

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re. Duke Energy Florida, LLC's Petition
for a limited proceeding to approve 2021
settlement agreement, including general
base rate increases

Docket No. 20210016-EI

Dated: March 23, 2021

**DUKE ENERGY FLORIDA'S RESPONSE IN OPPOSITION
TO CHARGEPOINT, INC.'S PETITION TO INTERVENE**

Duke Energy Florida, LLC ("DEF"), by and through undersigned counsel and pursuant to Fla. Admin. Code Rule 28-106.204, hereby responds in opposition to the Petition to Intervene filed by ChargePoint, Inc. ("ChargePoint"). ChargePoint petitioned to intervene in the proceeding involving DEF's 2017 Settlement, and the Commission correctly denied that petition because ChargePoint failed to meet the legal standing requirements. *See* Order No. PSC-2017-0397-PCO-EI. ChargePoint's arguments in support of standing have not changed, so for the same reasons its request was denied in the 2017 proceeding, its request should also be denied here. DEF in further support of its response, states as follows:

1. On March 17, 2021, ChargePoint filed its Petition to Intervene in Docket No. 20210016-EI, which was opened to address the 2021 Settlement Agreement ("2021 Settlement") between DEF, the Office of Public Counsel ("OPC"), the Florida Industrial Power Uses Group ("FIPUG"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("White Springs") and Nucor Steel Florida, Inc. ("Nucor") (collectively, the "Parties").

2. In its Petition, ChargePoint alleges that it is one of the world's largest electric vehicle charging networks and that its "primary business model consists of selling its smart charging solutions directly to businesses and organizations." *Petition*, ¶ 4.

3. In attempt to demonstrate its affected interests, ChargePoint asserts that DEF's proposal in the 2021 Settlement to establish a permanent electric vehicle charging program "would directly compete with ChargePoint's customers that own and operate commercial charging stations." *Id.* at ¶ 5. ChargePoint admits that "[s]ome DEF proposals could encourage market growth while others could harm it," and then broadly states that DEF's proposal "constitutes a direct threat to ChargePoint's ability to sell its products in DEF's service territory."¹ *Id.* Finally, ChargePoint asserts that it can "provide valuable assistance to the Commission in its legislative mandate of ensuring that participation of this public utility [in the electric vehicle charging marketplace] is consistent with the legislature's clear endorsement of free-market solutions."² *Id.*

4. The Petition does not satisfy the test for standing set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). Under *Agrico*, to demonstrate a substantial interest in the outcome of a proceeding, a proposed intervenor must show "(1) that he will suffer injury in fact of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his injury is of a type of nature which the proceeding is designed to protect." 406 So. 2d at 482. Having failed to meet either prong of the *Agrico* test, the Petition must be denied.

5. To satisfy the "injury in fact" requirement in the first prong of *Agrico*, the asserted injury cannot be remote, speculative, or indirect. See *Int'l Jai-Alai Players Ass'n v. Fla. Pari-Mutuel Comm'n*, 561 So. 2d 1224 (Fla. 3d DCA 1990); *Village Park Mobile Home Ass'n v. State*,

¹ Presently, ChargePoint is the dominant provider of electric vehicle charging in Florida with a vested interest in blocking increased market competition.

² ChargePoint argues that its perspective is necessary because it does not appear that "any party to the settlement agreement that was filed as part of the petition has experience or expertise in the EV charging marketplace." *Petition*, ¶ 5. ChargePoint fails to mention that DEF conducted extensive outreach and many features of the proposed program reflected in the 2021 Settlement were developed in direct response to feedback from ChargePoint and other stakeholders.

Dep't of Bus. Regulation, 506 So. 2d 426 (Fla. 1st DCA 1987). Further, “an indirect effect on economic competition does not meet the ‘immediacy’ test.” Order No. PSC-2002-0324-PCO-EI (citing *Fla. Soc. of Ophthalmology v. State, Bd. of Optometry*, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)); *see also* Order No. PSC-2017-0397-PCO-EI (“ChargePoint’s alleged harm is abstract and speculative, and not directly affected by the outcome of this proceeding.”).

6. ChargePoint’s only alleged injury – increased competition and the threat to its ability to sell products in DEF’s service territory – is too remote and speculative to confer standing to participate in this proceeding.³ *See* Order No. PSC-2014-0329-PCO-EU (finding a solar trade association’s alleged impact to its commercial and economic interests too speculative and indirect to confer standing); *see also Fla. Soc. of Ophthalmology; Int’l Jai-Alai Players Ass’n; Village Park*. For this reason alone, the Petition should be denied.

7. Further, the Petition fails to satisfy the second prong of the *Agrico* test. This limited proceeding to consider the 2021 Settlement is not a proceeding designed to protect ChargePoint’s economic interests in maintaining its share of the electric vehicle charging market. While the Petition argues, by citation to section 339.287(2)(c)4., Florida Statutes, that “the Commission now has the specific legislative mandate to protect the interest of a free EV charging market in Florida, including the interest of ChargePoint,” this is a mischaracterization of the law. *Petition*, ¶ 5. Section 339.287, Florida Statutes, requires the Department of Transportation (“FDOT”) to “coordinate, develop, and recommend a master plan for current and future plans for the development of electric vehicle charging station infrastructure along the State Highway System.” In developing the master plan, the Commission, in consultation with FDOT and the Department

³ Indeed, DEF has not yet made any vendor selections for its proposed electric vehicle charging program. It is entirely possible that ChargePoint could be selected as a vendor such that the program would benefit ChargePoint’s economic interests. Further, the proposed program will benefit all electric vehicle operators and suppliers, including ChargePoint, by ensuring there is adequate infrastructure in place to support faster electric vehicle market growth.

of Agriculture and Consumer Services, is primarily responsible for “identifying the type of regulatory structure necessary for the delivery of electricity to electric vehicles and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace.” Fla. Stat. § 339.287(2)(c)4. The statute does not direct the Commission – or even provide it with the discretion – to consider competitive interests in the context of a ratemaking proceeding filed under chapter 366, Florida Statutes. Further, as this Commission held in the 2017 Settlement Agreement proceeding, “ChargePoint’s alleged injury to its economic interests and the free market are not what the governing statutes of this proceeding were meant to protect.” Order No. PSC-2017-0397-PCO-EI.

8. DEF agrees that interested persons should have an opportunity to be heard at the hearing in this docket and notes that the Commission has provided notice that public comments will be allowed. However, the mere desire to be heard on an issue that interests a putative intervenor does not confer standing to intervene. DEF’s petition for review and approval of the 2021 Settlement was filed under section 366.076, Florida Statutes, and nothing in that statute evidences a legislative intent to protect the type of interests asserted in the Petition. *See* Order No. PSC-1999-0535-FOF-EM (“Although one need not have his rights determined to become a party to a licensing proceeding, party status will be accorded only to those persons who will suffer an injury to their substantial interests in a manner sought to be prevented by the statutory scheme.”) (quoting *Fla. Soc. of Ophthalmology*, 532 So. 2d at 1284). Therefore, the Petition should be denied.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that the Commission deny ChargePoint’s Petition to Intervene for lack of standing. The Petition fails, on its face, to meet either prong of the *Agrico* standing test.

Respectfully submitted this 23rd day of March, 2021.

/s/ Dianne M. Triplett

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 23rd day of March, 2021.

/s/ Dianne M. Triplett

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