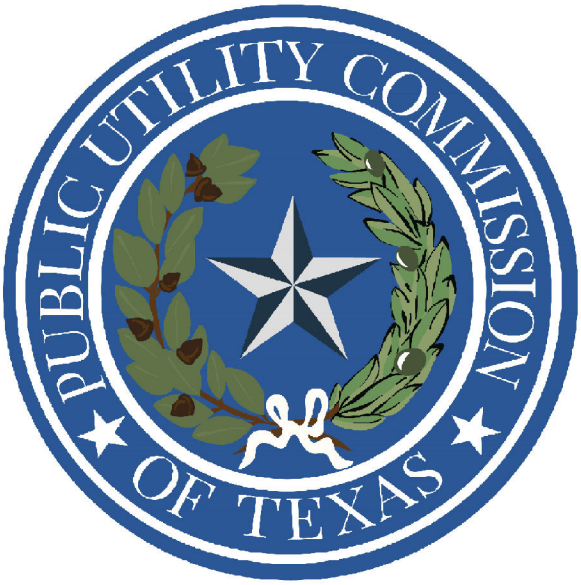

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APPLICATION OF ENTERGY	**§**	**BEFORE THE STATE OFFICE**
TEXAS, INC. FOR AUTHORITY	**§**	**OF**
TO CHANGE RATES	**§**	**ADMINISTRATIVE HEARINGS**

AMERICANS FOR AFFORDABLE CLEAN ENERGY'S

INITIAL BRIEF

January 13, 2023

AMERICANS FOR AFFORDABLE CLEAN ENERGY'S
INITIAL BRIEF

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AMERICANS FOR AFFORDABLE CLEAN ENERGY'S INITIAL BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES (ALJs):

COMES NOW, Americans for Affordable Clean Energy (AACE), and files this Initial Brief in the above-captioned docket. Pursuant to State Office of Administrative Hearings' (SOAH) Order Adopting Procedural Schedule[1] and SOAH Order No. 14,[2] this brief is timely filed and in support thereof, AACE shows the following:

AACE is a non-profit organization whose members consist of owners and operators of convenience stores, public travel center facilities, and truckstops that provide retail fuel supply as well as other services at existing locations in Texas and across the United States. AACE's members have an interest in installing, owning, and operating electric vehicle (EV) charging stations in Texas. More importantly, AACE's goal is to work with state policymakers to create a robust marketplace for EV fast charging in Texas. AACE's Brief will demonstrate that the Commission should deny Entergy Texas, Inc.'s (ETI) proposed Transportation Electrification and Charging Infrastructure (TECI) Rider, and approve the Transportation Electrification and Charging Demand Adjustment (TECDA) Rider.

I. INTRODUCTION

On July 1, 2022, ETI filed its Application for Authority to Change Rates with the Public Utility Commission of Texas (Commission). The Application included two Riders, the TECI Rider and the TECDA Rider, both of which deal with distinct aspects of the EV infrastructure and market. Therefore, this case presents an opportunity to support and promote the growth of the EV market in Texas. The TECI and TECDA Riders should be met with a high level of scrutiny that ensures the continued growth of the EV market, while protecting the competitive nature of the

[1] SOAH Order Memorializing Prehearing Conference; Adopting Procedural Schedule; and Setting Hearing on the Merits (Jul. 27, 2022).

[2] SOAH Order No. 14–Adopting Briefing Outline; Admitting Evidence; and Adopting Procedural Schedule (Dec. 27, 2022).

market. The TECI Rider involves a subject that has the potential to set precedent affecting the market throughout all of Texas, requiring a thorough evaluation outside of this rate case.

II. PRELIMINARY ORDER ISSUE NO. 68

Preliminary Order Issue No. 68 poses the question of whether it is 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. For the purposes of this Brief, *EV charging stations* include consumer-facing refueling infrastructure that dispenses electricity into an EV, while *make-ready EV charging infrastructure* includes all necessary electric grid, transmission, and other necessary infrastructure upstream of and not including EV charging stations themselves.

It is not appropriate for an electric utility in a vertically integrated area to own EV charging stations. However, it is appropriate for an electric utility in a vertically integrated area to own make-ready EV charging infrastructure. Allowing a utility to own make-ready EV charging infrastructure will promote EV growth in Texas by decreasing the cost barriers that site hosts face, while maintaining the competitive nature of the EV charging market.

A. It is Not Appropriate for an Electric Utility in a Vertically Integrated Area to Own EV Charging Stations, but it is Appropriate for One to Own Make-Ready EV Charging Infrastructure

Vertically integrated electric utilities should not be able to own EV charging stations. Unregulated businesses that compete on price and quality of service are better positioned to own and operate EV charging stations, while electric utilities should focus on key challenges such as infrastructure investments necessary to accommodate EV charging stations (so called "make-ready" EV charging infrastructure) and grid modernization. Allowing electric utilities to focus on and own transportation electrification (TE) make-ready infrastructure would allow for the much-needed proliferation of TE infrastructure and EV charging stations by supporting the competitive market in reducing the financial barriers to entry.

ETI asserts that policy prohibiting electric utilities' ownership of TE infrastructure would severely restrict the potential proliferation of EVs in Texas.[3] While the *total* prohibition of electric utility ownership of TE infrastructure could restrict the potential growth of EVs, the allowance of

[3] ETI Ex. 53 at Bates 7.

electric utility ownership limited to make-ready EV charging infrastructure would allow for the expansion of EVs in Texas. Such TE infrastructure ownership would stimulate market activity, investment, and participation.[4] Make-ready EV charging infrastructure consists of the installation of necessary electric grid, transmission, and other necessary infrastructure upstream of EV charging stations needed to provide power to the EV charging stations.[5] An electric utility constructing, owning, and maintaining make-ready EV charging infrastructure would provide the proper support for site hosts to invest in EV charging stations by eliminating the cost barrier of the make-ready EV charging infrastructure that site hosts would otherwise confront when opting to provide EV charging services to customers.

The make-ready infrastructure model (utility ownership of make-ready EV charging infrastructure and site host/customer ownership of EV charging stations) has successfully been implemented in other states. As the record shows, the states that have already implemented a make-ready model have seen positive results.[6] Some of the advantages that have come from these programs include a reduction of the cost of installing chargers, allowing site hosts the ability to afford more chargers; site host investment in the chargers' success due to the site hosts' share in total cost of installing the chargers; no market distortion caused by a utility offering competitive services; and site hosts having the ability to choose equipment and network providers, which promotes competition and innovation.[7] These advantages not only benefit the site hosts directly, but the EV market as a whole (including utilities), and also promotes growth without burdening ratepayers with additional costs on their monthly bills.

B. It is Not Appropriate for a Monopoly, Such as an Electric Utility, to Compete in a Competitive Market

An electric utility in a vertically integrated area should not be able to own EV charging stations because their doing so would unavoidably disrupt the potential development of a competitive EV charging market. A monopoly, such as an electric utility, participating in a competitive market would create an unfair advantage disincentivizing private, unregulated businesses to continue market enhancement. Electric utilities are immune from market and

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[4] SPS Ex. 1 at Bates 8.

[5] ETI Ex. 40 at Bates 10; ChargePoint Ex. 1.0 at Bates 8.

[6] ChargePoint Ex. 1.0 at Bates 8-9.

[7] ChargePoint Ex. 1.0 at Bates 9-10.

competitive forces, as the utilities have authorized rates of return and other interim rate adjustments that allows for rate increases to help them reach those returns. Private businesses should not have to compete with regulated electric utilities that are immune from market and competitive forces. To create a successful statewide electric charging network, all EV charging providers must be able to compete on an even playing field.

The Public Utility Regulatory Act (PURA) requires that the provision of generation and retail services be subject to a competitive market.[8] PURA further asserts that the legislative intent in enacting the electric utilities subtitle is to protect the public interest by requiring the formulation and application of rules, policies, and principles to protect the public interest in a more competitive marketplace.[9] Therefore, allowing a vertically integrated electric utility to partake in the EV charging market would be in direct opposition to the policy and purpose of PURA.

An electric utility has the ability to avoid competitive pressures because the utility can recover the costs of providing EV charging stations from its ratepayers. An unregulated business, referred to as a site host, does not have this ability and would be taking on the risk of loss as well as competing with the low prices set by monopolies. Unregulated site hosts would also be compelled to charge their customers a price for energy that reflects both the price of acquiring that energy *and* the upfront capital expenditures associated with installing the EV charging station. Regulated utilities would not be so burdened. Therefore, allowing regulated utilities to own and operate EV charging stations necessarily creates an uneven playing field and disincentivizes unregulated businesses from investing in EV charging.

ETI's proposal is to finance the infrastructure and equipment through an on-bill fixed charge over a set term in order to help relieve the burden of costs for site hosts. This turn-key installation is already being offered by non-utility service providers.[10] Since there are already non-utility providers offering a similar service to what ETI is proposing, allowing a utility provider to come in and provide such services would force non-utility providers to compete on an uneven playing field. This would deter non-utility providers from partaking in these services, reducing competition and innovation. Therefore, it is unnecessary, and contrary to Texas law, to have ETI

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[8] ETI Ex. 53 at Bates 14, citing Tex. Util. Code §§ 31.001(c); 39.001(a).

[9] Public Utility Regulatory Act, Tex. Util. Code § 31.001(c).

[10] ChargePoint Ex. 1.0 at Bates 15.

provide these services when unregulated entities and the free market are already offering them to customers.

Further, parties claim that the private competitive market has failed to serve a substantial part of the State, creating a need for electric utilities to partake in the EV charging market.[11] These claims accompany statements asserting that adoption of TE is still new and modest in Texas, but is increasing rapidly.[12] However, these circular arguments fail to recognize that the ongoing, clear and present threat of competition from regulated entities with inherent cost of capital advantages unambiguously discourages private businesses from investing in EV charging stations. What's more, as EV penetration in Texas increases, private companies and the federal government are responding by increasing investments in EV charging stations in the state.

To successfully electrify the transportation industry, stakeholders need to focus on their core competencies. The most efficient, cost-effective path to a statewide network of EV charging stations is for retailers and power companies to work in partnership with each focused on their specific areas of expertise. Regulatory policy that incentivizes this partnership structure will encourage consumers to adopt EV more quickly. Retailers and other private businesses that compete on price and services are in a better position to own and operate charging stations. Eliminating the threat of unfair competition, coupled with an expected increase in EV demand, will push private businesses to invest even further.

It is projected that there will be one million EVs on the road by 2028, which will result in a push for site-hosts to incorporate EV charging stations into their primary businesses.[13] As in many markets, when there is an abrupt increase in demand, businesses invest to meet those demands. It is inappropriate to authorize electric utilities to enter the competitive EV charging market when the market is still in its early adoption period and market forces have only begun to push private businesses to meet the demand. Electric utilities partaking in such a market would disincentivize private businesses from investing in the EV charging market. Therefore, it is inappropriate for an electric utility to have the authority to enter the EV charging market when private businesses could meet the demand.

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[11] SPS Ex. 2 at Bates 18.

[12] ETI Ex. 40 at Bates 6.

[13] ChargePoint Ex. 1.0 at Bates 22.

In addition to the future market demand pressures, the state and federal governments are also pushing for market expansion. The Texas Department of Transportation (TxDOT) released a new EV infrastructure deployment plan in an effort to leverage federal funds that will be available in 2023 under the Infrastructure Investment and Jobs Act.[14] The plan establishes a framework that creates a statewide EV charging network in compliance with the National Electric Vehicle Infrastructure (NEVI) formula program.[15] The establishment of these plans and funds to provide reasonable and adequate service in Texas, including in rural and low/moderate income counties, eliminates the need for an electric utility to partake in the EV charging market.

For the forgoing reasons, AACE contends it would be inappropriate and non-compliant with PURA for an electric utility to compete in a competitive market, and therefore, the TECI Rider should be denied.

III. PRELIMINARY ORDER ISSUE NO. 69

Preliminary Order Issue No. 69 poses the question of whether ETI should 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. ETI should not be allowed to own EV charging stations as proposed in the TECI Rider. AACE reiterates its arguments stated above in reasoning why it is not appropriate for an electric utility, like ETI, in a vertically integrated area to own EV charging stations. In addition to these arguments, AACE contends that denial of the TECI Rider is appropriate because of the precedent that would be established, which would allow other vertically integrated utilities the ability to own EV charging stations as well.

A. Transportation Electrification and Charging Infrastructure (TECI) Rider

The Commission should not approve the TECI Rider. AACE reiterates its arguments stated above as they pertain to the TECI Rider. However, if the Commission approves ETI's proposed TECI Rider, the additional costs created by this Rider should not be distributed to ratepayers through ETI's rate base. ETI should maintain these expenses and other associated costs in a separate account to avoid ETI considering these costs in its next base rate case.[16]

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[14] ETI Ex. 40 at Bates 8.

[15] *Id.*

[16] OPUC Ex. 47 at Bates 34.

ETI claims the TECI Rider is similar to ETI's earlier Commission-approved ALS and AFC Riders.[17] This claim is focused on the principle and application of the Riders.[18] In both the ALS and AFC Riders, a participating customer signs up for the Rider, benefits from the service, and pays for the cost of the property and services.[19] This is the same process as in the proposed TECI Rider. While ETI focuses on these similarities, the question that has been raised in Preliminary Order Issue Nos. 68 and 69 relating to the TECI Rider is not in the manner of cost recovery, but in utility ownership of TE related infrastructure and facilities. It is, therefore, illogical and inappropriate to compare the ALS and AFC Riders to ETI's proposed TECI Rider.

B. Transportation Electrification and Charging Demand Adjustment (TECDA) Rider

The TECDA Rider should be approved to the extent that it could offer demand relief, something that would benefit site hosts. Demand charges in the EV charging market tend to be high due to the unique power needs which require high power capacity for charging but consume relatively low amounts of energy per charge. Uncertain and high demand charges increase monthly electric bills which results in a reduction of profit for site hosts and disincentivizes private businesses who want to invest in EV charging stations. A limitation on demand charges would be a positive step for the competitive EV charging market in Texas and would encourage investments in EV charging stations by private, unregulated businesses, which would allow for the proliferation of EVs in Texas.

Business customers of ETI have expressed that demand charges are among the challenges creating a barrier for investment in EV charging stations.[20] ETI designed the TECDA Rider as a response to this barrier.[21] The purpose of the Rider is to stimulate growth of TE infrastructure and charging stations. The Rider will be available for all new customers who wish to purchase and construct separately metered infrastructure.[22] It will focus on those potential site hosts who wish to invest but are met with the cost barrier, which will enable potential site hosts to invest without

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[17] ETI Ex. 53 at Bates 16.

[18] *Id.*

[19] *Id.*

[20] ETI Ex. 53 at Bates 41.

[21] *Id.*

[22] ETI Ex. 40 at Bates 12.

fear of unreasonably high demand.[23] High demand charges are due to the fact that EV charging stations tend to have sporadic periods of high demand, which results in unpredictable utilization and lower load factors.[24] Specifically, during the early adoption period of charging stations, there is often high level of demand, but relatively low energy utilization.[25] This high demand and low utilization is what leads to higher demand charges, causing an increase in costs due to electric rates exceeding the revenue received from the charging stations, resulting in uncertain electricity bills.

The TECDA Rider will limit the amount of demand billed under Rate Schedule GS to a qualifying customer during a billing period when the calculated load factor is less than 15%.[26] Through this Rider, the amount of billing demand billed to the EV charging stations will be lesser of either the measured demand (conventionally determined and subject to terms of the GS), or adjusting demand (calculated based on actual usage and a minimum 15% monthly load factor).[27] This will allow for the customer to avoid being billed for any demands that exceed this amount, resulting in reduction of billing demand charges.[28]

Additionally, the TECDA Rider is reasonable because the Rider is limited to being used by the site host for the first five years after initially taking electric service, and at 30,000 KW of load.[29] AACE agrees with ChargePoint that the TECDA Rider should not be limited to five years because the sporadic, high demand charges could remain an issue even after five years.[30] This is ostensibly a temporary solution that would allow for investments in EV charging stations without the uncertainty of demand charges. AACE believes the TECDA Rider is a reasonable effort to mitigate the inherent barrier that demand charges pose to EV investment.

The Commission should approve ETI's proposed TECDA Rider because it is reasonable and beneficial to the EV market as a whole.

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[23] ETI Ex. 53 at Bates 34.

[24] ChargePoint Ex. 1.0 at Bates 19.

[25] ETI Ex. 53 at Bates 37.

[26] OPUC Ex. No. 47 at Bates 34.

[27] ETI Ex. 40 at Bates 29.

[28] OPUC Ex. 47 at Bates 35.

[29] ETI Ex. 53 at Bates 34.

[30] ChargePoint Ex. 1.0 Bates 21.

IV. CONCLUSION

For the reasons stated above, AACE respectfully requests that the Commission deny ETI's proposed TECI Rider and approve ETI's proposed TECDA Rider.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 13, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

JAMIE L. MAULDIN