

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF UTAH

Docket No. 20-035-34

Application of Rocky Mountain Power for Approval of its Electric Vehicle Infrastructure Program

**RESPONSE TO MOTION FOR PROTECTIVE ORDER OF
CHARGEPOINT, INC.**

Pursuant to the Public Service Commission’s Notice of Virtual Scheduling Conference and Motion for Protective Order, ChargePoint, Inc. (ChargePoint) respectfully files this response to Rocky Mountain Power’s (RMP or the Company) Motion for Protective Order (Motion). ChargePoint opposes the Motion and recommends that it be denied. Alternatively, ChargePoint recommends that the Commission clearly delineate the type of confidential information that cannot be accessed by intervening parties who have signed a non-disclosure agreement (NDA). If the Commission issues a protective order, the Commission should also determine that outside counsel for intervening parties, including ChargePoint, should be able to access all confidential and highly confidential information.

RMP has failed to meet its burden to demonstrate a competitive disadvantage.

RMP states that it seeks to deny intervening parties access to the following information: “detailed estimates of its yearly expected expenditures, the per cost estimate for each charging station location, the estimated operating costs of the EVIP, and the Company’s calculations of revenue breakeven at various utilization levels.”¹ Utah Admin. Code 746-1-602(2)(a) provides that a person may not receive confidential information if “the person could use the information to the

¹ Motion, ¶ 27.

competitive disadvantage of the person providing the information.” As the party that wishes to deny access to confidential information to intervening parties, RMP “has the burden to demonstrate the competitive disadvantage claimed” under Utah Admin. Code 746-1-602(2)(b).

RMP attempts to meet this burden when it states:

The information could be used by parties for competitive insight and advantage during the RFP process the Company will use to select an operator for the network of Company-owned chargers. Additionally, intervening parties may use the information to compete directly with Rocky Mountain Power as a provider of charging station locations.²

The Commission should find that RMP has failed to meet its burden to demonstrate that it would suffer a competitive disadvantage by allowing intervening parties to access the information it seeks to redact. RMP seeks to protect its cost *estimates*, not its actual costs. If the Commission approves RMP’s proposed RFP process, the Company’s actual costs would be determined by the results of the RFP. Bidders in the RFP would be competing *with one another* in the RFP, not competing with the Company. Accordingly, information on the Company’s current cost estimates would not put the Company at a competitive disadvantage.

Further, “the Company’s calculations of revenue breakeven at various utilization levels” would likewise not put the Company at a competitive disadvantage in the Company’s proposed role “as a provider of charging station locations.” If the Commission approves RMP’s proposal to own and operate charging stations, third-party charging station site hosts will compete with RMP based on charging prices, locations, speed, co-located amenities, and similar factors. Because RMP’s charging prices will be tariffed rates and publicly known, the Company’s “calculations of revenue breakeven at various utilization levels” have no relevance to the factors on which the

² Motion for Protective Order, ¶ 28.

Company will compete with third-party site hosts. Accordingly, accessing this information would provide no advantage to a third-party site host competing with RMP based on these factors.

The Commission should find that RMP has failed to meet its burden to demonstrate that it would be put at a competitive disadvantage by providing information on its cost estimates and its “revenue breakeven” estimates. Accessing this information is crucial to intervening parties’ ability to assess the reasonableness of RMP’s proposals and the proposals’ compliance with Utah Code Ann. § 54-4-41.

Alternatively, the Commission should clearly delineate which information is covered by a protective order.

Alternatively, if the Commission finds that RMP has met its burden of demonstrating a competitive disadvantage under Utah Admin. Code 746-1-602(2)(b), the Commission should clearly delineate which information would be covered by such a protective order.

ChargePoint is concerned that the redactions that appear in RMP’s application and accompanying testimony and exhibits cover more information than the information described in the Motion. As quoted above, the Motion states that RMP does not want to allow intervening parties to access “detailed estimates of its yearly expected expenditures, the per cost estimate for each charging station location, the estimated operating costs of the EVIP, and the Company’s calculations of revenue breakeven at various utilization levels.”³

In the Direct Testimony of James A. Campbell, Table 2 on page 8 is redacted in its entirety. Witness Campbell describes the table as displaying an analysis of “revenues at different price and utilization levels were calculated and compared against the costs and expenses of the location over a 10-year period.”⁴ As discussed above, ChargePoint does not believe that revealing cost *estimates*

³ Motion, ¶ 27.

⁴ Campbell Direct, p. 7, ll. 144-146.

put RMP at a competitive disadvantage, but even if the Commission finds that they do, there is no reason to redact RMP's modeled prices and modeled utilization levels in Table 2. Accordingly, if the Commission grants RMP's request to redact cost estimate information, the Commission should direct RMP not to redact the prices and utilization levels modeled in Table 2.

Table 3 on page 11 of the Direct Testimony of James A. Campbell is also redacted in its entirety. Witness Campbell describes the table as providing "high level estimates for spending on equipment, infrastructure, incentives, and expenses during the initial five-year period."⁵ Again, ChargePoint does not believe that revealing cost *estimates* put RMP at a competitive disadvantage, but even if the Commission finds that they do, the only cost category that is arguably a concern is for charging equipment and operational expenses because the Company proposes to conduct an RFP. There is no reason for RMP to redact its cost estimates for infrastructure or incentives. Accordingly, if the Commission grants RMP's request to redact equipment and operational cost estimate information, the Commission should direct RMP not to redact its cost estimates for infrastructure and incentives modeled in Table 3.

Finally and most concerningly, the Commission should not allow RMP to redact Exhibit JAC-2, which provides RMP's proposed estimated program expenditures. RMP's request not to allow intervening parties to review its proposed spending by category is highly inappropriate and unnecessary. It is one thing to redact RMP's cost estimates for a single charging location or other specific items that it will procure through the proposed RFP (if the RFP process is approved). However, RMP has not even provided unredacted estimates of how much it plans to spend on Company-owned chargers, Company-owned infrastructure, and make-ready infrastructure for customer-owned chargers.⁶ This information is more accurately described as RMP's budget

⁵ *Id.* at p. 11, ll. 207-209.

⁶ Exhibit JAC-1, p. 19.

proposal and not its cost estimates. There is no possible way that RMP could be put at a competitive disadvantage if its budget proposals across these broad spending categories is accessed by intervening parties. Moreover, the Company's proposed allocation of spending across these three categories, which presumably appears in redacted Exhibit JAC-2, is critical information that intervening parties such as ChargePoint need to determine their position on RMP's Application. For example, ChargePoint's recommendations and ultimate position in this proceeding may be determined in part by how much RMP proposes to spend on Company-owned chargers versus make-ready infrastructure. ChargePoint cannot provide recommendations to the Commission on the reasonableness of RMP's proposals without knowing how RMP proposes to allocate its budget across the various spending categories it has proposed. Without access to RMP's proposed spending, ChargePoint's ability to participate in this proceeding will be hamstrung.

Accordingly, the Commission should find that RMP will not be put at a competitive disadvantage by providing intervening parties with access to its proposed spending levels by category. Even if the Commission allows RMP to redact cost information for any specific items, it should not permit RMP to redact information on its spending proposals across cost categories.

ChargePoint's counsel should be permitted to access all confidential information if they sign an NDA.

If the Commission grants the Motion contrary to ChargePoint's recommendation, the Commission should find that intervening parties' counsel, including ChargePoint's outside counsel, should be permitted to access all confidential information if they sign an NDA. Utah Admin. Code 746-1-602(2)(a) specifies that a person may not receive confidential information if, "in performing the person's normal job functions, the person could use the information to the competitive disadvantage of the person providing the information." ChargePoint's outside counsel's "normal job functions" are to advise and represent ChargePoint in utility regulatory

proceedings such as the current proceeding. ChargePoint's outside counsel's job functions are limited to legal representation and do not involve the competitive sides of ChargePoint's business such as selling EV charging stations and network services. Even if the Commission finds that ChargePoint itself could use the confidential information to RMP's competitive disadvantage (which it should not), ChargePoint's outside counsel is not involved in any of the activities that could be deemed to be competitive with RMP. Accordingly, if the Commission restricts intervening parties' access to any confidential information in this proceeding, it should at the very least allow ChargePoint's outside counsel to access such information after signing an NDA.

Conclusion

For the reasons discussed, the Commission should find that RMP has not met its burden to demonstrate that confidential information could be used to its competitive disadvantage and deny the Motion.

Alternatively, if the Commission does not deny the Motion, then it should clearly delineate the information covered by any protective order and not allow RMP to redact all of the information it has redacted. Most importantly, the Commission should direct RMP not to redact its spending proposals across cost categories such as capital spending for Company-owned chargers, Company-owned infrastructure, and make-ready infrastructure for customer-owned chargers. The Commission should also direct RMP not to redact any information unrelated to cost estimates, as discussed above.

Finally, if the Commission issues a protective order, it should find that ChargePoint's outside counsel could not use any confidential information to RMP's competitive disadvantage and allow ChargePoint's outside counsel to sign an NDA and access such information.

Respectfully submitted on September 7, 2021,

/s/ Scott F. Dunbar

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2021, I have duly served a true and correct copy of the foregoing **RESPONSE TO MOTION FOR PROTECTIVE ORDER OF CHARGEPOINT, INC.** upon all parties email.

/s/ Scott F. Dunbar _____
Scott F. Dunbar