



Brian R. Greene
GreeneHurlocker, PLC
1807 Libbie Avenue, Suite 102
Richmond, Virginia 23229
(804) 672-4542 (Direct)
BGreene@GreeneHurlocker.com

May 20, 2019

By Electronic Filing

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005

Re: Formal Case No. 1130 and 1155

Dear Ms. Westbrook-Sedgwick,

Attached for filing in the referenced matters please find the Comments of ChargePoint, Inc. on Potomac Electric Power Company's Application for Reconsideration and Clarification of Order No. 19898.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian R. Greene', written in a cursive style.

Brian R. Greene

Enclosure

c: Service List

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

IN THE MATTER OF

The Investigation into Modernizing the Energy Delivery System for Increased)	
)	
)	Formal Case No. 1130
And)	
)	
The Application of the Potomac Electric Power Company for Approval of its Transportation Electrification Program)	
)	Formal Case No. 1155

**COMMENTS OF CHARGEPOINT, INC.
On Potomac Electric Power Company's
Application for Reconsideration and Clarification of Order No. 19898**

I. Introduction

On September 6, 2018, the Potomac Electric Power Company ("Pepco") filed an Application for Approval of its Transportation Electrification Program in the District of Columbia ("TE Program"). The proposal sought to expand transportation electrification in the District and presented 13 offerings with varying options for the Commission's consideration. The Commission accepted comments and reply comments from interested parties on December 18, 2018 and January 14, 2019, respectively, seeking perspectives on the merits of the TE Program proposals, as well as comments related to the Commission's statutory authority over electric vehicle ("EV") charging activities. ChargePoint offered comments at both procedural junctures.

On April 12, 2019, the Commission issued Order No. 19898, granting in part and denying in part Pepco's Application for the TE Program. Specifically, the Commission:

- Approved Offering 1: Residential Whole House Time-Of-Use Rate;

- Revised and approved Offerings 7, 8, 10, and 11, directing Pepco to provide “make-ready” infrastructure for public EV charging and public transportation charging to facilitate the deployment of public EV charging station;
- Determined that Pepco can only sell electricity from an EV charging station through an affiliate;
- Established a temporary Transportation Electrification Working Group to further explore and develop offerings for residential charging rebates and multi-dwelling unit deployments under Offerings 4 and 5, respectively; and,
- Rejected Offerings 2, 3, 6, 9, 12, and 13.

Additionally, in the course of its review of statutory authority over EV charging activities, the Commission ordered the implementation of a rulemaking to amend its rules and eliminate any licensing and bonding requirements for third party EV charging owners and operators.

On May 13, 2019, Pepco filed an Application for Reconsideration and Clarification of Order No. 19898. Among those reconsiderations, Pepco identified the following determinations:

- In passing the Energy Innovation and Savings Amendment Act of 2012, the Council of the District of Columbia did not express a desire for the competitive market alone to facilitate the deployment of public electric vehicle charging stations (“EVCS”);
- The Commission's determination that there has been impressive growth in EVCS and related infrastructure is not supported by the record evidence; and,
- The Commission's finding that there are adequate public charging opportunities in Wards 5, 7 and 8 is contrary to the record evidence.

With this filing, ChargePoint responds to the Pepco’s Application for Reconsideration and the specific points outlined above.¹

¹ ChargePoint notes while it is responding to Pepco’s substantive arguments in the Application for Reconsideration, Pepco’s arguments may consist of new issues and facts not previously raised. The Commission has previously ruled that new issues may not be raised for the first time on reconsideration,

II. Support for the Commission's Decision to Remove Barriers for Third Party Owners and Operators of EV Charging Stations

ChargePoint supports the Commission's determination to remove uncertainty around the ability of third parties to provide charging services. As ChargePoint and other commenters noted, the legislative history of Energy Innovation and Savings Amendment Act of 2012 ("Act"), shows that the intent of the legislation was to reduce regulatory barriers for the competitive, non-utility market for charging infrastructure. The plain and unambiguous language of the Act's definitional revisions is clear that the Commission does not regulate the EV charging activities of third-party providers. Furthermore, the Act's Committee Report shows the intent of the D.C. Council to open the District's market to competition and reduce regulatory uncertainty for third-party providers of EV charging.²

Simply put, the intent of the Council was to create a clear, unencumbered regulatory environment, in which third-party EV charging providers could compete. However, ChargePoint suggested that the Commission's previous interpretations of the Act, Formal Case 1096, and other underlying statutory bases surrounding the definition of electric supply had limited EVCS providers' business models and restricted market activities. Specifically, if these providers did price by kilowatt-hour, the Commission ordered that they would need to obtain an electric supplier

when, with due diligence, they could have been raised earlier. See, e.g., Formal Case No. 1119, Order No. 18243 at 21 (June 21, 2016).

2017 D.C. PUC LEXIS 455, *13 (D.C.P.S.C. October 6, 2017)

² The D.C. Court of Appeals has noted that, "[a]lthough the 'plain meaning' rule is certainly the first step in statutory interpretation, it is not always the last or the most illuminating step. This court has found it appropriate to look beyond the plain meaning of statutory language in several different situations" that do not exist in this proceeding. One such situation is "where the words of the statute have a 'superficial clarity,' a review of the legislative history or an in-depth consideration of alternative constructions that could be ascribed to statutory language may reveal ambiguities that the court must resolve." That's not the case here. Another situation is when "a court may refuse to adhere strictly to the plain wording of a statute in order to effectuate the legislative purpose, as determined by a reading of the legislative history or by an examination of the statute as a whole." That, also, is not the case here as the intent of the D.C. Council was clearly to exempt third-party providers of EV activities from Commission jurisdiction. See In the Matter of 15 DCMR Chapter 29 – *Renewable Energy* Portfolio Standard Expansion Act of 2016, RM29-2016-02, Order No. 18749 (Apr. 13, 2017) (citing *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 754 (D.C. 1983) (internal quotations marks and citations omitted)).

license. The Commission set in place periodic compliance and enforcement site visits to EV charging stations to ensure that pricing to drivers remained in line with this determination of authority.³

In Order No. 19898, the Commission eliminated these requirements temporarily and set in place a rulemaking process to formally amend its rules to that end. ChargePoint supports the Commission's determination, not only as it supports the intent of the D.C. Council, but also as it creates more flexibility for third party EVCS and allows for greater competition. ChargePoint believes that these amendments will provide more options for charging stations, allow for market-driven business models to operate stations, and reduce barriers for more providers to enter the market. ChargePoint also notes that in approving rule changes, the market must continue to be based around unregulated, competitive pricing to EV drivers. When developed alongside unregulated pricing managed by site hosts, regulated pricing to drivers has the potential to undermine competitive market pricing and decrease utilization.

III. Pepco's Proposal to Assume Approved Programs is Unnecessary and Lacks Competitive Market Considerations

In its Application for Reconsideration, Pepco requests that the Commission modify Order No. 19898 to allow Pepco to own, operate, and deploy public EVCS alongside other market participants. In addition, Pepco proposes a "compromise" where Pepco would be allowed to operate up to 50% of the authorized public EV charging programs under Offerings 7 and 8. Pepco also requests that if the competitive market fails to deploy all approved public EVCS within nine months, Pepco would be allowed to own, operate, and deploy the remaining public charging stations. ChargePoint believes that these requests should be denied, as they are arbitrarily set

³ D.C. Public Service Commission. "Formal Case No. 1096, In the Matter of the Investigation in to the Regulatory Treatment of Providers of Electric Vehicle Charging Stations and Related Services." Order No. 18004. October 16, 2015. https://edocket.dcpssc.org/apis/pdf_files/fe9d30df-3763-4d5c-b305-8772a4ea7591.pdf

and fail to consider any alternative methodologies to achieve the desired buildout of public charging, other than utility operation.

First, Pepco's proposed utility ownership of 50% of the public charging offerings would not accelerate ongoing competitive market activities, but rather risks slowing down market competition. As ChargePoint noted in initial comments, it is imperative that the current competitive marketplace dynamics remain intact, and that the utility's cost-free offerings do not impede the sales of other vendors, supplanting current market activities with pre-selected charging solutions. If Pepco were permitted to operate EV charging alongside a competitive market, it would potentially push away competitors in the market, as Pepco approaches the industry's customers and prime locations to offer free products of the utility's choosing. Moreover, Pepco's utility-operated EVCS would presumably have regulated tariff pricing to drivers, which may: (a) be unattainable when compared with pricing to drivers from competitive market providers and site hosts; (b) inhibit optimal utilization of charging stations; and (c) severely limit pricing flexibility and models across various use cases.

Second, Pepco's request to take over authorized public charging programs in the event that competitive market fails to deploy stations within nine months is arbitrary. ChargePoint believes that restricting competitive market activities to this timescale would discourage program participation for vendors and site hosts alike. The timescale of public charging buildouts, from site acquisition, to permitting, and to construction is highly variable. ChargePoint believes that the availability of make-ready incentives in the TE Program will result in an accelerated buildout of charging infrastructure without the need for an unwarranted deadline.

Third, Pepco's proposal does not consider alternative investment models, other than utility operation, that would result in the timely buildout of charging infrastructure necessary to meet market goals. To be clear, ChargePoint strongly supports utility investment in charging infrastructure, and believes it can catalyze and foster a long-term, scalable, and competitive market for charging equipment and charging networks. ChargePoint maintains that given the

presence of private investment in EV charging in the District, the TE Program should continue to incorporate utility investment models that reduce barriers and encourage the participating site host to contribute financially and play a role in operating the charging infrastructure. Additionally, utility investments should maintain a variety of customer choices of equipment and networks to reflect the competitive market choices that exist today. Utility programs that include site host contributions and offer product choices lower barriers and help accelerate current market activities.⁴

For this reason, ChargePoint believes that the Commission's approval for make-ready programs in Order No. 19898 serves as a prime example of effective EV charging program design. ChargePoint agrees with the Commission's analysis that make-ready programs have been employed in other states, and believes that incentivizing EVCS site hosts in the TE program will produce the expected buildout and achieve the right outcomes for the long-term health of the market.⁵ Ongoing program performance assessments can ensure program success and evaluate any potential amendments to the program.

Finally, Pepco characterizes the current state of the competitive market as underperforming in furthering the D.C. Council's goals for transportation electrification, even requesting that the Commission reconsider its conclusion that the competitive market is experiencing "impressive growth". ChargePoint maintains that there is an active competitive market in the District, with several vendors competing for sites and site hosts and offering innovative solutions to meet customer needs. Overall, the growth rate of charging stations in the District is scaling and increasing alongside the adoption rate of EVs. While ChargePoint agrees with Pepco that projections show that more buildout is needed and certain segments would benefit

⁴ There are alternative models to achieve these market outcomes, including a custodian model (utility-owned station with site host choice of products and control over asset), make-ready model (utility ownership of extension from site host panel to charging station, with site host ownership and control of the EV charging station), and rebates (incentives to cover the cost of make-ready and equipment, with site host ownership and control).

⁵ DCPSC, Order No. 19898, Page 16.

from additional investment or incentives, ChargePoint believes that this does not require the utility to bypass the market to operate those assets. Instead, alternative investment models, such as the approved make-ready investment, stimulate the existing activities in the market, direct them to key segments, and satisfy natural market demands.

ChargePoint is committed to working with Pepco in stakeholder discussions to incorporate these considerations into future utility investment programs to benefit the District's growing EV market.

IV. Support for Market-Based Deployments in Disadvantaged Communities

Pepco requests that the Commission reconsider its decision and permit Pepco to deploy, own, and operate seven public smart Level 2 EV charging stations and four public DC fast charging stations in Wards 5, 7, and 8. Pepco bases this reconsideration on an accounting of the current buildout of EV infrastructure in those communities. ChargePoint supports Pepco's intent to make available more EV charging stations, and that an equitable distribution of charging solutions will help to stimulate wider EV adoption. In fact, ChargePoint encourages utility investments in those communities as part of EV charging program designs. However, Pepco suggests that the competitive market lacks the ability to deploy in disadvantaged communities, an assertion that is not supported. Simply put, utility operation is not the only way to deploy EVCS in disadvantaged communities, especially at this stage in the market.

ChargePoint currently deploys in disadvantaged communities across the country, and believes that utility programs can effectively stimulate deployment in those communities through targeted market-based incentives or cost coverage, such as make-ready or rebate-based models. For example, an approved and implemented EV charging program in Ohio⁶ had a specific carve-out in its rebate programs for deployments in disadvantaged communities. Importantly, that

⁶ See Public Utilities Commission of Ohio. Docket No. 16-1852-EL-SSO. "In The Matter of the Application of the Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143." April 25, 2018. <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=1a7d9c25-92bc-42e4-896d-c888c1a015ac>

program and similarly designed programs in other states appropriately adjust to a higher level of coverage or incentive than deployments in other segments of the market. As noted in Section III, should the Commission permit Pepco to invest EVCS deployments in disadvantaged communities, the utility should pursue alternatives to utility operation. As noted in Section III above, alternative investment models exist and are in practice today with many utilities that leverage the capacities of the current and active competitive market in D.C. and achieve the same results with broader program participation.

V. Conclusion

Thank you for the opportunity to provide comments. ChargePoint looks forward to continuing participating in this case and the discussion surrounding grid modernization. We look forward to working with the Commission on bringing smart EV charging in the District of Columbia.

Respectfully submitted,

CHARGEPOINT, INC.

By Counsel

/s/ Brian R. Greene
Brian R. Greene
D.C. Bar No. 450954
GREENEHURLOCKER, PLC
1807 Libbie Avenue, Suite 102
Richmond, Virginia 23226
Tel: 804.672.4542 (direct)
BGreene@GreeneHurlocker.com

Date: May 20, 2019

Certificate of Service

I certify that true copies of the foregoing Comments were served on May 20, 2019 upon all those on the service lists for FC 1130 and FC 1155.

/s/ Brian R. Greene
Brian R. Greene