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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	**§** **§** **§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ENTERGY TEXAS, INC.'S OBJECTION TO CHARGEPOINT, INC.'S MOTION FOR LEAVE TO INTERVENE OUT OF TIME

Entergy Texas, Inc. ("ETI" or the "Company") objects to ChargePoint, Inc.'s ("ChargePoint") Motion for Leave to Intervene Out of Time, because it was untimely and ChargePoint has no justiciable interest in the proceeding. Pursuant to 16 TAC § 22.78(a), a responsive pleading is due within "five working days after receipt of the pleading to which the response is made." ETI received ChargePoint's motion on September 7, 2022; therefore, ETI's objection is timely filed.

I. Argument

A. ChargePoint's Motion for Leave to Intervene is untimely.

ChargePoint filed its motion to intervene 23 days after the August 15, 2022, intervention deadline established pursuant to the ALJs' order dated July 29, 2022.[1] Although late interventions may be granted under 16 TAC § 22.104(d)(1) under certain circumstances, ChargePoint's request should not be granted because it proffers an apparently pretextual basis as good cause for its untimely motion. ChargePoint seeks to excuse its delay on the basis that it did not receive notice of ETI's filing, but ChargePoint does not say ***when*** it became aware of this matter. ChargePoint then claims it "had some difficulty finding local Texas counsel with experience practicing before this Commission, which further delayed ChargePoint's intervention."[2] Yet the attorneys listed on ChargePoint's motion are not Texas lawyers; they have Colorado business addresses and are licensed in states other than Texas.[3] Moreover, these lawyers are ChargePoint's present counsel

[1] *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Order Memorializing Prehearing Conference; Adopting Procedural Schedule; and Setting Hearing on the Merits at 2 (Jul. 29, 2022); 16 TAC § 22.104(b) ("45 days from the date an application is filed with the commission.").

[2] Motion at 6.

[3] Docket No. 53719, ChargePoint Motion for Leave to Intervene Out of Time at 1-2 (Sept. 7, 2022).

of record in at least one other regulatory proceeding,[4] so the delay in the filing of ChargePoint's motion cannot reasonably be attributed to the time required to identify or locate these lawyers. Because ChargePoint has failed to establish good cause for its late intervention request, its motion should be denied.[5]

B. ChargePoint lacks a justiciable interest in this base rate proceeding.

In order to participate as a party in a proceeding before the Commission, a person must have standing to intervene.[6] A person has standing if that person "(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding."[7] The Commission has previously explained that a justiciable interest in a Commission proceeding is similar to standing to maintain a lawsuit.[8] While the Commission construes Rule 22.103 liberally, when the potential effect of a proceeding on a person moving to intervene is "remote or contingent," intervention should be denied.[9]

ChargePoint seeks to intervene to weigh in on whether ETI's proposed Transportation Electrification and Charging Infrastructure ("TECI") Rider and Transportation Electrification and

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[4] *See* Arkansas Public Service Commission Docket No. 22-026-TF, Petition to Intervene of ChargePoint, Inc. (filed July 1, 2022) (listing Scott Dunbar of Keyes & Fox, LLP as counsel of record to ChargePoint).

[5] *See Complaint of Aspire Commodities LLC Against the Electric Reliability Council of Texas*, Docket No. 49637, Order No. 4 at 1 (Sep. 19, 2019) (Denying intervention motions filed three and five days after the deadline when movants failed to establish good cause).

[6] 16 TAC § 22.103(b).

[7] *Id.*

[8] *Application of Cross Texas Transmission, LLC to Amend its Certificate of Convenience and Necessity for the Proposed Salt Fork to Gray 345-kV transmission Line in Gray and Donley Counties*, Docket No. 43731, Order on Appeal of Order No. 4 at 2 (Feb. 24, 2015) (citing *Application of American Electric Power Texas Central Company to Amend a Certificate of Convenience and Necessity (CCN) for a 345-kV Double Circuit Transmission Line in Kenedy County, Texas*, Docket No. 34298, Order on Appeal of Order No. 5 at 2 (Oct. 29, 2007) and *Hunt v. Bass*, 664 S.W.2d 323 at 324 (Tex. 1984)).

[9] *Mendez v. Brewer*, 626 S.W.2d 498, 499-500 (Tex. 1982) ("To entitle a person to intervene in a pending suit, it is incumbent upon the petitioner to show an interest in the subject matter of the litigation … greater than a mere contingent or remote interest ….") (quotation omitted); *see also*, *Inquiry into the Reasonableness of the Rates, Services, and Sale of Facilities by Gulf States Utilities Company*, Docket No. 12423, 19 Texas P.U.C. Bull. 1311 (Dec. 20, 1993).

Charging Demand Adjustment ("TECDA") Rider should be approved.[10] It alleges that if these riders are approved, ChargePoint's "ability to sell its services" and the "value proposition" for those services will be "directly impacted."[11] However, ChargePoint does not explain how adoption of those two riders will impact its business, nor how much or even whether the impact will be positive or negative. Indeed, it is clear from the face of ChargePoint's pleading that it fundamentally misunderstands the relief being requested in this case, and that misunderstanding is central to its perceived justiciable interest. ChargePoint claims, "the Company's proposal in the TECI Rider to partner with interested nonresidential customers to plan, construct, own, operate,[12] and maintain transportation electrification related infrastructure and equipment . . . ***at no cost to the site hosts*** . . . will directly impact ChargePoint's ability to sell its products and services . . . ."[13] In actuality, ETI's proposed TECI Rider recovers all non-revenue justified costs from the customers receiving these services – that is the fundamental purpose of the percentage rates proposed under the TECI Rider. As explained in direct testimony supporting the request, the TECI Rider is fundamentally no different than the PUCT-approved Additional Facilities Charges ("AFC") rider that allows the utility to invest in infrastructure benefiting a particular customer who in turns agrees contractually to pay for that infrastructure. ChargePoint's speculative and misinformed assertions demonstrate that its interest, if any, is too remote or contingent to confer standing to intervene.

ChargePoint's essential concern appears to be that it believes it will be impacted by having to "compete with" Entergy Texas. However, this concern is both unfounded and does not provide a basis for standing. ETI does not seek to compete with transportation electrification ("TE") providers. Instead, ETI seeks, through its TECI Rider, to bridge the gap between ETI customers and TE providers – ETI does not seek to displace such providers but to work with them. As a case in point, ChargePoint is a vendor that has provided EV charging infrastructure to Entergy Texas'

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[10] Motion at 3.

[11] Motion at 4.

[12] ETI will not operate charging equipment; under the terms of the TECI Rider, such operation will be the responsibility of the customer/site host.

[13] Motion at 4.

regulated utility affiliates. Similarly, ETI's proposed TECDA Rider seeks to remove barriers to adoption by reducing – for a limited time – the often cost-prohibitive demand charges associated with the use of TE infrastructure. This rider will benefit TE developers and vendors such as ChargePoint by reducing the cost of electricity used for charging and thus increasing their business opportunities; it is not a means of competing with them in any respect. Even if ETI were seeking to compete with ChargePoint, which to be clear it is not, a competitor has no justiciable interest to challenge a utility's authority to act under PURA, as interpreted and implemented by the Commission's regulatory decisions.[14]

ChargePoint's interest in this base rate proceeding is significantly more attenuated than that of Southwestern Public Service Company's ("SPS"), whose motion to intervene to address the same issues was recently denied.[15] SPS is a vertically integrated utility whose rates and operations are fully regulated by the Commission. Decisions in one utility's base rate case are frequently cited as ***binding precedent*** in another utility's base rate case. To the extent SPS's interest is not sufficiently justiciable to intervene to weigh in on these questions, there can be little doubt that the same is true of ChargePoint's more attenuated interest. ChargePoint merely claims a potential "impact"; it does not assert, nor could it, that the adoption of ETI's two Riders has the potential to prohibit it from participating in the TE infrastructure market altogether. In contrast, approval of both riders will serve to enhance ChargePoint's business opportunities in Entergy Texas' service area.

C. Conclusion

For all these reasons, ETI respectfully requests that the Administrative Law Judges deny ChargePoint's untimely Motion to Intervene, and for any other relief to which ETI is entitled.

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[14] *See Southwestern Pub. Serv. Co. v. Public Util. Comm'n*, 578 S.W.2d 507, 513 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.) ("The only interest Southwestern could have in South Plains' activities in the disputed territory, under a certificate granted by the Commission, is as a competitor. Whether a corporation has acted in excess of its lawful powers can be raised only by a party interested in the corporation or in a direct proceeding brought by the state. In the present case the attorney general, representing the Commission, has not challenged the right of South Plains to provide service within the annexed area. Southwestern's lack of justiciable interest, under the facts of this case, to challenge the corporate powers of South Plains is clearly demonstrated . . . .").

[15] SOAH Order No. 4 at 2 (Sep. 7, 2022).

Dated: September 9, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all parties of record on this 9th day of September 2022.