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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

REPLY BRIEF

January 27, 2023

AMERICANS FOR AFFORDABLE CLEAN ENERGY'S
REPLY BRIEF

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AMERICANS FOR AFFORDABLE CLEAN ENERGY'S REPLY BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES (ALJs):

COMES NOW, Americans for Affordable Clean Energy (AACE), and files this Rely Brief to address the parties' initial briefs filed in the above-captioned docket. Pursuant to the State Office of Administrative Hearings' (SOAH) Order Adopting Procedural Schedule[1] and SOAH Order No. 14,[2] this Reply Brief is timely filed.

I. INTRODUCTION

AACE addresses the Public Utility Commission of Texas' (Commission) Preliminary Order Issue Nos. 68 and 69[3] in this Reply Brief. Specifically, AACE—whose members have an interest in installing, owning, and operating electric vehicle (EV) charging stations in Texas—opposes Entergy Texas, Inc.'s (ETI) proposed Transportation Electrification and Charging Infrastructure (TECI) Rider, and supports ETI's proposed Transportation Electrification and Charging Demand Adjustment (TECDA) Rider.

The EV charging market is still in its early stages of adoption throughout Texas. However, as demonstrated by ETI, Southwestern Public Service Company (SPS), ChargePoint, Inc. (ChargePoint), and FlashParking, Inc. (FlashParking), the market is growing rapidly.[4] ChargePoint projected that there will be one million EVs on the road by 2028.[5] With this growth

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[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).

[3] Preliminary Order at 15 (Aug. 4, 2022).

[4] Entergy Texas, Inc.'s Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 at 8 (Jan. 13, 2023) (ETI's Initial Brief); Southwestern Public Service Company's Initial Brief Regarding Preliminary Order Issue Nos. 68 and 69 at 5 (SPS's Initial Brief); ChargePoint, Inc.'s Initial Brief at 14 (ChargePoint's Initial Brief); and FlashParking, Inc.'s Initial Brief Relating Only to the EV Charging Infrastructure Issues at Bates 4 (FlashParking's Initial Brief).

[5] ChargePoint Ex. 1.0 at Bates 22.

comes the need for new policies and programs within the State of Texas to expand transportation electrification (TE) infrastructure to *all* areas of Texas,[6] including in rural markets that have been underserved and underdeveloped.[7] AACE supports the necessary growth and development of TE infrastructure throughout Texas in order to meet the new demands of the increasing EV market, and commends the state's leadership for ensuring that equitable access to EV charging infrastructure is a state priority.[8] To maintain such growth, the competitive market of EV charging stations cannot be hindered by a monopoly provider, such as a vertically integrated electric utility, participating in the EV charging market. However, it is critical that electric utilities support the EV charging market through ownership of make-ready EV charging infrastructure.

At the outset, AACE would correct the record with regard to ETI's claims about other parties' positions on its proposed TECI and TECDA Riders. ETI incorrectly states in its Initial Brief that "[a]ll of these parties, with the exception of Commission Staff, either support or do not oppose the TECI and TECDA Rider and/or the right of vertically integrated utilities to own TE infrastructure."[9] ETI's statement is incorrect, incomplete, and misrepresents parties' positions in several aspects. First, both Commission Staff and the Office of Public Utility Counsel (OPUC) expressly opposed both the TECI and TECDA Riders and the right of vertically integrated utilities to own TE infrastructure.[10] Further, ETI's assertion mischaracterizes ChargePoint's position by generalizing its testimony and evidence and failing to mention that ChargePoint only supports vertically integrated utilities owning TE infrastructure *"under the right circumstances."*[11] In addition, although AACE did not submit evidence on these issues, it did submit a Statement of Position in which it expressly opposed ETI's proposed TECI Rider and the right of vertically integrated utilities to own all TE infrastructure.[12] In its Statement of Position, AACE supported the direct testimony of Justin D. Wilson on behalf of ChargePoint in finding that it *is* appropriate

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[6] Americans for Affordable Clean Energy's Initial Brief at 6 (Jan. 13, 2023) (AACE's Initial Brief).

[7] ETI's Initial Brief at 3.

[8] ETI's Initial Brief at 1, citing the Direct Testimony of Jeremiah W. Cunningham.

[9] ETI's Initial Brief at 6.

[10] Staff Ex. 4 at 7; Office of Public Utility Counsel's Post-Hearing Initial Brief on Preliminary Order Issues Nos. 68 and 69 at Bates 2, 5-6 (OPUC's Initial Brief).

[11] ChargePoint Ex. 1.0 at Bates 6 (emphasis added).

[12] Americans for Affordable Clean Energy's Statement of Position (Nov. 30, 2022).

for electric utilities to own make-ready infrastructure in order to support EV chargers, but expressly did not support electric utilities owning all EV charging-related infrastructure.[13] Therefore, AACE requests that Your Honors disregard the above-referenced statement contained in ETI's Initial Brief. ETI's statement asserting near-unanimous support for its proposed TECI and TECDA Riders and the right of vertically integrated utilities to own TE infrastructure is false, intentionally misleading, and misrepresents parties' positions, and therefore, must be disregarded.

II. PRELIMINARY ORDER ISSUE NO. 68

Preliminary Order Issue No. 68 asks 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 whether the ownership of such facilities should be left to competitive providers. For the purposes of this Reply Brief, AACE refers to *EV charging stations* as consumer-facing refueling infrastructure that dispenses electricity into an EV, and refers to *make-ready EV charging infrastructure* as all necessary electric grid, transmission, and other necessary infrastructure upstream of and not including EV charging stations themselves.

AACE maintains its position that 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.

A. The Regulatory Scheme in Texas Should Mirror the "Make-Ready Model" Implemented and Successfully Executed in Other States in Which Site Hosts Own EV Charging Stations and Electric Utilities Own Make-Ready EV Charging Infrastructure

AACE reiterates that a vertically integrated electric utility should not be permitted to own EV charging stations.[14] EV charging stations should be owned by unregulated businesses that compete on price and quality of service because they 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.[15] As established by ETI, utilities have expert knowledge of, and experience in installing and maintaining equipment like make-ready EV charging

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[13] *Id.* at 2.

[14] AACE's Initial Brief at 2.

[15] *Id.*

infrastructure, including line extensions, meter cabinets, and conduit conductors.[16] This experience and knowledge puts electric utilities in the best position to focus on and own make-ready EV charging infrastructure. Alternatively, site hosts have the experience and knowledge in providing customer amenities and other services that customers have come to expect while refueling their vehicles. While utilities have important experience in constructing, owning, and operating electricity infrastructure, site hosts are the entities with experience interfacing with customers, selling competitively priced fuel, and catering to motorists' evolving demands. This experience and knowledge best positions site hosts to own EV charging stations. Allowing electric utilities and site hosts to focus on their core competencies will facilitate the much-needed proliferation of TE infrastructure and EV charging stations by supporting the competitive market.

Both ETI and SPS assert that a total prohibition of electric utility ownership of TE infrastructure would severely restrict the proliferation of EVs in Texas,[17] undercutting Texas' TE infrastructure goals.[18] While the *total* prohibition of electric utility ownership of TE infrastructure could restrict the potential growth of EV charging in Texas, limiting electric utility ownership to make-ready EV charging infrastructure, and not EV charging stations, would allow for the expansion of EV charging in Texas. As noted in the Edison Electric Institute's letter, make-ready programs have been instrumental in increasing investments by third parties in EV charging infrastructure.[19] Through make-ready programs, electric utilities play an integral role in fostering the private investment in make-ready EV charging infrastructure needed to satisfy the need of TE infrastructure in Texas.

Make-ready EV charging infrastructure consists of the installation of grid, transmission, and other necessary infrastructure upstream of EV charging stations required to provide power to the EV charging stations.[20] The "make-ready model"—in which the utility owns and operates the make-ready EV charging infrastructure (including wiring, conduit, trenching, and civil construction work needed to provide power upstream of EV charging stations) and site hosts own and operate EV charging stations—is a common and efficient EV market scheme already being

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[16] ETI's Initial Brief at 12.

[17] ETI Ex. 53 at Bates 7.

[18] SPS's Initial Brief at 1.

[19] ETI Ex. 53at Bates 54.

[20] AACE's Initial Brief at 3.

implemented and successfully executed in other states. ETI has already shown support of the concept of a make-ready model by arguing that electric utility ownership of line extensions (a portion of make-ready EV charging infrastructure) should be "undisputed," because the line extensions under the proposed TECI Rider and the line extensions already in the rest of the grid are functionally equivalent.[21] Further, electric utility ownership of make-ready EV charging infrastructure allows for unregulated businesses to avoid the cost barrier of such infrastructure and instead invest more into EV charging stations, increasing investment in TE infrastructure.

States such as Michigan, New Jersey, Massachusetts, Ohio, New York, and Connecticut have all implemented make-ready programs which, as ChargePoint indicated, have resulted in the support of TE infrastructure without the risk of distorting the competitive EV charging market.[22] As previously discussed in AACE's Initial Brief, states that have implemented a make-ready model have seen many advantages that not only benefit the site hosts directly, but the EV market as a whole (including utilities).[23] Some of the advantages of the make-ready model include: 1) a significant reduction of the cost of installing EV charging stations, which encourages site hosts to deploy EV charging stations for the benefit of EV drivers; 2) site hosts' investment in the EV charging stations' success, because site hosts share in the total cost of installing EV charging stations; 3) avoiding the market distortions that arise from a utility offering a competitive service while recovering revenue shortfalls from ratepayers; and 4) the stimulation of competition, innovation, and increased customer choices in EV charging services, all of which benefit EV drivers.[24] The regulatory scheme in Texas should mirror the make-ready model implemented and successfully executed in other states, and should not allow electric utilities to own and operate EV charging stations.

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

AACE maintains its position that 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

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[21] ETI's Initial Brief at 12, citing SPS Ex. 2 at 10.

[22] ChargePoint's Initial Brief at 5-6.

[23] AACE's Initial Brief at 3; *See* ChargePoint Ex. 1.0 at Bates 9-10.

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

potential development of a competitive EV charging market.[25] However, as explained above, it is appropriate for an electric utility to own make-ready EV charging infrastructure due to the fact that make-ready EV charging infrastructure is not a competitive service. Therefore, electric utility ownership of make-ready EV charging infrastructure would raise no competitive concerns. Allowing a monopoly, such as a vertically integrated electric utility, to participate in a competitive market would create an unfair advantage, which would disincentivize participation from unregulated businesses. Electric utilities have an unfair advantage because they have authorized rates of return and other interim rate adjustments, which allow them to increase rates to help them reach those returns. This process allows electric utilities to remain immune from market and competitive forces. ChargePoint's assertion that the competitive EV charging market is unlikely to be distorted by ETI's participation so long as site-host choice is included[26] is false and misguided. If some EV charging stations are being operated in a guaranteed rate of return environment and others are not, that distorts the EV charging market. Electric utilities have the ability to avoid competitive forces, allowing them to set low charging prices—something with which site hosts cannot compete. In a competitive market, a site host would 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.[27] Electric utilities would not be so burdened and would be in a position to charge lower prices. This would create an uneven playing field and site hosts should not have to compete with electric utilities that are immune from market and competitive forces. In order to create a successful statewide electric charging network, all EV charging providers must be able to compete on an even playing field.

Competitive forces drive site hosts' action and decisions on how to participate in the market. They must decide the number of EV charging stations to install, where to install them, what type of equipment to use, which network provider to use, and how much to charge drivers for charging their vehicles are the types of decisions that stimulate competition between EV charging equipment and network service provider vendors.[28] The competitive pressure between vendors promotes more innovation amongst vendors and ensures competitive prices, which

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[25] AACE's Initial Brief at 3.

[26] ChargePoint's Initial Brief at 6-7.

[27] AACE's Initial Brief at 4.

[28] ChargePoint's Initial Brief at 6.

enhances the diversity in the EV charging market—which in turn, creates an opportunity for new unregulated businesses to participate and invest in the market. Allowing an electric utility that is not faced with the same competitive forces as site hosts would hinder the competitive nature of the market by not fostering the competitive pressure between vendors, since an electric utility can recover the costs of providing EV charging stations. A lack of innovation and diversity and a lack in competitive prices amongst vendors would disincentivize further unregulated businesses from investing in EV charging stations.

1. Allowing a Monopoly to Compete in a Competitive Market is Contrary to the Policy and Purpose of PURA

It would be in opposition to the policy and purpose of the Public Utility Regulatory Act (PURA) to allow vertically integrated utilities to participate in the EV charging market. As stated in AACE's Initial Brief, PURA requires that the provision of generation and retail services be subject to a competitive market.[29] The legislative intent in enacting the electric utilities subtitle of PURA was to protect the public interest in a more competitive marketplace.[30] In order to protect such public interest, it is essential not to disrupt the potential development of the competitive marketplace by allowing an electric utility to participate in a competitive market with unregulated businesses that are capable of providing the same services.

ETI incorrectly alleges that the Legislature, in Senate Bill 1202, permits vertically integrated electric utilities to participate in electric services that are also provided by competitive businesses.[31] Through Senate Bill 1202, an amendment was made to PURA which excepted someone who "owns or operates equipment used solely to provide electricity charging service" from the definition of "electric utility."[32] ETI's interpretation of Senate Bill 1202 is erroneous and does not consider the intent of the Legislature. As explained by Commission Staff, the intent of the Legislature was to provide regulatory clarity to the competitive providers of electric charging services in order to help facilitate the development of and competition of EV charging stations for

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[29] AACE's Initial Brief at 4, citing ETI Ex. 53 at Bates 14.

[30] AACE's Initial Brief at 4, citing Public Utility Regulatory Act, Tex. Util. Code Ann. § 31.001(c) (PURA).

[31] ETI's Initial Brief at 3-4.

[32] Tex. S.B. 1202, 87th Leg., R.S. (Mar. 19, 2021); PURA § 31.002(17).

customers.[33] This amendment enables new unregulated businesses to participate in the competitive market of EV charging without the concern of being labeled, and therefore regulated, as an "electric utility."

Governor Abbott has made it clear that the development of TE infrastructure throughout Texas is a priority in order to ensure every Texan has access to EV charging infrastructure.[34] Allowing a monopoly, like an electric utility, to compete in the EV charging station market would hinder the competitive market which is contrary to Texas' policy in prioritizing TE infrastructure development. As explained above, an electric utility participating in a competitive market with businesses would force site hosts to compete on an uneven playing field. This would disincentivize businesses from participating and investing in TE infrastructure, hindering the EV charging station market and development of TE infrastructure, and undermining Texas' goal of increased development of TE infrastructure.

2. There is No Need for a Monopoly to Participate in a Competitive Market When There Has Not Been a Failure by the Competitive Market to Provide Reasonable and Adequate Service

It is premature for an electric utility to participate in the EV charging market due to an alleged lack of ability by unregulated businesses to provide reasonable and adequate service. As stated by Mr. William Abbott, testifying on behalf of Commission Staff, "the fundamental basis for authorization of 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."[35] This notion is derived from PURA, which declares that the purpose of PURA is to "establish a comprehensive and adequate regulatory system for public utilities to assure . . . services that are just and reasonable to the consumers and to the utilities."[36] The market for EV charging is still in its early stages. The EV market is also expected to increase rapidly.[37] Therefore,

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[33] Commission Staff's Initial Brief on Issues 68 and 69 at 6 (Jan. 13, 2023) (Commission Staff's Initial Brief).

[34] SPS's Initial Brief at 6.

[35] Staff Ex. 4 at Bates 8.

[36] PURA § 11.002(a).

[37] FlashParking's Initial Brief at Bates 9.

it would be premature and incorrect to claim that the competitive market alone is unable to provide reasonable and adequate service.[38]

Further, in looking at the current circumstances, it is apparent that unregulated businesses have the ability to provide reasonable and adequate EV charging services. As proposed in ETI's TECI Rider, the site hosts who partake in the TECI Rider have the ability to choose the charging equipment and network service providers from a list of prequalified vendors.[39] Third parties providing such services on behalf of ETI indicates the ability of the competitive market to meet such TE infrastructure and EV charging equipment needs.[40] Moreover, as EV penetration in Texas increases, the state and federal governments are responding by establishing plans and increasing funds to provide reasonable and adequate service in Texas, including in the rural and low/moderate income counties. On the state and national level, the Texas Department of Transportation released a new EV infrastructure deployment plan in an effort to leverage funds that will be available in 2023 under the Infrastructure and Jobs Act and establishes a framework that creates a statewide EV charging network.[41] The framework complies with the National Electric Vehicle Infrastructure (NEVI) formula program, which is in place to provide national funding to states to strategically deploy EV charging stations and establish an interconnected EV network.[42]

As noted by SPS, Texas has shown its strong support for EVs by implementing policies such as the Light-Duty Motor Vehicle Purchase or Lease Incentive Program through the Texas Commission on Environmental Quality (TCEQ), which offers tax credits to incentivize the purchase of and lease of EVs; grants administered by the TCEQ for EV fleets, school buses, vehicles and infrastructure; and the 2022 Inflation Reduction Act, which aimed to lower the sticker price of EVs by providing tax credits to new owners of EVs.[43] The implementation of these policies and programs supports the growth of TE infrastructure and EVs in Texas. However, these programs should not be used as a justification for electric utility ownership of EV charging stations

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[38] Commission Staff's Initial Brief at 1.

[39] ETI's Initial Brief at 12-13.

[40] Commission Staff's Initial Brief at 3.

[41] AACE's Initial Brief at 6.

[42] National Electric Vehicle Infrastructure (NEVI) Formula program, U.S. Department of Energy https://afdc.energy.gov/laws/12744.

[43] SPS's Initial Brief at 7.

ordinarily provided by unregulated businesses. Instead, these programs should be used as justification for the integral roles electric utilities can and should play in investing in make-ready EV charging infrastructure to help support the growth of TE infrastructure in furtherance of the programs and policies already in place in Texas.

In order to properly and efficiently implement these policies and programs, it is critical for stakeholders to focus on their core competencies. The most efficient, cost-effective path to a statewide network of EV charging stations is a make-ready model which would allow retailers and electric utilities to work in partnership while focusing on their specific area of expertise. A regulatory policy that incentivizes this partnership structure will encourage consumers to adopt EV more quickly. This structure makes it possible for retailers and other unregulated businesses that compete on price and services to be in a better position to own and operate EV charging stations.

For the foregoing reasons, AACE contends it would be premature, inappropriate, and non-compliant with PURA and other policies for an electric utility to compete in a competitive market, and therefore, the TECI Rider as proposed by ETI should be denied.

III. PRELIMINARY ORDER ISSUE NO. 69

Preliminary Order Issue No. 69 asks 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 whether such ownership should be wholly left to customers or third parties. AACE maintains that ETI should not be allowed to own EV charging stations as proposed in the TECI Rider.[44] 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, the denial of the TECI Rider is appropriate because of the precedent that would be established, allowing 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 as currently proposed by ETI. 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 the Rider should

[44] AACE's Initial Brief at 6.

not be distributed to ratepayers through ETI's rate base. Although ETI claims that recovering costs from the site host who opt to partake in the Rider would ensure costs associated with ETI investment will only be charged to those customers and not non-participating ratepayers,[45] market distortion still occurs since utilities are able to invest risk free. AACE does not support a cost recovery method that would inject distorting forces into the market.

ETI claims the TECI Rider is functionally equivalent to ETI's earlier Commission-approved ALS and AFC Riders.[46] AACE maintains that it is illogical and inappropriate to compare the ALS and AFC Riders to ETI's proposed TECI Rider.[47] The focus of the comparison made by ETI is on the cost recovery and function of these Riders.[48] However, the question that has been raised in Preliminary Order Issue Nos. 68 and 69 relating to the TECI Rider does not concern the manner of cost recovery, but instead concerns utility ownership of TE related infrastructure and facilities. Therefore, the comparison of the ALS and AFC Riders to the proposed TECI Rider is unjustified.

The infrastructure and charging equipment service that ETI proposes to provide is analogous to turn-key installations already provided by competitive service providers.[49] ETI claims its TECI Rider in no way "hinder[s] solutions the market could otherwise provide or compete[s] with private entities that desire to offer charging to the public for compensation."[50] However, under ETI's proposed TECI Rider, the providers that site hosts would be able to choose from will be placed on a pre-approved list.[51] Such a pre-approved list—one that is solely authored and approved by ETI—raises competitive concerns. ETI claims that vertically integrated electric utility ownership of EV charging facilities and other TE infrastructure "does not present a binary choice" between the utilities and competitive providers.[52] However, the pre-approved list proposed in the TECI Rider does exactly that. In deciding whether or not to participate in the

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[45] ETI's Initial Brief at 16.

[46] *Id.*

[47] AACE's Initial Brief at 7.

[48] ETI's Initial Brief at 16-17.

[49] ChargePoint Ex. 1.0 at Bates 15.

[50] ETI's Initial Brief at 4.

[51] Commission Staff's Initial Brief at 7.

[52] ETI's Initial Brief at 7.

TECI Rider, the site host is having to make the choice of choosing to work with an electric utility and whichever provider the electric utility allows to provide service, or exploring which competitive providers would be best equipped for their needs. As proposed, the TECI Rider hinders the EV charging market by allowing a monopoly to compete with other competitive service providers, and also limits the vendors that site hosts are able to choose from in the pre-approved list, creating a lack of diversity, which in turn hinders the competitive market.

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

AACE maintains its position that the TECDA Rider should be approved to the extent that it could offer demand relief, something that would benefit site hosts.[53] Demand charges in the EV charging market tend to be high and uncertain due to the unique power needs of EV charging stations, which require high power capacity for charging but consume relatively low amounts of energy per charge. Such high demand charges increase a site host's monthly electric bill which results in profit reductions. High demand charges act as a barrier to the EV charging market by disincentivizing unregulated businesses who want to invest in EV charging stations. A limitation on demand charges, like the TECDA Rider proposes, would be a positive step for the competitive EV charging market in Texas and encourages investments in EV charging stations by unregulated businesses, which would allow for the proliferation of EVs in Texas.

As proposed, 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%.[54] Specifically, under the Rider, the amount of billing demand billed to the site host 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).[55] Although Commission Staff claims the Rider will actually cause an increase in electric bill uncertainty,[56] the Rider will actually create more predictable electric bills by adjusting the variability in utilization and load factors of EV charging stations. The application of the Rider

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[53] AACE's Initial Brief at 7.

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

[55] ETI Ex. 40 at Bates 29.

[56] Commission Staff's Initial Brief at 11.

will result in a lower, more certain monthly electricity bills because the customer avoids being billed for any demand that exceeds the limited demand charge amount.

As previously discussed in AACE's Initial Brief, the TECDA Rider should not be limited to five years because the sporadic, high demand charges could remain an issue even after five years.[57] As ETI asserts, the Rider is self-correcting because the site host bills would automatically adjust back to standard Rate Schedule GS rates if the stations utilization increased above the 15% monthly load factor floor, and thus is expected to "phase out" on its own in the next few years as EVs and EV charging stations increase.[58] As noted by ChargePoint, the self-correcting design of the Rider allows for site hosts with a load factor below 15% to continue to receive support, while site hosts with a more sufficient utilization (load factor being above 15%) will drop off of the Rider.[59] Therefore, it is unnecessary to have a five-year limitation period when the Rider itself is self-correcting and site hosts who may continue to have low load factors after five years can continue to receive relief from high demand charges. AACE believes the TECDA Rider is a reasonable effort to mitigate the inherent barrier caused by demand charges that is confronted by unregulated businesses interested in investing in and owning EV charging stations.

Implementation of the TECDA Rider would result in a net benefit to all customers, those who are participating in the TECDA Rider as well as non-participants.[60] Commission Staff and OPUC both raise concerns about costs from the TECDA Rider being shifting onto non-participating customers.[61] These concerns are invalid based on the results from the Ratepayer Impact Measure (RIM) test done by ETI.[62] The RIM test considers the incremental benefits of the utility's proposal and the costs associated with providing the service.[63] The results from the test indicated a lower rate requirement from all customers.[64] The Rider itself is self-correcting and sets limitations on the participating customers. It is a temporary solution, and as noted by Mr. Wilson

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[57] AACE's Initial Brief at 8.

[58] ETI's Initial Brief at 24.

[59] ChargePoint's Initial Brief at 13.

[60] ETI's Initial Brief at 24.

[61] Commission Staff's Initial Brief at 11; OPUC's Initial Brief at 6.

[62] ETI's Initial Brief at 24.

[63] *Id.*

[64] *Id.*

in the testimony of ChargePoint, the amount of participating customers will decrease over time, which will ensure that any potential impact on non-participating customers would be minimal.[65] Commission Staff and OPUC's concerns about costs being shifted onto non-participating customers is not a just reason to deny the TECDA Rider which, as shown by the RIM test, benefits all customers and would remove one barrier unregulated businesses face when entering the EV charging station market.

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

IV. CONCLUSION

For the reasons stated above, AACE re-urges the points made in its Initial Brief and respectfully requests that the Commission deny ETI's proposed TECI Rider and approve ETI's proposed TECDA Rider.

Respectfully submitted,

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[65] ChargePoint Ex. 1.0 at Bates 21.

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 27, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

JAMIE L. MAULDIN