

May 15, 2023

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza Agency Building 3
Albany, NY 12223-1350

RE: Case No. 18-E-0138: Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure

Dear Secretary Phillips,

Attached for electronic filing in the above-referenced matter, please find comments on behalf of ChargePoint, Inc. Please let me know if you have any questions.

Respectfully,

/s/ Matthew Deal

Matthew Deal
Senior Manager, Utility Policy
ChargePoint, Inc.
202.528.5008
matthew.deal@chargepoint.com

Attachment

CC: All parties (via DMS)

I. Introduction and summary of comments

On March 1, 2023, the New York Department of Public Service Staff (“Staff”) filed the Electric Vehicle Make-Ready Program Midpoint Review and Recommendations Whitepaper (“Whitepaper”) in Case No. 18-E-0138. The Whitepaper describes Staff’s recommended changes to the statewide make-ready program by ConEdison, National Grid, Central Hudson, Orange & Rockland (O&R), New York State Electric & Gas (NYSEG), and Rochester Gas & Electric (RG&E) (collectively the “Joint Utilities”). The Whitepaper considers stakeholder input as well as new analytical tools available to Staff. ChargePoint submitted initial comments in the make-ready program midpoint review on October 10, 2022, and appreciates the opportunity to provide additional recommendations for consideration by Staff and the Public Service Commission (“Commission”) in response to the Whitepaper.

As an initial matter, ChargePoint commends Staff on the Whitepaper’s thoughtful consideration of the dozens of concerns and ideas submitted by stakeholders in October 2022. Due to the wide breadth of issues addressed by the Whitepaper, ChargePoint’s comments focus only on the highest priority issues that require further attention or reconsideration. Nonetheless, ChargePoint appreciates Staff’s drive to accelerate port deployment in New York, particularly regarding the Whitepaper proposal for an expansion of the make-ready program budget by over \$407 million. ChargePoint also supports Staff’s recommendation to extend the make-ready program beyond January 1, 2025 deadline if port targets are not met.

That said, ChargePoint notes that a significant amount of time has passed since the midpoint review process began in August 2022. ChargePoint imagines that a different process could have resulted in more timely collection of stakeholder input and decision-making than the Whitepaper process. ChargePoint suggests that the Commission and Staff consider other models for engagement and participation to solicit feedback and institute changes in utility-funded EV programs in the future.

In summary, ChargePoint recommends the Commission consider the following changes in response to the proposed recommendations in Staff’s Whitepaper:

- Level 2 (L2) stations installed at multi-unit dwellings (MUDs) should qualify for the proposed 75% funding tier.
- The upcoming technical session on June 12, 2023, should investigate and prepare to propose an alternative to plug outage metrics.
- The driver complaint process requires greater input from stakeholders to minimize the risk of EV driver confusion.
- Technical requirements should not prohibit proprietary extensions to OCPP.
- Technical requirements for OCPP and ISO 15118 should be applied on a prospective basis and allow hardware manufacturers to demonstrate compliance within one year of the Commission’s final order adopting changes to the make ready program (“make ready 2.0 order”).
- The Joint Utilities should adopt a statewide qualified product list.

- An MOU should be a sufficient standard to initiate co-location dispute process with stations installed by New York Power Authority (NYPA) in the Evolve NY program.

ChargePoint also requests clarification from Staff on the following matters:

- How the Joint Utilities, particularly ConEdison, are to prioritize their L2 budgets in light of the proposed L2 port deployment targets.
- Whether the requirement for ISO 15118 compliance will apply to L2 stations.

II. Comments

1. MUDs should qualify for the proposed 75% funding tier.

One of the most substantive changes recommended to the statewide make-ready program by the Staff Whitepaper is a shift in port deployment goals that emphasizes L2 MUD and DC fast chargers (“DCFC”). Whereas the original make-ready order did not include any MUD-specific port targets, Staff proposes a statewide MUD L2 target of 44,351 plugs by 2025 and increases the DCFC plug target four-fold.¹ Staff bases its recommendation on a new residential charging access analysis provided by NREL and NYSERDA, which suggests that drivers need greater access to DCFC and L2 MUD charging than previously modeled to meet state EV adoption goals.² Staff also recommends several changes to the program budget to reflect the program’s reprioritization to focus on DCFC. ChargePoint summarizes the port deployment and budget targets for the make-ready order and the Staff Whitepaper below.³

Table 1 – Make-Ready program port deployment goals and budget by L2 and DCFC segment

	L2 port target	L2 make-ready budget	DCFC port target	DCFC make-ready budget
Make-ready order	53,773	\$385.8M	1,500	\$94.7M
Staff Whitepaper	63,646	\$282.2M	10,012	\$503.3M

ChargePoint understands Staff’s proposal as an effort to accelerate MUD charging access in the L2 segment. However, Table 1 indicates that the increase in L2 ports is not supported by a proportional increase in budget, presumably because the shift to the MUD segment also shifts the majority of anticipated new L2 ports to a lower incentive tier; whereas public chargers are eligible for incentives to cover 90% of eligible make-ready costs, MUDs are confined to the partial (50%) tier.⁴ ChargePoint is concerned that limiting MUD customers to the 50% tier will undermine Staff’s effort to improve L2 port deployment at MUDs.

¹ Staff Whitepaper at 88, Figure 3.

² Staff Whitepaper at 22-23.

³ Staff Whitepaper at 88, Figure 3 and Staff Whitepaper at 90, Figure 7 5.

⁴ All L2 ports in disadvantaged communities are eligible for the 100% tier. See Whitepaper at 24, Table 3.

Though ChargePoint recommended that Staff consider a higher incentive tier for the L2 MUD segment in initial comments, Staff declined to make changes to incentive eligibility on the basis that “Public charging is still relatively nascent in New York and redirecting funds away from publicly accessible chargers could result in insufficient infrastructure.”⁵ However, this justification seems to clash with the Whitepaper’s proposed port deployment targets, which ostensibly prioritize L2 MUDs over L2 public/workplace. The Whitepaper extensively refers to a NYSERDA/NREL analysis that indicates MUD ports, which are considered “private,” are nonetheless extremely important to meet statewide EV adoption goals.⁶ MUDs are a challenging segment for charger deployment for a variety of reasons, including the landlord-renter split incentive, shared decision-making structure for condo owners, and the multitude of resident parking arrangements that increase site complexity and complicate decision-making. Higher incentive levels would provide a stronger signal to landlords, building owners, and condo associations to deploy chargers at MUDs, just as the 90% incentive tier has acted as a strong signal to business owners, retail areas, and offices to deploy public/workplace L2 chargers.

ChargePoint finds that continuing to assign incentive tiers based on whether a use case is considered public or private will not achieve the desired outcome to accelerate charging at MUDs. Incentive tiers should be modified based on the level of support needed to achieve the desired port deployment targets. Because Staff desires an increase in L2 port deployment at MUDs, it follows that the L2 MUD incentive tier should be upgraded. Simply increasing the MUD L2 port target will not achieve greater deployment at MUDs without a commensurate increase in the incentive tier for MUDs. ChargePoint recommends that all MUDs eligibility is upgraded to at least the 75% tier.

2. The new L2 port deployment targets necessitate clarification regarding how the Joint Utilities, particularly ConEdison, will prioritize their L2 budgets.

Though Staff proposes an increase to the total number of L2 ports installed within the make-ready program, the Joint Utilities each have lower port deployment goals for workplace/public L2 segments. Staff’s proposed port deployment targets effectively shift L2 ports away from public/workplace target for 2025 and into the MUD segment. While most of the Joint Utilities still have more L2 ports to deploy in every segment, ConEdison has already exceeded its 2025 port deployment targets for the L2 public/workplace segment under Staff’s proposed changes.⁷

⁵ Staff Whitepaper at 33.

⁶ Staff Whitepaper at 21-22.

⁷ Staff Whitepaper at 88, Figure 3.

Table 2 – Remaining public and workplace L2 ports by utility service territory

	Central Hudson	ConEdison	National Grid	NYSEG	O&R	RG&E
Workplace/public L2 make-ready order plug goals ⁸	3204	18539	15728	9279	2845	4178
Workplace/public L2 committed and completed ⁹	498	7999	2569	416	636	357
Net loss of workplace/public L2 ports under Staff Whitepaper ¹⁰	1770	11789	10273	6933	1773	1943
Remaining workplace/public L2 ports	936	-1249	2886	1930	436	1878

ChargePoint expects that the upstate utilities will proceed with recruiting customers across all segments to meet 2025 targets across all segments, but it remains unclear how ConEdison's remaining L2 budget should or will be distributed. Considering limited L2 budget, ChargePoint is concerned that ConEdison will be forced to cease accepting L2 public/workplace applications, or only accept a limited number of them, as ConEdison seems to have already exceeded the Whitepaper's proposed 2025 targets.

For the sake of the continued development of the public/workplace segment in the downstate region, there must be program continuity to ensure ConEdison customers interested in public/workplace chargers remain eligible for incentives. ChargePoint requests clarification from Staff regarding the vision and expectation for how remaining L2 budgets will be distributed among public, workplace, and MUD segments should the new L2 port deployment targets go into effect.

3. The upcoming technical session on June 12 should investigate and propose an alternative to the "plug outage metrics."

ChargePoint thanks DPS Staff for responding to the issues raised by ChargePoint's initial comments on data reporting.¹¹ Staff is looking for stakeholder feedback on ways to streamline the data collection process and recommends convening a technical conference with industry stakeholders to identify and address data reporting issues, particularly regarding the lack of plug outage information. ChargePoint supports Staff's recommendation and believes that the technical session scheduled for June 12, 2023, is an appropriate forum to explore issues related to reliability of utility-funded charging stations.

⁸ Staff Whitepaper at 20, Table 2.

⁹ Staff Whitepaper at 20, Table 2.

¹⁰ Staff Whitepaper at 88, Figure 3.

¹¹ Staff Whitepaper at 39.

As an initial matter, the agenda of the upcoming technical session should investigate the shortcomings of the “number and duration of plug outages” metrics and develop a recommendation for effective alternatives. Robust reliability standards are critical in ensuring excellent driver experience and supporting increased consumer adoption of EVs. However, the requirement to report on the number and duration of plug outages creates a variety of reporting challenges, all stemming from the lack of standardization for “plug outage data.”

First, the Commission’s make-ready order does not establish a definition for what is considered a plug outage, so it is unclear whether plug outage data should include outages caused by power failures (i.e., blackouts) or cellular network failures that are not the fault of the network provider or station hardware. If so, it is unclear why it would be the responsibility of the network provider to track and tally events outside their control. Second, the strategies used by operators to monitor network reliability may not necessarily mesh well with a process needed to count the number of outages by port, particularly if the data is meant to include grid or cellular network failures. Therefore, compiling such a tally may require cost- or time-intensive processes that create challenges for timely reporting. Third, without standardized definitions, there is no guarantee that one provider’s interpretation of what is counted as a “plug outage” is the same as another’s. If all providers submit their unique interpretation of plug outage data, the Commission, utilities, and DPS Staff would be unable to meaningfully interpret the results and understand charger reliability on an apples-to-apples basis.

Since the last stakeholder comment opportunity on the midpoint review, the Federal Highway Administration (FHWA) released a standard definition of uptime that will be applicable to DCFC stations receiving federal funds from the National Electric Vehicle Infrastructure (NEVI) Program.¹² As FHWA’s formula clearly defines uptime (including what events should and should not be included in reporting) and will apply to DCFC stations in New York and across the country, ChargePoint finds that the uptime formula as defined by the NEVI Program could present the foundation for a more standardized, effective reliability reporting metric for stations installed using statewide make-ready funds on a prospective basis. ChargePoint looks forward to participating in the upcoming technical session to improve the data reporting process and to ensure a high-quality charging experience in New York.

4. The driver complaint process requires greater input from stakeholders to minimize the risk of EV driver confusion.

The Whitepaper asserts the need for an established and uniform driver complaint process and recommends that EVSE be required to display contact information for the EV service provider, site host, and utility customer service.¹³ ChargePoint appreciates Staff’s effort to improve reliability and the EV driver experience, but is concerned that Staff’s recommendation could impair, rather than improve, the driver complaint process.

¹² See NEVI Program Final Rule § 680.116(b), available at the Federal Register at: <https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements>

¹³ Staff Whitepaper at 40.

Regarding the customer experience of submitting a complaint, it may be confusing for EV drivers to be confronted with contact information for three separate stakeholders without clarity on who to contact regarding a particular issue. It is important for the EV driver to understand where and how to raise an issue to the appropriate party, as timely resolution relies on the right stakeholder to receive the driver complaint when it is made. Further, it is unlikely that EV drivers submit three complaints to three different stakeholders every time, which would lead to complaints filed with the wrong stakeholder and lengthen resolution time. For example, it should be clear to the EV driver that issues related to billing should be reported directly to ChargePoint, not the utility or the site host. If billing issues were to be submitted to the utility, this would significantly increase the time to resolve the problem for the driver.

The driver complaint process needs greater input from stakeholders before changes are finalized. ChargePoint also requests confirmation that, should the Commission adopt Staff's recommendation as written, digital display of contact information would be acceptable. We look forward to further discussion to determine the best strategies to deliver a seamless, hassle-free charging experience for EV drivers.

5. It is not necessary to eliminate proprietary extensions to OCPP to support interoperability and minimize the risk of stranded assets.

ChargePoint does not oppose Staff's proposal to require third-party compliance testing for OCPP.¹⁴ However, Staff's recommendation that EVSE demonstrate OCPP compliance via third-party testing *with no proprietary extensions* is based on an inaccurate understanding regarding the role of extensions within OCPP and how compliance for OCPP is tested.

Staff's recommendation to prohibit extensions to OCPP seems to be based on comments submitted by the Sierra Club and National Resources Defense Council (NRDC) in 2020, which claim, "EV charging companies could potentially install EVSEs with software that technically has or uses (i.e. is compatible with) open communications protocols such as the Open Charge Point Protocol (OCPP), but which still require proprietary extensions that close these EVSEs off from other networks."¹⁵ The comments of the Sierra Club and NRDC mischaracterize how OCPP extensions work.

OCPP is a communications protocol that enables a common set of baseline features, such as starting/stopping sessions and basic pricing. Because baseline functionality enabled by OCPP is limited, OCPP was designed specifically to enable extensions¹⁶, which empower EV charging networks such as ChargePoint to develop innovative new features on top of the baseline protocol. ChargePoint products may support baseline functionality enabled by OCPP 2.0.1, plus additional features unique to ChargePoint – see Figure 1 below. Extensions do not only enable

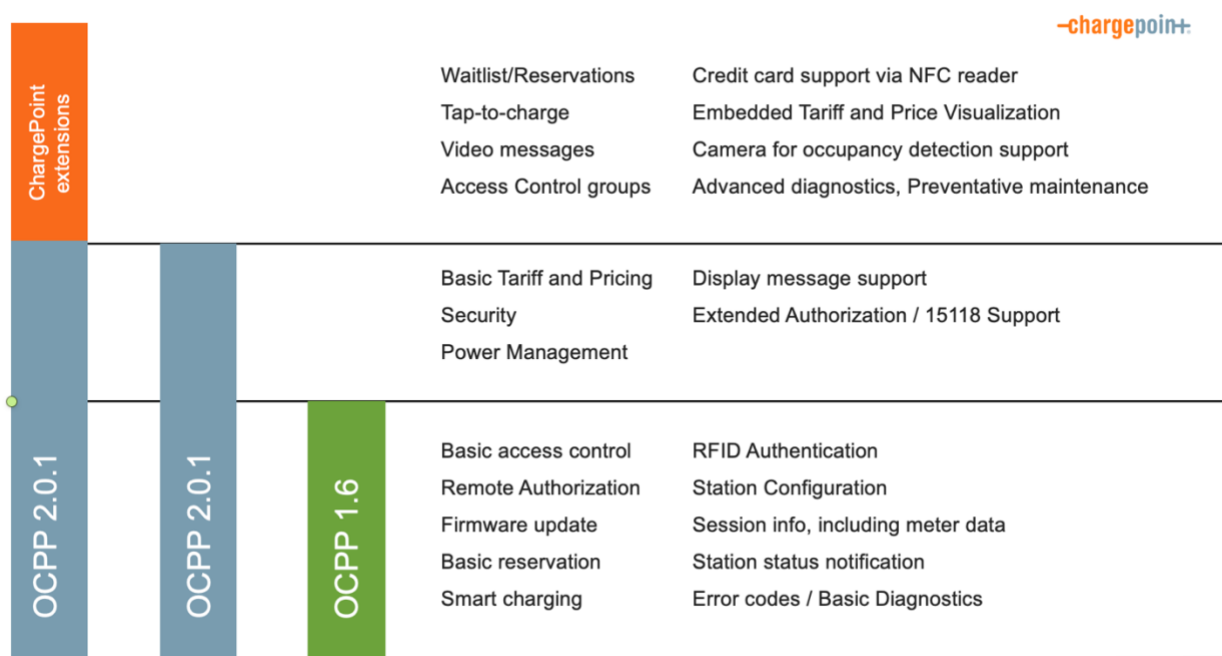
¹⁴ Staff Whitepaper at 35-36.

¹⁵Case 18-E-0138, Initial Comments of NRDC and Sierra Club, filed on April 27, 2020, at 16.

¹⁶ See <https://www.openchargealliance.org/uploads/files/OCA-Customizing-OCPP-Implementations.pdf>

operators to improve the EV driver experience through new user features, but they are also a tool for security updates for stations operating on legacy versions of OCPP. For example, if a station operating on OCPP 1.6 was unable to use extensions to update its security protocol, the station would be stuck with security capabilities dated to 2018, when OCPP version 1.6 was released. In this example, new malware could exploit vulnerabilities in OCPP 1.6, and without the ability to develop proprietary extensions, the network operator would be unarmed to negate the cybersecurity threat to the charging station and users of that station. Network operators need flexibility to build extensions to OCPP to unlock advanced diagnostics and other improvements to deliver a reliable and safe charging network. In sum, the Whitepaper's proposal to prohibit proprietary extensions to OCPP would freeze the deployment of innovative and secure charging services in New York.

Figure 1 - Functionality enabled by OCPP 1.6, OCPP 2.0.1, and ChargePoint extensions



Further, contrary to the assertions of the Sierra Club and NRDC, extensions to OCPP do not “close EVSE off from other networks” or increase the risk of stranded assets if a network operator leaves the market. The latest version of OCPP (2.0.1) *expands* network operators’ ability to integrate optional extensions to baseline OCPP functionality, and it is possible to receive OCPP certification with extensions in place. So long as EVSE can demonstrate compliance with OCPP 2.0.1 via standardized testing, it is possible to transfer baseline station functionality enabled by OCPP to another operator and deactivate any proprietary extensions. Therefore, OCPP-compliant stations with proprietary extensions pose no greater risk of stranded assets than OCPP-compliant stations without proprietary extensions.

Software standards establish a common floor for interoperability, but they should not be used to create a ceiling for functionality, particularly as both the EVSE industry and technology are rapidly evolving. ChargePoint recommends that, should the Commission adopt Staff's recommendation regarding OCPP-compliance testing, there should be no restrictions that limit the ability of EVSE network operators to utilize proprietary extensions to OCPP.

6. Clarification is needed regarding whether ISO 15118 compliance will apply to both L2 and DCFC equipment.

The Whitepaper recommends adopting the position of the Federal Highway Administration (FHWA), stating "...Staff supports FHWA's position and recommends that installed chargers conform to the ISO 15118 standard and, therefore, be able to reciprocate communication with CCS-compliant EVs that have implemented this protocol."¹⁷ Because the NEVI Program guidelines apply only to public DCFC equipment and Staff specifically references CCS (the DCFC port standard), ChargePoint seeks clarification from Staff as to whether the requirement for ISO 15118 will apply only to DCFC, or to both DCFC and L2 stations.

As there is currently a limited number of L2 products available on the market that comply with ISO 15118, it may be premature to broadly apply ISO 15118 requirements across all equipment types, and such a requirement would substantially limit the L2 products eligible for installation with the make-ready program. For example, Southern California Edison (SCE) recently investigated the feasibility of applying an ISO 15118 requirement to L2 stations on its approved products list and found that 61 of 75 EVSE models (roughly 80% of eligible chargers) would have become ineligible by doing so.¹⁸ ChargePoint recommends that L2 products be exempt from the requirement to conform with ISO 15118 until the standard is more widespread. A process to develop a qualified products list (see recommendation 8) may help to identify when it is appropriate to require ISO 15118 for L2 chargers.

7. New requirements for OCPP and ISO 15118 should be applied on a prospective basis and allow hardware manufacturers to demonstrate compliance within one year.

New interoperability requirements take time to integrate across an entire network. ChargePoint recommends that new technical requirements apply prospectively to stations not yet installed, rather than retroactively to existing stations installed with make-ready funding, as it would be both unnecessary and highly costly for site hosts to replace equipment already in the ground to comply with new technical requirements. In addition, hardware manufacturers and network operators should have at least one year from the date of the Commission's make-ready 2.0 order to implement new interoperability requirements recommended by the Whitepaper, for the reasons described below.

A. There is no ability to certify OCPP 2.0.1 compliance.

¹⁷ Staff Whitepaper at 36.

¹⁸ See SCE's approved product list at <https://www.sce.com/evbusiness/chargeready/compareandchoose>

Staff's Whitepaper recommends that EVSE hardware installed with make-ready program funds be tested by an independent third-party for compliance with OCPP version 1.6 or later.¹⁹ As discussed earlier, a newer version of OCPP (version 2.0.1) enables advanced driver management, strengthens cybersecurity, and bolsters new proprietary extensions. However, a certification process for OCPP 2.0.1 is not currently available.

Without a certification process, products developed using OCPP 2.0.1 cannot be certified by an independent testing organization. While Staff proposes a compliance requirement for OCPP 1.6 or later, this requirement disadvantages chargers that have been developed using the latest version of OCPP, 2.0.1. ChargePoint and other vendors that have developed their equipment and software utilizing the latest version of OCPP should not be disadvantaged because a third-party organization has not yet established the ability to be certified. ChargePoint is working closely with the Open Charge Alliance (OCA) on the development of certification tools and is closely monitoring for their eventual release. We are keen to have our stations certified as soon as feasible once the testing tool is released.

ChargePoint respectfully requests that Staff build flexibility into compliance demonstration and require OCPP compliance testing no sooner than one year from the date of the make-ready 2.0 order. Alternatively, Staff should allow EV charging companies to self-certify for OCPP 2.0.1 for one year from the date of the make-ready 2.0 order. We note that testing may be a time-consuming process and sufficient time for manufacturers to internally validate software using the public testing tool and for official OCA testing should be allowed. Additional time could be required if a testing process is delayed further or if a queue develops at OCA approved testing facilities.

B. The Federal Highway Administration provided operators one year to demonstrate compliance for ISO 15118 and OCPP 2.0.1.

The final NEVI Program guidelines, released on February 28, 2022, provide operators one year from the publication of the final guidelines to comply with the Program's interoperability requirements.²³ It is therefore appropriate for the Commission to include one year of flexibility for charging operators in New York to demonstrate compliance with new technical requirements.

8. The Joint Utilities should adopt a qualified product list, such as NYSERDA's Charge Ready 2.0 equipment list.

Both ChargePoint and the Joint Utilities recommended in initial comments that it would be useful to adopt a statewide qualified product list.²⁵ However, Staff's Whitepaper did not

¹⁹ Staff Whitepaper at 35-36.

²³ Final NEVI guidelines were published on February 28, 2023 on the Federal Register. See § 680.108, available at: <https://www.federalregister.gov/documents/2023/02/28/2023-03500/national-electric-vehicle-infrastructure-standards-and-requirements>

²⁵ Staff Whitepaper at 79.

recommend the adoption of a qualified products list, nor did Staff provide justification for its decision to decline a recommendation on this matter. The Whitepaper did acknowledge several issues, such as data quality/reporting, reliability, and interoperability compliance, that a qualified vendor list or qualified product list could help address.

For example, Staff's Whitepaper identified OCPP and ISO 15118 as interoperability protocols that Staff would like chargers installed with make-ready program funding to support. A qualified equipment list would clarify the new program equipment requirements (if they are adopted) for site hosts and ensure selected equipment enables the functionalities desired by Staff. It is unclear how the Joint Utilities would be able to consistently apply specific equipment requirements to program participants without a qualified product list. The absence of such a list would likely introduce significant administrative burden for the Joint Utilities, as well as confusion for participants if the Joint Utilities were to establish different lists for each service territory. ChargePoint notes that qualified product lists are common practice for utility-funded EVSE programs, such as SCE's Charge Ready 2 program in California.²⁶ For the sake of administrative ease, it may be appropriate for the Commission to direct the Joint Utilities to adopt NYSEDA's Charge Ready 2.0 equipment list, as the program is expected to relaunch in 2023 and it is important to align requirements with other statewide programs that provide incentives for charging equipment.

9. An MOU should be sufficient to start NYPA's co-location dispute process.

ChargePoint thanks Staff for consideration of our initial comments regarding NYPA's site notification process for EVolve NY sites that receive make-ready funding.²⁷ In response to NYPA's sur-reply comments filed on October 20, 2022, ChargePoint would like to clarify that we do not intend to unduly impede NYPA's ability to accelerate DCFC deployment in New York, particularly in areas where the economics of station operation may be challenging. That said, ChargePoint remains concerned that there is a gap in the co-location dispute resolution process that inhibits developers' ability to effectively work with NYPA to limit co-location in areas the market is ready to serve.

According to NYPA's Electric Vehicle Infrastructure Make-Ready Program Implementation Plan, the co-location dispute resolution process can only commence if a developer is able to present a signed site-host agreement. However, the risk of co-location interferes with a developer's ability to secure the required legally binding agreement. Because utilization is a key driver of the financial viability of a charging station, adjacent DCFC sites significantly affect each other's economics. For this reason, site hosts investing their own capital are generally unwilling to sign a binding agreement until the risk of co-location has been alleviated. The requirement to provide a signed site-host agreement simply to *initiate* the formal dispute resolution process

²⁶ According to SCE, "We developed an Approved Product List (APL) to identify EV charging stations that meet various functional, technical, and safety requirements. Program participants are required to choose their equipment from the APL." More information is available at:

<https://www.sce.com/evbusiness/chargeready/compareandchoose>

²⁷ Staff Whitepaper at 43-45.

sets an impossible standard for the developer to address the risk of co-location, thus inhibiting private investment. Staff noted that the problem of co-location must not be widespread because only ChargePoint has raised the issue, but given the “catch-22,” it should be unsurprising that few developers have utilized the dispute resolution process.

ChargePoint therefore restates our initial recommendation that an MOU should be sufficient to initiate the dispute resolution process as outlined in NYPA’s Electric Vehicle Infrastructure Make-Ready Program Implementation Plan.²⁸ ChargePoint acknowledges that NYPA is hesitant to abandon a site given the lack of legal certainty of an MOU and the duty to deploy DCFC as expeditiously as possible, which is typically a multi-month or even multi-year process in of itself.²⁹ However, the initiation of the dispute resolution process does not necessarily mean that NYPA will be forced to abandon every site that undergoes dispute resolution. Dispute resolution simply requires NYPA, in consultation with DPS Staff, to assess the status of active site-host negotiations in the disputed area. It may well be the case that DPS Staff finds it appropriate for NYPA to proceed with their site development, deferring to the competitive site host only when it makes sense to do so because private investment is forthcoming. ChargePoint intends to work as collaboratively as possible with NYPA to address co-location concerns, however, given the commercial sensitivity of information associated with site selection, an effective dispute resolution process is key to the Commission’s directive to focus NYPA on areas where private investment is not forthcoming.³⁰

Furthermore, should NYPA abandon a site and chargers in the disputed area fail to materialize, the Electric Vehicle Infrastructure Make-Ready Program Implementation Plan allows NYPA to resume its own site negotiations if the developer does not complete construction within one year. Developers have no reason to initiate the dispute resolution process except to engage in good-faith efforts to mitigate the risk of co-location for site hosts willing to invest their own capital to install DCFC and to prioritize private investment for the areas the market is ready to serve.

III. Conclusion

ChargePoint appreciates consideration of these comments by the Commission, Staff, the Joint Utilities, and all other stakeholders. We thank Staff for drafting the Whitepaper and look forward to continuing discussion on appropriate changes to accelerate the make-ready program’s support of EV charger deployment in New York.

²⁸ ChargePoint’s initial comments requested that NYPA wait one year (rather than 30 days) before developing its sites and to lower the threshold for demonstration of intent to develop from a signed host agreement to an MOU.

²⁹ Case 18-E-1038, NYPA Sur-Reply Comments, filed October 20, 2022.

³⁰ Make-Ready Order at 30.