor-owned utilities. However, third-party owners or operators of EV charging stations are not public utilities because they do not own, operate, control or manage electric plant or provide utility services to the public. To highlight once more the central arguments, under Section

³ https://na.chargepoint.com/charge_point

386.020(43) a jurisdictional “public utility” includes an “electrical corporation” defined in Section 386.020(15) as a:

*corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others. [emphasis added]*⁴

Third-party owners and operators of EV charging stations do not generate, transmit, distribute, or sell electricity to end users. Rather, they use electricity to provide EV charging service to their customers. As other state utility commissions have found in 18 states, the use of electricity is merely incidental to the provision of EV charging service through a privately owned charging station.⁵ The charging service provided by the charging station owner or operator is not delivered by that owner or operator over distribution system wires or circuits, but rather by a cord and a connector, behind the utility meter, the line of demarcation of a utility and its customer of record.

The transaction between an EV service provider and an EV driver has nothing in common with a traditional sale of electricity by a utility to a consumer. Indeed, non-public utility companies selling charging services are themselves retail customers that purchase electricity from a regulated utility in order to provide charging services, which will in most cases include providing the user access to the charging station, use of related metrology and communications software,

⁴ The term “electric plant” is defined in Section 386.020(14) as “real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.”

⁵ California, Colorado, Connecticut, Washington DC, Florida, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Utah, Virginia, Washington, West Virginia.

participation in a network, billing, and various other options for transportation fuel. In this respect, a provider of EV charging services has more in common with a coffee shop that allows users to plug in to charge their laptop batteries or a cell phone battery-charging kiosk at the airport than with a regulated public utility operating a grid and selling electricity to local businesses and households. Individuals, regardless of any affiliation with the individual utility, will operate and fuel their vehicles across vast territories, and not be bound to any geographic area, utility service territory or state. Limiting electric vehicle fueling to only the utility is contrary to serving the public interest, ensuring customer choice and maintaining nondiscriminatory practices.

(C) Is a certificate of convenience and necessity required for Ameren Missouri to build, install, and operate the electric vehicle charging stations?

Based upon the motions filed and arguments asserted by OPC and Consumers Council, and based upon the above and foregoing, it is ChargePoint's position that EV charging service providers do not fall under the regulatory jurisdiction of the Commission and are not required to submit applications for certificates of service authority to provide that service. Accordingly, to the extent a public utility chooses to provide EV charging services, it does so on a non-regulated basis and under Missouri law no separate certificate of service authority is required; neither is a supplement or amendment to its existing certificate required.

Conclusion

Given that the Commission's jurisdiction falls on regulating the utilities, not a charging station provider or the charging stations, ChargePoint submits that factual data regarding the existence of a competitive EV charging market should be considered when evaluating the utility tariff filings on owning and operating EV charging stations. There are more than 150 charging ports owned and operated by non-public utilities in Missouri on the ChargePoint network alone, suggesting strongly that this is not a monopoly service and the private sector can support the

provision of EV charging infrastructure. Allowing the utility to provide charging stations to a site host could crowd out this private investment and instead create a market that is dependent on utility investment in perpetuity to grow. ChargePoint encourages the Commission to consider competitive impacts of utility programs on the non-utility, unregulated charging station market.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via email on this 21st day of October, 2016, to:

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