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Received - 2022-11-18 03:02:19 PM

Control Number - 53719

ItemNumber - 373

November 18, 2022

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**In Re: APPLICATION OF ENERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES
PUC DOCKET NO. 53719
SOAH DOCKET NO. 473-22-04394**

**To: Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson**

Dear Chairman Lake and Commissioners:

The Alliance for Transportation Electrification (the "Alliance" or "ATE") is not a formal party to this case but is providing these comments pursuant to the Commission's rules and regulations which allows the public to provide input for the Commission's consideration either supporting or opposing a filing before the Commission. In this particular case, ATE is supporting the portion of Entergy Texas, Inc.'s (ETI's) Application for Authority to Change Rates that propose new optional Riders "TECI" and "TECDA" to its rates. TECI is a rider designed to allow ETI to partner with interested nonresidential customers to plan, construct, own, operate, and maintain transportation electrification ("TE") related infrastructure and equipment on customer-owned property, with costs incurred by ETI to be added to the interested customers' monthly electric bill as a fixed payment. Rider TECDA provides demand charge relief for non-residential customers installing EV charging infrastructure on new, separately metered electric service under Rate Schedule GS.

ATE is a 501(c)(6) non-profit corporation established in early 2018 and is active in many state proceedings across the country. We engage with policymakers at the State and local government level to remove barriers to EV adoption and to encourage the acceleration of EV infrastructure deployment with a particular emphasis on open standards and interoperability. We currently have about 60 members that include many electric utilities, auto and bus manufacturers, EV charging and service providers (EVSPs), and related trade associations and non-profit organizations.

With respect to Rider TECDA, the Alliance is on record in numerous proceedings around the country that because utilization of DC Fast Charging stations in particular is likely to be low during these early years of EV market development, demand charges may represent an impediment to the development of such charging infrastructure by making investment non-economic. We think it is entirely appropriate, and consistent with traditional cost of service ratemaking to mitigate demand charges on a temporary basis

to help achieve public policy goals. Rather than provide a detailed justification here, we refer the Commission to a White Paper developed by the Alliance which discusses the need for such temporary mitigation and alternatives to addressing the problem.¹

Rider TECI raises issues regarding the regulated utility role in Electric Vehicle (EV) infrastructure, and in particular utility ownership and operation (O&O) of charging stations (electric vehicle service equipment or “EVSE”), and is the primary focus of our comments. In the Commission’s Preliminary Order in this Docket, issued on August 4, 2022, the Commission asked two questions relevant to utility O&O as proposed in Rider TECI (Questions 68 and 69 in that Order):

68. Is it appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure. or should the ownership of such facilities be left to competitive providers?

69. Should Entergy be allowed to own transportation electrification and charging infrastructure including vehicle-charging facilities-in the manner it has proposed in its application. Or should such ownership be wholly left to customers or third parties?

These questions relate directly to the option presented in ETI’s proposed Rider TECI that would allow non-residential customers to choose to have Entergy own and operate charging stations at the customer’s site, with the customer making fixed payments to cover the costs of such infrastructure installation. The first of these questions (68) we interpret to ask whether utilities (vertically integrated in this case) should be permitted to own charging infrastructure at all, without regard to how costs are recovered. The second question (69) in contrast asks whether ETI should be allowed to own and operate such infrastructure with cost recovery as proposed in Rider TECI.

Response to Commission Questions 68 and 69

The short answer to both these questions is yes. ATE strongly believes that regulated utilities should be permitted and even encouraged to own and operate both the electrical infrastructure to the charging station (make-ready) as well as the actual EVSE as requested by the customer. And as long as the Commission oversees the rates that utility-owned stations charge for service to EVs, which it will, we do not see the need for any restrictions or limitations. This does not mean that utilities can or should be the only or predominant owner of charging stations or EVSE. Rather, utilities, particularly in these nascent stages of market development when public-facing stations are needed to reduce range anxiety of potential EV owners, should focus on filling gaps when the private non-utility charging market is not sufficient. It may be that sometime in the future when EVs are ubiquitous on Texas roads, public charging by private EVSPs will develop sufficient to meet all fueling needs of electric transportation. But that is certainly not the case today, and as regulated utilities with a general universal service obligation, the utility should play a key role in enabling this market, ensuring all communities are served, and that the equipment and networks are maintained.

Building charging infrastructure to meet both current and future demands is one of the greatest needs facing emerging EV markets and is vital to driving the benefits that transportation electrification can

¹ The White Paper is available at https://evtransportationalliance.org/wp-content/uploads/2022/06/Rate.Design.TF_Demand-Charge-Paper-Final-5.25.22.pdf

provide. The IJA of 2021 provided a major boost to getting infrastructure built by authorizing the National Electric Vehicle Infrastructure (NEVI) program which provides \$7.5 billion dollars in funding to states for locating charging stations along certain Alternative Fuel Corridors. Additional funding was provided for electric school buses. In addition to stations that have already been installed around the country, this is a good start.

But it is only a start. The needs for public charging are immense. The International Council for Clean Transportation has estimated that to meet modest EV sales growth, we will need to increase the number of chargers in the U.S. from 216,000 chargers in 2020 to 2.4 million by 2030, including 1.3 million workplace, 900,000 public Level 2, and 180,000 direct current fast chargers. The costs would be about \$28 billion. Atlas Public Policy research shows that to achieve 100 percent passenger electric vehicle sales by 2035 and put the nation on the path to full electrification, over \$87 billion in investments in charging infrastructure will be needed over the next decade, including \$39 billion for public charging. While we don't know of any studies of charging infrastructure needs in Texas specifically, the Electric Reliability Council of Texas has estimated that about 1 million EVs will be on Texas roads by 2028.² EEI, in its comments in this proceeding estimates that approximately that this number of EVs would require 5,000 public DC fast chargers (DCFC) and more than 110,000 public Level 2 chargers which represents the need for a quadrupling of current charging stations.³

So how do we get infrastructure built in Texas? Federal funding through the Joint Office, FHWA, and EPA will certainly help but will prove to be insufficient to meet future demands. Given the magnitude of the need, we must rely on an all hands on deck approach. We need to rely on government, private EVSPs in the business of building, owning and operating charging stations, private employers, transit and bus companies, landlords, real estate developers, fleet owners and operators, and yes – utilities - have a vital role to play. The proper utility role has unfortunately become the subject of some controversy which we believe is not only unwarranted, but will be extremely counterproductive to seeing continued growth in the EV market and in ensuring that the development of the market takes into account the needs of all communities, including those traditionally underserved. Of course, slowing down EV market growth may be the point of some of these efforts to preclude utility involvement.

General Utility Infrastructure Investment Landscape

There are three different types of potential utility infrastructure investment - utility distribution system upgrades, make ready investments (equipment and wiring between the utility pole and the charger stub), and ownership and operation (O & O) of charging stations. Improvements to utility distribution to accommodate new charging stations is the least controversial of these. Most stakeholders agree that it is appropriate for utilities, in the normal course of meeting forecasted load, to make investments in distribution to accommodate increased charging loads. The PUCT has regularly recognized the appropriateness of distribution investment to maintain reliability in the face of increased loads, based on integrated resource planning, assessing peak loads, and other forms of planning and coordination.

² See Texas Department of Transportation, Texas Electric Vehicle Infrastructure Plan, July, 2022, available at <https://ftp.txdot.gov/pub/txdot/getinvolved/statewide/EV°/020Charging°/020Plan/Texas\ElectricVehicleChargingPlan.pdf>

³ Letter from Philp D. Moeller, Executive Vice President, Edison Electric Institute to the Texas Public Utilities Commission in Docket Number 53719, November 15, 2022.

These efforts will need to be enhanced and done on a more granular level in the future as loads increase through electrification.

Investing in (or offering incentives for the construction of) make-ready infrastructure has become a best practice for utilities in many jurisdictions and allowed by Commissions. Although not proposed in the current Docket, these costs are typically deferred in a regulatory asset, allowed under FASB and cost accounting rules, and then reviewed in a future general rate case. Such make-ready programs are offered in a variety of ways both in front of the meter and behind the meter, depending on the use case. However, there are certain parties or organizations who may oppose such programs. Opponents of such investments can generally be placed in two classes: first, are groups who generally object to potential rate increases, and second are petroleum marketers, convenience stores and gas station owners who object to “subsidized competition” from other charging station owners – and many simply oppose any actions that will lead to more EVs on the road and lower gasoline sales. Non-utility EVSPs and potential host sites, on the other hand, generally support make ready investments as it reduces their upfront capital costs in land acquisition, development, and procurement and can help accelerate the pace of deployments. The arguments for make-ready investments by utilities are really the same as those for O&O investments and are discussed below.

Utility O&O is the most controversial of the potential utility investment options. The primary opponents of utility ownership are third-party EVSE developers⁴, convenience store and gas station operators, and gasoline wholesalers and marketers. Their primary argument is that utility O&O amounts to unfair competition – that being able to place costs in rate base gives utilities an economic advantage in building charging stations and the ability to undercut the prices that may be charged by non-utility EVSE owners. They suggest that they will not invest in chargers as long as even the threat of utility competition exists and thus they seek regulatory or legislative prohibitions on utility ownership of charging stations (and sometimes prohibitions on make-ready investments). Their arguments are usually couched in free market principles– that competition among private “unsubsidized” entities will alone be sufficient to provide needed levels of charging stations at the lowest cost to consumers.

Unfortunately, the arguments made by these stakeholders sound like they are opposing or preventing potential bad actions by the local utilities. And their arguments might have some heft if these groups were meeting the needs of consumers by deploying EV infrastructure in a timely way. Utilities would be more than happy to let private entities develop the market if they were actually doing so. The real benefit to utilities (and their customers) is from development of the EV market, not ownership of charging stations. But as noted earlier, the needs for charging station development over the next decade are so significant relative to current levels that greater action is needed now. And there are potentially many use cases – such as rural areas, underserved communities, multi-unit dwellings, and others where private investment is difficult and utilities can step in to fill the void. And perhaps most importantly early utility investment can help kickstart the market leading to more EVs on the road and better economics for private investment. In other words, we believe that a rising tide lifts all boats.

⁴ Although the EVSE developer testimony in this case by ChargePoint and FlashParking read as generally supportive of this proposed tariff.

The arguments by opponents of utility O&O are also wrong and misleading on many levels and represent a basic misunderstanding of how utility investment works and the protections in place to ensure that utilities can't take anti-competitive actions.

- First, while utilities do place the costs of make-ready or charger investments in rate base once approved by commissions, customers do receive substantial benefits in return. The Alliance believes that, while there may be a cost shift in the short run to enable the market, over time these investments will be “normalized” as part of the electrical infrastructure or plant assets and should provide system benefits to all customers of the regulated utility. Moreover, utilities cannot give away charging service for free. When utilities charge EV drivers for charging at utility-owned stations, those revenues also go to offset the costs that utilities have invested. Thus, over the long term, customer costs are reduced by the amount of utility revenues at a level equal to or greater than the original investment. With greater overall revenue, there should also be downward pressure on rates over time that can be addressed in a general rate case;
- Second, utilities can and should make every effort to ensure that the bulk of EV charging takes place in off-peak hours when there is excess capacity in the distribution system. Increased revenues from such sales will be greater than any incremental costs, meaning average rates for all customers will see downward pressure. While most of this effect occurs from home charging, where over 80 percent of light duty EV charging occurs, again the presence of significant public charging is necessary for consumers to be willing to buy EVs in the first place. So if utility investment in public charging leads to more EVs on the road and a subsequent increase in off-peak charging, rates to all customers can be reduced.
- Finally, there are other substantial benefits to the development of the EV market which can be driven in part by utility investment. These benefits include environmental, economic and national security benefits (less reliance on energy imports).

Utilities can also bring benefits simply owing to quite different time horizons for capital investments in EVSE as a grid-edge asset: namely, while third parties often take a shorter term (less than five years) to achieve the return on investment demanded by their equity investors, the regulated utility takes a much longer view toward investments in utility assets in the distribution grid (often in the 10 to 40 year timeframe). And many investments in chargers by private EVSPs— particularly DC Fast Chargers - will take longer than five years to recoup costs. In most of the cases where utility investment has been approved around the country, there is a strong component of investment in areas that otherwise would not see much charging capacity because of the long time frame needed for cost recovery.

There are two primary arguments made by opponents of utility O&O relating to claims of unfair competition. First is the argument made by many opponents of utility O&O is that such investment will be overwhelming and “crowd out” the potential for investment by private interests. But proposed utility investments are so small relative to the total need that any arguments that utility investment will overwhelm the market or push out competition reflects a disregard for market-based realities, or a tendency by vendors and certain advocates to want to “lock in” certain business models, including proprietary systems. There are numerous examples around the country where even a proposal to build 10, 20 or 30 new charging stations receives opposition from private companies when the identified needs are in the thousands or hundreds of thousands of chargers. In these cases, the argument made

that utilities will crowd out private investment are absurd on their face, but these arguments are still made.

The second competitive argument made by opponents is that utilities, because they are able to recover costs of investments from ratepayers, will be able to price charging service in a manner that will undercut the price of charging services by non-utilities. This represents a total misunderstanding of the utility ownership model – whether intentional or not. Utility retail service – including charging services provided at utility-owned charging stations – will be fully regulated by the Commission (unlike prices charged by non-regulated entities). It is simply not possible for a utility to try to undercut the price of non-utility charging stations, without intervention by the Commission. Those worried about unfair competition may intervene in utility rate proceedings where prices are set for charging services. Thus the Commission can and should use its ratemaking authority to prevent unfair competition. And, while the Commission does not regulate the prices charged by private EVSPs, the Commission and other state agencies have general responsibilities to protect consumers from unfair pricing and potential discrimination.

ETI's TECI Proposal

In the current Docket, ETI's Rider TECI does rate base costs of the chargers it will own and operate but the proposal is designed to ensure that all costs are recovered both from fixed payments by the customer and by revenues from charging services. Thus there is no subsidy from the general rate base that raise any competitive concerns. ETI's proposed Rider TECI provides clear benefits as an option to customers wanting to take advantage of it, but does not require any customer to enroll. So particularly in this case, there are no competitive concerns that should preclude approval of the Rider by the Commission. **Coupled with all the benefits of utility O&O described above, we strongly urge the Commission to approve ETI's Rider TECI in its Rate Case decision.**

Utility investment and proposed TE programs of course must be (and will be) carefully considered by the Commission to ensure that the benefits to customers outweigh the costs, that competition in the market will not be significantly affected, and that rates associated with utility programs are just and reasonable. Utility TE investments have been proposed in many states around the country and in all states where it has been considered, either make ready or utility own and operate investments or both have been approved. To date, according to Atlas Public Policy, there has been over \$3.5 billion in utility TE investments approved in 34 different states. Clearly, state commissions have recognized that utilities have an important role to play in developing the EV markets through strategic and beneficial infrastructure investments.

Sincerely,

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