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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 TO CHANGE	§	OF
RATES	§	ADMINISTRATIVE HEARINGS

OFFICE OF PUBLIC UTILITY COUNSEL'S POST-HEARING INITIAL BRIEF ON PRELIMINARY ORDER ISSUES NOS. 68 AND 69

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, respectfully submits this initial post-hearing brief on preliminary order issues numbers 68 and 69 and shows the following:¹

I. Introduction

RATES

In its application filed on July 1, 2021, Entergy Texas, Inc. ("ETI" or the "Company") proposed to include two new riders pertaining to transportation electrification technology and related infrastructure and equipment.² The Transportation Electrification and Charging Infrastructure ("TECI") rider 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 (such as electric vehicle charging and Shore Power) on customer-owned property, with costs incurred by ETI to be added to the interested customers' monthly electric bill as a fixed payment.³ The Transportation Electrification and

¹ Note: OPUC's Initial Brief follows the agreed briefing outline adopted by the parties, which only addresses PO issues numbers 68 and 69. OPUC reserves the right to address in its reply brief any issues raised by the parties in their initial briefs.

² Entergy Texas, Inc. Application for Authority to Change Rates (Jul. 1, 2022) ("ETI Application").

³ *Id.* at 7-8.

Charging Demand Adjustment ("TECDA") rider is designed to provide targeted demand charge relief and reduce electric bill uncertainty exclusively for non-residential customers installing electric vehicle charging infrastructure and taking new separately metered electric service under Rate Schedule GS.⁴

ETI asserts that non-participating customers will not bear costs associated with the TECI-1 rider⁵ and that "application of the TECDA Rider would not materially impact non-participating ETI customers." However, ETI did not provide an estimate of the potential range of impacts the TECI and TECDA Rider could have on non-participating customers within the General Service rate class, nor did it limit the time period in which the TECDA Rider would be available. As a result, the impact could continue indefinitely, with new participants added after the term limit for old participants is reached or the initial participants cease operations. OPUC is concerned that non-participating customers from all customer classes will bear additional costs and that the riders could limit the competitive offering of similar equipment and services in the competitive market.

II. <u>Preliminary Order Issue No. 68</u>. 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 vehiclecharging facilities or other transportation electrification infrastructure. The ownership of such facilities should be left to the competitive market. "The fundamental basis for the authorization of

⁴ *Id.* at 8.

⁵ Direct Testimony of Samantha F. Hill at 16:1-6.

⁶ *Id.* at 37:14-18.

⁷ Direct Testimony of Evan D. Evans at 35:12-16.

a utility such as ETI to operate as an exclusive monopoly provider in an area rests upon the notion that reasonable and adequate service cannot be provided by the competitive market." If public utilities were allowed to operate in the manner that ETI proposes, essentially leasing and managing electric vehicle ("EV") charging infrastructure and equipment, it would undercut the mission and purpose of the Public Utility Commission of Texas ⁹ and would inappropriately allow a regulated monopoly, like ETI, to provide a competitive service, contrary to Public Utility Regulatory Act ("PURA") § 11.02¹⁰ and 16 TAC § 25.1.¹¹

III. <u>Preliminary Order Issue No. 69</u>. 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. If ETI were allowed to own and maintain TE and charging infrastructure and equipment the way it is proposed in the application, it could unnecessarily limit the competitive offering of similar equipment and services in the competitive market and thus should be left to customers or third parties. Specifically, OPUC is concerned that non-participating customers will bear the costs of ETI's TECI customer consultations and operations and maintenance ("O&M") expenses associated with EV infrastructure and equipment investment. Additionally, OPUC is concerned that non-participating customers will be forced to bear any unrecovered costs when participating customers file for bankruptcy or default on paying their bills under the riders. If the

⁸ Direct Testimony of William B. Abbott 8:5-7.

⁹ See 16 Texas Administrative Code (TAC) § 25.1(a), stating "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."

 $^{^{10}}$ See PURA § 11.02(b), stating "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."

¹¹ Cross-Rebuttal Testimony of Evan D. Evans at 11.

Commission determines it is appropriate for ETI to own make-ready TE infrastructure and charging equipment, the Commission should at a minimum establish appropriate safeguards to ensure ETI's participation in the competitive markets does not: (1) increase the cost to serve ETI's non-participating electric service customers, (2) hinder the development and expansion of the competitive market for TE infrastructure and charging equipment, or (3) unduly limit a TE site-host's ability to choose their preferred TE infrastructure and charging equipment.

OPUC also recommends that appropriate allocations of ETI's overhead costs be assigned to: (1) ETI's investment in make-ready transportation electrification infrastructure and charging equipment, (2) ETI's activities to market these services, and (3) ETI's operation and maintenance of associated equipment. These overhead costs should include investment in general and intangible rate base, administrative and general expenses, wages and salaries, property insurance, property taxes, payroll taxes, etc. ¹² Furthermore, it is OPUC's position that ETI's non-participant retail electric service customers should be adequately compensated for the fact that they financially support ETI, which enables ETI to compete from the advantageous position of being the certificated public utility in its service area in possession of immense customer information. ¹³ Adequate steps and procedures should be instituted that fully protect ETI's non-participant retail electric service customers from bearing any costs or risk associated with ETI's investment and efforts to provide make-ready transportation electrification infrastructure and charging equipment, including protection from the risk of default by TECI or TECDA customers. ¹⁴ Finally, OPUC recommends that ETI should be required to maintain separate accounting for all investment,

¹² *Id.* at 5:13-18.

¹³ *Id.* at 5:19-22.

¹⁴ *Id.* at 6:1 – 5.

depreciation expense and other costs associated with the TECI program and promotion of that program for consideration in ETI's next base rate case.

A. Transportation Electrification and Charging Infrastructure ("TECI") Rider

OPUC believes that ETI's proposed TECI Rider is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable. As proposed, the TECI Rider could create competition concerns in the competitive market and would likely result in harm to other ratepayers in addition to the potential shifting of costs to other customers if the TECI costs and revenues do not reasonably match up. 15 ETI asserts in Ms. Samantha Hill's testimony that "the charges assessed under the TECI-1 Rider will only be charged to those customers who voluntarily enroll in the TECI-1 Rider, and no costs associated with the administration of the rider will be imposed on any customers who have not elected to participate." ¹⁶ However, there is no discussion or evidence to show what safeguards are in place for non-participating customers when a participating customer defaults. OPUC further recommends that the riders should not contain a separate and distinct extension policy from the Extension Policy contained in ETI's approved Rules and Regulations, Sheet No. 18 – Electric Extension Policy. To safeguard non-participating customers and ratepayers, TECI Rider customers should be required to reimburse the Company for the cost of construction and installation of new facilities necessary to extend electric service to the TE charging infrastructure in excess of two years' anticipated annual base revenues, instead of ETI's proposal of four years' anticipated annual base revenues. 17

¹⁵ Direct Testimony of William Abbott at 9:13-16.

¹⁶ Direct Testimony of Samantha Hill 16:3-6.

¹⁷ Direct Testimony of Evan D. Evans (Errata) at 30:11 – 34:8.

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

OPUC's position is that the TECDA Rider is unreasonably preferential and discriminatory, is inequitable, and grants an unreasonable preference concerning rates to certain customers in a classification if the unrecovered participant demand charges are shifted to non-participating customers. PURA § 36.007(d) states, "Notwithstanding any other provision of the title, the commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers." Accordingly, the under-recovered demand revenues that result from the application of the billing demand cap in the TECDA Rider should not be borne by other customers. If the TECDA Rider is approved by the Commission, the rider should expire when new rates are approved in ETI's next base rate case, unless the rider is ratified in that base rate case. Additionally, if the TECDA Rider is approved, the proposed load factor-based billing demand cap should be considered a discounted rate pursuant to PURA § 36.007(a). No other customers within the General Service, Large General Service, or Industrial Power Service rate classes are provided similar demand caps and the intent of this demand cap is to promote expansion of EV infrastructure. ETI will benefit from the expansion by increased sales. OPUC maintains that the under-recovered demand revenues that result from the application of the billing demand cap in the TECDA Rider should not be borne by other customers pursuant to PURA § 36.007(d).

Finally, it is OPUC's position that all rate case expenses relative to the TECI and TECDA riders should be recorded separately and not be recovered from Residential Service or other non-participating customer classes. And, in the interest of efficiency and productivity, consideration of the TE issues and associated Riders should be addressed in a separate docket so as to enable greater

participatory engagement from all four vertically-integrated, non-ERCOT investor-owned electric utilities.

IV. Conclusion

For the reasons stated herein and discussed in the Direct Testimony and Cross-Rebuttal Testimony of OPUC witness Mr. Evan Evans, OPUC respectfully requests that the State Office of Administrative Hearings Administrative Law Judges adopt and incorporate OPUC's recommendations into the Proposal for Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

SOAH Docket No. 473-22-04394 PUC Docket No. 53719

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 13th day of January, 2023, by facsimile, electronic mail, and/or first class, U.S. Mail.

Renee Wiersema