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**SOAH DOCKET NO. 473-22-04394  
PUC DOCKET NO. 53719**

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

**COMMISSION STAFF'S INITIAL BRIEF ON ISSUES 68 AND 69**

Dated: January 13, 2023

Respectfully submitted,

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## **TABLE OF ABBREVIATIONS**

ChargePoint	ChargePoint, Inc.
Commission	Public Utility Commission of Texas
ETI	Entergy Texas, Inc.
FlashParking	FlashParking, Inc.
HHI	Herfindahl-Hirschman Index
OPUC	Office of Public Utility Counsel
PURA	Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016
SPS	Southwestern Public Service Company
Staff	Commission Staff
TAC	Texas Administrative Code
TECDA	Transportation Electrification and Charging Demand Adjustment
TECI	Transportation Electrification and Charging Infrastructure
TxDOT	Texas Department of Transportation

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<b>APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES</b>	<b>§ § §</b>	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**COMMISSION STAFF’S INITIAL BRIEF ON ISSUES 68 AND 69**

**I. INTRODUCTION**

The Commission should determine that it is not appropriate for ETI and similarly situated vertically integrated utilities to own vehicle-charging facilities or other transportation electrification and charging infrastructure. Importantly, such ownership should be left to the competitive market through customers and third parties, as there is potential for ownership by vertically integrated utilities, such as ETI in this case, to hinder participation and further development of the competitive market for transportation electrification and charging infrastructure. Furthermore, one of the underlying fundamentals of PURA § 11.002 and 16 TAC § 25.1, is that regulated utilities, such as ETI, are authorized to operate as monopolies in specific areas to the extent that reasonable and adequate service cannot be provided by the competitive market. ETI and other parties may argue that Texas does not receive reasonable and adequate service of transportation electrification and charging infrastructure and thus the Commission should allow ETI and other vertically integrated utilities to join the competitive market, but such arguments are insufficiently evidenced, contradictory, and premature. As such, approval of ETI’s proposed TECI-1 Rider would contravene PURA § 11.002 and 16 TAC § 25.1.

Notwithstanding the foregoing, if the Commission determines that it is appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure, ETI should not be allowed to do so in the manner it has proposed in its application through the TECI-1 Rider. Specifically, ETI’s proposed TECI-1 Rider is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable. Similarly, ETI’s proposed TECDA-1 Rider is also unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain persons in a classification, and should be rejected as it is not just and reasonable.

**II. PRELIMINARY ORDER ISSUE NO. 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?**

No. It is not appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure and such ownership should be left to competitive providers such as potential customers and third parties that will allow the competitive market to continue its development throughout Texas. Serving as the basis for this recommendation is the underlying principles of PURA and the Commission's rules regarding regulation of electric public utilities.<sup>1</sup> Specifically, PURA § 11.002, relating to Purpose and Findings, importantly states in part that:

(b) Public utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.<sup>2</sup>

(c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law....<sup>3</sup>

Further, 16 TAC § 25.1, relating to Purpose and Scope of Rule, importantly states in part that:

(a) **Mission of the Public Utility Commission of Texas (commission).** The mission of the commission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the commission shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.<sup>4</sup>

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<sup>1</sup> Direct Testimony of William B. Abbott, Staff Exhibit No. 4 at 5-6 and 8 (Nov. 2, 2022).

<sup>2</sup> *Id.* at 5 (citing to PURA § 11.002(b)).

<sup>3</sup> *Id.* at 6 (citing to PURA § 11.002(c)).

<sup>4</sup> *Id.* at 6 (citing to 16 TAC § 25.1(a)).

In order to protect the public interests of Texas, the Commission is tasked with ensuring that competition is facilitated despite the fact that public utilities that serve in vertically integrated areas are monopolies. Where the competitive market cannot provide reasonable and adequate service, it is appropriate for an electric utility to operate as an exclusive monopoly service provider in a vertically integrated service area.<sup>5</sup> Therefore, whether or not reasonable and adequate service can be provided is the essential inquiry and basis for determining whether to allow a regulated monopoly to provide such competitive service. In the case of ETI's proposed TECI-1 Rider, it would authorize ETI to own all or portions of transportation electrification and charging infrastructure on a non-residential customer's property for the customer's use,<sup>6</sup> which in Staff's view would allow ETI to inappropriately provide a competitive service.<sup>7</sup> Importantly, the fact that ETI's proposal will rely on third parties to install and maintain the transportation electrification infrastructure is at least some indication that the market is currently capable of providing reasonable and adequate transportation electrification and charging services and that allowing ETI to enter this marketplace and recover costs associated with such services would be outside the proper scope of monopoly utility service.<sup>8</sup>

There are other circumstances that indicate that the competitive market is developing in a manner that would provide Texas with reasonable and adequate transportation electrification and charging services, without the need for the Commission to authorize ETI and other electric utilities in vertically integrated areas to compete in the market. First, there is significant federal and state funding available, such as the VW-EPA "dieselgate" settlement and the Inflation Reduction Act, to give competitive providers in the market with additional means for providing reasonable and adequate electric vehicle charging infrastructure in Texas, without the need for ETI and other vertically integrated utilities to provide such infrastructure through proposals like ETI's TECI-1 Rider.<sup>9</sup> Second, as noted by SPS, Texas has offered state incentives and grants for electric vehicle infrastructure under the Texas Emissions Reduction Plan.<sup>10</sup>

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<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* (citing to Direct Testimony of Samantha F. Hill, ETI Exhibit No. 40 at 10-11 (Jul. 1, 2022).)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Cross-Rebuttal Testimony of Jeremiah W. Cunningham, Attachment JWC-CR2, SPS Exhibit No. 2 at 29-31 (Nov. 16, 2022).

<sup>10</sup> Direct Testimony of Jeremiah W. Cunningham, SPS Exhibit No. 1 at 11 (Oct. 26, 2022).

Third, there is the Texas Electric Vehicle Infrastructure Plan. As noted by SPS, Governor Greg Abbott sent a letter to TxDOT on March 22, 2022 in support of the Texas Electric Vehicle Infrastructure Plan, requesting TxDOT to develop a plan to ensure that all Texans have access to electric vehicle infrastructure.<sup>11</sup> SPS also noted that TxDOT submitted its Texas Electrical Vehicle Infrastructure Plan to the Federal Highway Administration on July 28, 2022, detailing how TxDOT will use National Electric Vehicle Infrastructure Plan funds to develop transportation electrification and charging infrastructure across Texas, and the Federal Highway Administration approved such a plan on September 27, 2022.<sup>12</sup> While the Texas Electric Vehicle Infrastructure Plan will be implemented through a competitive bidding processes with the private sector, absent is any indication whether the private sector should include electric utilities.<sup>13</sup> Conversely, it appears that the plan implicitly contemplates the private sector entities to not include utilities based on language included in the Contracting section, which states that selected vendors will work with property owners, *utilities*, and municipalities to complete the installation of charging infrastructure, as well as language that provides for contingencies where an owner/operator of a charging station chooses not to continue operation.<sup>14</sup>

Regardless of the foregoing, given the early stages of deployment, it is premature to assume that implementation of the plan requires participation by ETI or other vertically integrated utilities in order for TxDOT to ensure that reasonable and adequate service can be provided by the otherwise competitive market. SPS would attempt to argue otherwise, that based on the highly concentrated market, as evidenced by an HHI of 5,785 points, there is a basis for the Commission to deem it necessary and thus appropriate for utility owned transportation electrification and charging infrastructure.<sup>15</sup> However, adding a handful of vertically integrated utilities to the market would not necessarily lower the HHI score and thus lower market concentration. And SPS does not discuss or provide evidence whether market concentration would be lowered and conversely does not consider whether allowing ETI and other vertically integrated utilities to join the market would hinder competition and deter smaller competitive providers from entering the market or

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<sup>11</sup> *Id.* at 11-12.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* 37-117.

<sup>14</sup> *Id.* at 53.

<sup>15</sup> *Id.* at 22.

maintaining a presence in the market.<sup>16</sup> Indeed, it stands to reason that a utility's participation in the market may actually increase market concentration by favoring vendors selected by the utility, as discussed further below, and thus render the market less competitive.

Furthermore, as noted by SPS, the Texas Electric Vehicle Infrastructure Plan has a high priority on rural placement and development.<sup>17</sup> SPS attempts to compare the rural development of electric vehicle charging infrastructure with the trends and policies of those occurring with high-speed internet/broadband infrastructure development.<sup>18</sup> While not stated, Staff views that one comparison is apt between the two types of services needed in rural Texas. Specifically, as indicated by SPS, Texas has addressed rural broadband development through the creation of the Texas Broadband Development Office and legislation to allow development to occur in high need areas.<sup>19</sup> Comparatively, implementation of the Texas Electric Vehicle Infrastructure Plan should provide Texas with similar policies to provide further development of transportation electrification and charging infrastructure in rural Texas. However, the Commission should not equate the trends and policies insofar as it relates to any attempt to compare the differing competitive markets between transportation electrification and charging services and high-speed internet/broadband services.

ETI, in turn, tries to compare the market for transportation electrification and charging services to the market for generation.<sup>20</sup> As noted by ETI, the market for electric generation throughout Texas used to be in the sole hands of monopoly providers, but has since broadened to include many competitive providers, including those at the customer level.<sup>21</sup> Conversely, vertically integrated utilities, such as ETI, have not been in the business of providing services related to transportation electrification and charging infrastructure and are just now attempting to enter the competitive market. As such, ETI's comparison to generation is not applicable. ETI also cites to the Legislature's explicit desire for ETI to provide generation services, among others, and attempts to argue that the Legislature would not conversely disallow ETI from providing services related to

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<sup>16</sup> Cross-Rebuttal Testimony of Evan D. Evans, OPUC Exhibit No. 57 at 11-12 (Nov. 16, 2021).

<sup>17</sup> SPS Exhibit No. 1 at 11.

<sup>18</sup> *Id.* at 23.

<sup>19</sup> *Id.*

<sup>20</sup> Rebuttal Testimony of Samantha F. Hill, ETI Exhibit No. 53 at bates page 13 (Nov. 16, 2022).

<sup>21</sup> *Id.*

the development of transportation electrification and charging infrastructure.<sup>22</sup> However, the basis for ETI's argument is that S.B. 1202, recently enacted legislation exempting competitive providers of electric vehicle charging services from becoming electric utilities under PURA, did not remove ETI's traditional rights to provide electric delivery services, such that ETI's proposed TECI-1 Rider would be consistent with legislative intent to encourage the development of the electric vehicle market.<sup>23</sup> ETI's argument, however, incorrectly assumes or implies that the Legislature intends for vertically integrated utilities to become part of the market. A more appropriate interpretation of the exemption provided for competitive providers is that the Legislature wanted to provide the competitive providers with regulatory clarity to help facilitate deployment and competition of electric vehicle charging stations for customers, while the competitive market further develops.<sup>24</sup>

Regarding policy-based arguments, SPS refers to the testimonies filed by FlashParking and ChargePoint, two competitive providers in the electric vehicle space, as a reason or signal to the Commission that utility ownership transportation electrification and charging infrastructure is beneficial to the competitive market.<sup>25</sup> However, SPS disregards the concerns that both FlashParking and ChargePoint have with ETI's proposed TECI-1 Rider. Importantly, ChargePoint indicates that it is not necessary for a utility to own charging infrastructure to achieve benefits for customers.<sup>26</sup> Conversely though, ChargePoint does attempt to argue that utility ownership of the make-ready infrastructure to support deployment of charging equipment can promote the competitive market and create value for all customers.<sup>27</sup> However, ChargePoint seemingly disregarded its own concerns that ETI's participation could have on competition. Specifically, as laid out in OPUC's cross-rebuttal testimony, ChargePoint identified the following concerns that could hinder the competitive market, assuming the Commission approves ETI's proposed TECI-1 Rider as filed.<sup>28</sup>

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<sup>22</sup> *Id.* at bates pages 13-14.

<sup>23</sup> *Id.*

<sup>24</sup> See Bill Analysis, S.B. 1202, Business and Commerce (Enrolled), available at <https://capitol.texas.gov/tlodocs/87R/analysis/pdf/SB01202F.pdf#navpanes=0> (last accessed Jan. 13, 2023).

<sup>25</sup> SPS Exhibit No. 2 at 7.

<sup>26</sup> Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint Exhibit No. 4 at 8 (Nov. 16, 2022).

<sup>27</sup> *Id.* at 4-5 and 6-8.

<sup>28</sup> OPUC Exhibit No. 57 at 9-10.

- Utilities are regulated monopolies that have a competitive advantage over other competitors since they can recover all or a portion of the cost of providing EV charging stations and infrastructure from their ratepayers;<sup>29</sup>
- A utility may procure a single equipment provider and single network service provider for all chargers that the utility will own and operate, regardless of the site host's needs and preferences. When a utility removes a site host's ability to choose their preferred equipment and network service provider, it significantly dampens competition and innovation;<sup>30</sup>
- ETI's proposal to provide infrastructure and potentially charging equipment is equivalent to the turn-key installation service offered by many non-utility service providers;<sup>31</sup> and
- ETI's proposal to recover the costs to install a customer's desired amount of infrastructure and equipment through an on-bill fixed charge over a term chosen by the customer is functionally equivalent to financing offers that are offered by many non-utility service providers.<sup>32</sup>

The only concern that seems to have been addressed by ETI is the second one listed. Specifically, ETI provided a response to ChargePoint's request for information and filed testimony indicating that ETI plans to provide customers a choice in which vendors to select for the equipment installed under the TECI-1 Rider.<sup>33</sup> This response by ETI, seemingly seems to alleviate ChargePoint's concern because it would provide sites hosts with a choice in electric vehicle charging equipment vendors and network service providers.<sup>34</sup> A customer's choice, however, would be limited to a list of vendors pre-qualified by ETI.<sup>35</sup> In direct contrast with ChargePoint, FlashParking recommends that vendor selection should not be limited to those solely approved by ETI,<sup>36</sup> indicating that ETI's proposed TECI-1 Rider may not be fully supported by competitive providers outside of this proceeding, who did not intervene and provide testimony. ChargePoint, in rebuttal testimony, also

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<sup>29</sup> *Id.* (citing to Direct Testimony of Justin D. Wilson, ChargePoint Exhibit No. 1 at 6 (Oct. 26, 2022)).

<sup>30</sup> *Id.* (citing to ChargePoint Exhibit No. 1 at 6-7).

<sup>31</sup> *Id.* (citing to ChargePoint Exhibit No. 1 at 15).

<sup>32</sup> *Id.* (citing to ChargePoint Exhibit No. 1 at 15).

<sup>33</sup> ETI Response to ChargePoint RFI 1:1, ChargePoint Exhibit No. 3 at 3-4 (Oct. 25, 2022); *see also* ETI Exhibit No. 53 at bates page 27.

<sup>34</sup> ChargePoint Exhibit No. 1 at 16; *see also* ChargePoint Exhibit No. 4 at 8.

<sup>35</sup> ChargePoint Exhibit No. 3 at 3-4; *see also* ETI Exhibit No. 53 at bates page 27.

<sup>36</sup> Direct Testimony of Matthew McCaffree, FlashParking Exhibit No. 1 at 8 (Oct. 26, 2022).

attempts to distinguish, without evidence, between ownership of make-ready infrastructure and ownership of charging infrastructure, for the proposition that make-ready infrastructure is not considered a competitive service and does not raise competitive concerns.<sup>37</sup> However, this is directly contradicted by ChargePoint’s direct testimony on the matter, where ChargePoint indicates that the services that ETI would provide under the TECI-1 Rider are already being provided by the competitive market.<sup>38</sup> Therefore, not much weight, if any, should be given to ChargePoint’s assertion that ETI’s proposal will not result in ETI providing a competitive service.

**III. PRELIMINARY ORDER ISSUE NO. 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?**

No. As partially discussed above and further detailed below, in the event the Commission determines that it is appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure, ETI should not be allowed to own transportation and electrification and charging infrastructure in the manner proposed in its application, because ETI’s proposed TECI-1 Rider and TECDA-1 Rider are not just and reasonable and should be rejected.

**A. TRANSPORTATION ELECTRIFICATION AND CHARGING INFRASTRUCTURE (“TECI”) RIDER**

First and foremost, as detailed above in Section II, to the extent that ETI’s proposed TECI-1 Rider allows ETI to own any portion of the transportation electrification and charging infrastructure that will be installed on the property of non-residential customers—including vehicle charging facilities—it inappropriately allows a regulated monopoly to provide a competitive service where there is not sufficient evidence or the evidence is premature that the competitive market is unable to provide reasonable and adequate service.<sup>39</sup>

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<sup>37</sup> ChargePoint Exhibit No. 4 at 9-10.

<sup>38</sup> ChargePoint Exhibit No. 1 at 6-7 and 15.

<sup>39</sup> Staff Exhibit No. 4 at 8.

Aside from the ownership-related arguments, ETI's proposed TECI-1 Rider should be rejected for other reasons. One such reason is that the rider relies on non-standard pricing that is tailored to individual customers, which is an approach that may be appropriate for proper utility services.<sup>40</sup> In this context, however, there are concerns for the Commission's ability to analyze relevant infrastructure costs and rider revenues, due to the customer-specific details unavailable at this time, such that a sufficient review of the TECI-1 Rider rates, which in part must be based on costs, is untenable.<sup>41</sup> In turn, the Commission is less able to determine whether any undue cross-subsidization or other form of discriminatory or preferential treatment would result from approving the TECI-1 Rider.<sup>42</sup> ETI argues that its proposed TECI-1 Rider is not materially different than its approved Additional Facilities Charge Rider, Option B or its approved Area Lighting Service Rider,<sup>43</sup> but does not necessarily address Staff's concerns with being unable to sufficiently evaluate for potential undue cross-subsidization or other form of discriminatory or preferential treatment.

Despite the foregoing described difficulties, the TECI-1 Rider would pose a risk to other customers if costs and revenues associated with the TECI-1 Rider do not match up.<sup>44</sup> Furthermore, in the event that a customer stops making payments under the TECI-1 Rider and ETI is unable to recover its investment from the customer, any remaining costs potentially may be borne by non-participating customers with no associated revenue offsets applied.<sup>45</sup> ETI's proposal would transfer the financing risk associated with a non-essential, discretionary service from competitive electric vehicle charger providers and onto its ratepayers.<sup>46</sup> SPS argues that the Commission considers uncollectible expenses as part of doing business for an electric utility, based on findings of fact in Docket No. 43695, in which the Commission found that uncollectible expenses should be treated as a system cost rather than a customer class cost.<sup>47</sup> However, given that the TECI-1 Rider is only applicable to non-residential customers, requiring non-participating customer classes

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 9; *see also* 16 TAC § 25.234(a).

<sup>42</sup> *Id.*

<sup>43</sup> ETI Exhibit No. 53 at bates pages 15-17.

<sup>44</sup> Staff Exhibit No. 4 at 9.

<sup>45</sup> *Id.* at 9-10.

<sup>46</sup> *Id.*

<sup>47</sup> SPS Exhibit No. 2 at 14-15 (citing to *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 43695, Order on Rehearing at Findings of Fact Nos. 310-311 (Feb. 23, 2016)).

to bear some of the uncollectible expenses could be considered as discriminatory practice against those non-participating customer classes. As such, Staff does not oppose OPUC's recommendation that, if applicable, the Commission ensure ETI's non-participant retail customers are protected from the risk of bearing costs related to ETI's transportation and electrification charging infrastructure investments, including protection from the risk of bearing uncollectible expenses that result from ETI being unable to collect from defaulting participating customers.<sup>48</sup> Alternatively, it would be reasonable for the Commission to prohibit ETI from recovering any uncollectible costs associated with its TECI-1 Rider from any of its customers, as these costs are not necessary for the functioning of the ETI system in the provision of standard utility service.

Based on the foregoing, ETI's proposed TECI-1 Rider is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable.<sup>49</sup> To the extent that the Commission determines that ETI's proposed TECI-1 Rider should be approved, Staff recommends that the rider be adjusted to use ETI's pre-tax weighted-average cost of capital approved by the Commission in this proceeding.<sup>50</sup>

## **B. TRANSPORTATION ELECTRIFICATION AND CHARGING DEMAND ADJUSTMENT ("TECDA") RIDER**

It would not be reasonable to adopt ETI's proposed TECDA-1 Rider based on the analysis provided by ETI. Specifically, capacity-related costs for demand charges result from customer demand (kW) and not by customer energy (kWh) use.<sup>51</sup> Therefore, ETI's analysis of the costs on a per-kWh basis is unreasonable, in error, and should not be considered to support ETI's proposed TECDA-1 Rider in this proceeding. Furthermore, customers with lower load factors, including electric vehicle charging stations that have lower customer demand, are less efficient in using the delivery system than customers with higher load factors, such that the low load factor customers have higher capacity or delivery costs per kWh used.<sup>52</sup> As such, the costs per kWh should not determine the capacity costs relevant to the analysis for ETI's proposed TECDA-1 Rider.

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<sup>48</sup> OPUC Exhibit No. 57 at 13-14.

<sup>49</sup> Staff Exhibit No. 4 at 7.

<sup>50</sup> ETI Exhibit No. 40 at 17.

<sup>51</sup> Staff Exhibit No. 4 at 10.

<sup>52</sup> *Id.*

Comparatively, the Commission has determined on the same basis that non-coincident peak demand charges are the most appropriate rate design for distribution delivery cost recovery where the necessary metering is available.<sup>53</sup> ETI attempts to distinguish electric vehicle charging station customers from traditional electric customers for the argument that once the early adoption period of the TECDA-1 Rider has surpassed and the EV charging industry has become more widespread, energy utilization (kWh) will increase to stabilize the effective cost per kWh, such that electric vehicle charging station customers will experience higher utilization and higher load factors and thus demand charges will longer be a challenge.<sup>54</sup> However, ETI provides no evidence to support this assertion. As such, there is no reason to consider electric vehicle charging station customers different than other customers with low load factors. Because of the potentially misguided and confusing load factor calculations used to support billing demand adjustments to the TECDA-1 Rider, the rider itself increases electric bill uncertainty for customers.<sup>55</sup>

The TECDA-1 Rider also will impact non participating customers. Specifically, the rider would allow qualifying participating customers to pay only a portion of their capacity costs which they cause ETI to incur and thus would unreasonably discriminate against a non-participating customer with identical usage and load. And such a non-participating customer would potentially end up paying much more than the participating electric vehicle charging station customers.<sup>56</sup> Regarding ETI's assertion that the TECDA-1 Rider is needed to help proliferate electric vehicle charging stations in ETI's service territory, Staff counters that an increase in the amount of customers taking service under ETI's proposed TECDA-1 Rider would correspondingly increase the amount of discriminatory cost shifting to other customers.<sup>57</sup> ETI ultimately argues that there would be a net benefit to ETI's non-participating customers.<sup>58</sup> However, this speculative assertion ignores the fact that some costs are shifted to non-participating customers that otherwise would not have borne those costs, such that these discriminatory practices cannot be ignored. Furthermore, ETI essentially acknowledges Staff's assertion that such discrimination may occur,

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<sup>53</sup> *Id.*

<sup>54</sup> ETI Exhibit No. 53 at 36-37.

<sup>55</sup> Staff Exhibit No. 4 at 10-11.

<sup>56</sup> *Id.* at 11.

<sup>57</sup> *Id.*

<sup>58</sup> ETI Exhibit No. 53 at 28-31.

as identical non-participating customers may potentially pay more than the participating customers.<sup>59</sup> Regardless, the TECDA-1 Rider is still unduly preferential and discriminatory based on Commission precedent in Docket No. 22344.<sup>60</sup> Specifically, the Commission relevantly did not include billing demand adjustments for select customer groups when setting the rate design for demand-metered classes such as the General Service rate class.<sup>61</sup> Additionally, the Commission also determined the following:

Many of the parties propose that demand-metered classes should be billed based on the non-coincident peak (NCP) demand.

...

With respect to a facilities/delivery charge, the Commission finds that the NCP billing determinant should be used for non-IDR metered customers.

...

The distribution facilities/delivery charge for IDR metered customers shall be billed on the NCP billing determinant.<sup>62</sup>

In direct contravention of this precedent, ETI's proposed TECDA-1 Rider includes a demand adjustment and would result in participating customers being billed for facility/distribution charges based on monthly kWh energy usage and not NCP demand.

Lastly, as noted by OPUC, the proposed billing demand adjustment would be a discounted rate under PURA § 36.007(a) that would potentially result in cost shifting to other customers and thus ETI's violation of PURA § 36.007(d). Additionally, the discounted billing demand does not provide adequate price signals to customers and can encourage customers to unnecessarily impose higher demands on the system, resulting in higher costs being incurred.<sup>63</sup> Overall, reliance on non-cost-based rates promotes inefficiencies that could cause higher rates for all customers.<sup>64</sup>

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<sup>59</sup> *Id.* at 35.

<sup>60</sup> Staff Exhibit No. 4 at 12-13 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Staff Exhibit No. 4 at 11.

<sup>64</sup> *Id.*

#### **IV. CONCLUSION**

Staff respectfully requests the entry of a proposal for decision consistent with the foregoing discussion, finding that it is not appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure, that ETI should not be allowed to own transportation electrification and charging infrastructure-including vehicle-charging facilities-in the manner it has proposed in its application, and that the TECI-1 and TECDA-1 riders should be rejected.

**SOAH DOCKET NO. 473-22-04394  
PUC DOCKET NO. 53719**

#### **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 Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles  
Scott Miles