Filing Receipt

Received - 2023-01-27 02:45:19 PM
Control Number - 53719
ItemNumber - 464

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

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

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

Courtney K. Hjältman
Chief Executive & Public Counsel
State Bar No. 24070294

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Justin Swearingen
Senior Assistant Public Counsel
State Bar No. 24096794
Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

January 27, 2023

TABLE OF CONTENTS

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

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

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

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 post-hearing reply brief on preliminary order issue numbers 68 and 69 and shows the following:[1]

I. Introduction

In its initial brief filed on January 13, 2023, Entergy Texas, Inc. ("ETI" or the "Company") continues to argue for two new riders pertaining to transportation electrification technology and related infrastructure and equipment.[2] The Transportation Electrification and Charging Infrastructure ("TECI") rider would allow ETI to plan, construct, own, operate, and maintain transportation electrification ("TE") related infrastructure and equipment on customer-owned property, and the Transportation Electrification and Charging Demand Adjustment ("TECDA") rider offers a payment option that purports to reduce electric bill uncertainty exclusively for non-

[1] Note: OPUC's Reply Brief follows the agreed briefing outline adopted by the parties, which only addresses PO issues numbers 68 and 69. The fact that OPUC does not address an issue whether here in its reply brief, or in its initial brief, should not be interpreted as agreement with any particular position on the issue.

[2] Entergy Texas, Inc. Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 (Jan. 13, 2023) ("ETI Initial Brief").

residential customers installing electric vehicle charging infrastructure and taking new separately metered electric service under Rate Schedule General Service ("GS").[3]

ETI continues to argue that these riders will advance the Texas legislature's initiatives regarding electric vehicles ("EV") and support the development of the infrastructure necessary to make TE services available in the Texas competitive market "in partnerships with, rather than crowding out, competitive TE infrastructure providers in a way that benefits all ETI customers."[4] Additionally, ETI dismisses OPUC's concern of under-recovered costs being borne or unduly cross-subsidized by ETI's non-participating customers by merely comparing the TECI rider to the Additional Facilities Charge ("AFC") Rider, Option B, as functionally equivalent, suggesting that its cost recovery method must therefore be sound and nondiscriminatory.[5] ETI also continues to assert that the TECDA rider is a "temporary" and "self-correcting" formula to provide non-residential Rate Schedule GS customers taking service under separately metered charging stations a more predictable electric bill each month and that "no costs associated with ETI's investment will be imposed on the Company's other customers."[6]

OPUC notes that ETI has yet to provide an estimate of the potential range of impacts the TECI and TECDA Riders could have on non-participating customers within the GS rate class, or any reasonable explanation as to the lack of limitations on the time period in which the TECDA Rider would be available. OPUC continues to take issue with each of these positions held by ETI and provides additional arguments herein to those already provided by OPUC in its post-hearing

---

[3] *Id.* at 8.

[4] *Id.* at 3.

[5] *Id.* at 5.

[6] *Id.*

initial brief. Finally, OPUC refutes ETI's argument that OPUC witness Mr. Evan Evans's recommendation that under-recovered demand revenues from the demand cap in the TECDA rider should not be borne by ETI's other customers is "misguided."[7]

II. Summary of Recommendations

OPUC recommends that the Administrative Law Judges ("ALJs") and the Public Utility Commission of Texas (the "Commission") reject ETI's TECI and TECDA riders as proposed. To the extent the Commission determines ETI's TECI and TECDA riders should be approved, OPUC recommends that ETI should be required to maintain separate accounting for all investment, depreciation expense, and other costs associated with the TECI program and promotion of that program for consideration in ETI's next base rate case. This will ensure that all costs are clearly identifiable, discernable, and separate to ensure that future recovery of any costs borne by non-participating customers are just and reasonable.[8] In addition, the Commission should ensure that no under-recovered revenues that result from the demand cap in the TECDA rider is recovered from other customers. Finally, all rate case expenses relative to the TECI Rider and the TECDA Rider be separated and not allocated to Residential Service and other customer classes for which these riders are not applicable.[9]

III. <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?

---

[7] ETI Initial Brief at 27.

[8] Direct Testimony of Evan D. Evans at 34:3-5.

[9] *Id.* at 34:5-8.

OPUC maintains its position that ownership of TE and charging infrastructure should be left to the competitive market. OPUC rejects ETI's notion that "*every single party* with a real-world stake in the development of the EV charging market" answered this question in the affirmative.[10] OPUC's view in this case does not have to mirror utilities and industrial stakeholder's view. OPUC is uniquely positioned by statute to advocate for residential and small commercial consumers. The interests OPUC seeks to protect in this case are those germane to cost impacts on residential and small commercial consumers. Of note, ChargePoint offered *conditional* support.[11] ChargePoint's witness, Justin D. Wilson, expressed that conditional support stating, "Yes, limited ownership of EV charging facilities may be appropriate provided certain conditions are in place.[12] Mr. Wilson also stated, "But certain checks and balances are necessary to prevent harm to the competitive market."[13]

Regarding ownership, OPUC is primarily concerned that ETI's or any other utility's ventures in competitive markets must not be subsidized by its regulated electric service customers and that regulated electric service customers are adequately compensated for use of customer information, systems, personnel, expenses, and investment for which the electric service customers bear the costs through their regulated rates.

IV. <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?

[10] *Id.* at 3.

[11] ChargePoint, Inc.'s Initial Brief at 3.

[12] Direct Testimony of Justin D. Wilson at 6:14 – 15.

[13] *Id.* at 6:16 – 17.

OPUC maintains its position that if ETI were allowed to own TE and charging infrastructure the way they have proposed under the TECI rider, ETI could effectively limit the competitive market and pass unnecessary costs to their nonparticipating customers. ETI argues that the TECI rider should be adopted because it is "functionally equivalent" to the Additional Facilities Charge ("AFC") Rider.[14] However, the AFC Rider works because the AFC Rider is associated with additional electric facilities required to provide regulated electric service to electric service customers. If the AFC Rider customer terminates the agreement, these additional facilities and equipment can be returned to materials and supplies or relocated elsewhere on ETI's system to provide electric service to other customers. Investment associated with ETI's TECI program is associated with TE infrastructure and charging systems that only serve TE customers and is not used to provide standard electric service to customers. Therefore, these facilities are not readily transferable to other service locations and the cost of any equipment associated with customers that terminate their service and default on their payments could be borne by regulated electric service customers. Accordingly, OPUC reiterates its concern that non-participating customers will bear the costs associated with ETI's TECI program.[15]

If the Commission determines it is appropriate for ETI to own make-ready TE infrastructure and charging equipment, OPUC again urges the Commission to 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

[14] ETI Initial Brief at 4.

[15] OPUC Initial Brief at 3.

equipment, or (3) unduly limit a TE site-host's ability to choose their preferred TE infrastructure and charging equipment.[16]

OPUC also recommends that appropriate allocations of ETI's overhead costs be assigned to the TECI program. The overhead costs assigned to TECI should include investment in general and intangible rate base, administrative and general expenses, wages and salaries, property insurance, property taxes, payroll taxes, and etc.[17] In addition, costs associated with ETI's activities to market these services, and the operation and maintenance expenses associated with TECI should be directly assigned to TECI.

These steps are necessary to 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 TE infrastructure and charging equipment.[18] In addition, OPUC restates its position that ETI should be required to maintain separate accounting for all investment, depreciation expense and other costs associated with the TECI program and promotion of that program for consideration in ETI's next base rate case.[19]

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

i. Extension Policy

OPUC refutes ETI's statement that Mr. Evans' testimony is "unreliable" and "irrelevant" concerning the issue of the extension provision contained in the TECI-1 tariff.[20] Mr. Evans

---

[16] *Id.* at 4.

[17] *Id.* at 5:13 – 18.

[18] *Id.* at 6:1 – 5.

[19] Direct Testimony and Workpapers of Evan D. Evans at 38.

[20] ETI Brief at 19.

identified a reference error in his calculations and Attachment EDE-9, and OPUC filed an errata that corrected Mr. Evans's testimony and Attachment EDE-9. ETI argues that Mr. Evans's calculation of distribution costs has no bearing on the recovery of distribution costs from the TECI rider customer and proposed credit for anticipated revenue associated with the extension provision. However, the analysis in Mr. Evans's Attachment EDE-9 (Errata) clearly shows that revenues from ETI's GS rate cannot support an extension policy equal to four times the expected annual base rate revenue from customers. Rather, the policy is able to support only 1.45 times the expected annual base rate revenue.[21] As Mr. Evans stated, "The analysis clearly shows that ETI's proposed GS rates only support a distribution rate base equal to 1.45 years of ETI's base revenues, which is significantly less than the four years anticipated base rate revenues that would be provided without charge pursuant to the TECI-1 Rider or ETI's current Extension Policy."[22]

Therefore, 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.[23]

OPUC's position continues to be that if a separate extension policy is included in the TECI Rider, 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

[21] Direct Testimony of Evan D. Evans, Attachment EDE-9 (Errata) at page 1 of 1.

[22] Direct Testimony of Evan D. Evans (Errata) at 30:18 – 22.

[23] *Id.* at 30:11 – 34:8.

TE charging infrastructure in excess of two years' anticipated annual base revenues.[24] However, since no other tariff has a separate line extension policy, the TECI Rider 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.

ii. Protection for Non-Participants

In its initial brief, ETI sought to respond to OPUC's recommendation that ETI maintain separate accounting for all TE-related investment, depreciation expense, and other costs associated with the TECI Program by identifying the FERC accounts into which the investment, depreciation expense and other expenses would be booked.[25] However, the accounts ETI identified are the general FERC accounts used for costs associated with providing regulated electric service.[26] The inclusion of TE-related costs into these FERC accounts would not permit parties and the Commission to later ensure that TECI revenues are sufficient to cover the associated costs and whether costs associated with the TECI program are being borne by non-participant customers. Unless ETI is required to separately account for all costs associated with the TECI program from the beginning, the parties and the Commission will not be able to "unscramble the egg" later so as to enable the Commission to properly ensure these costs are not being borne by non-participating customers. OPUC reiterates its position that ETI's proposed TECI Rider 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.[27] While ETI does attempt to address OPUC's

---

[24] *Id.*at 33:20 – 34:8.

[25] ETI Initial Brief at 20.

[26] *Id.*

[27] Direct Testimony of William Abbott at 9:13-16.

concerns regarding defaulting customers with explanations of how different costs will be assigned to different FERC accounts, it still fails to sufficiently show how undue cross subsidization would be avoided.[28]

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

In its initial brief, ETI states the following:

> Mr. Evans' recommendation that under-recovered demand revenues from the demand cap in the TECDA Rider should not be borne by other customers is misguided. It is inaccurate to characterize these revenues as "under-recovered," because the revenues from the TECDA Rider are incremental and would not exist absent the demand charge assistance provided by the Rider. In the same vein, Mr. Abbott's claim that "a greater penetration of EV charging stations taking service under the TECDA rider would result is greater subsidies paid for by other customers" is not true. As explained above, the expansion of EV charging stations will result in greater revenues, which in turn will decrease ETI's customers' rates. The [Ratepayer Impact Measure] test results further highlight the net benefits stemming from the TECDA Rider.[29]

However, such arguments have been routinely denied because utilities have been unable to prove their assertion that the additional revenues would not exist absent demand charge assistance and because they would contravene PURA § 36.007(d). In this case, ETI has provided no proof that these additional revenues "would not exist absent the demand charge assistance provided by the Rider." Also, the issue of whether or not the incremental revenues would exist absent this discounted rate continues to not be a consideration under PURA § 36.007(d). If the Legislature had intended to provide an exclusion to PURA § 36.007(d) for incremental revenues, they have had almost 28 years and 13 regular sessions since 1995 to modify that section of PURA.

---

[28] ETI Initial Brief at 20.

[29] *Id.* at27.

OPUC does not oppose ETI's claims that these TE customers will produce greater revenues. However, ETI's claims that the TECDA Rider results in net benefits to ETI's customers and will decrease ETI's customers' rates are unproven and ETI's customers should not bear the risk that those claims are proven false.

Furthermore, the concern that some EV chargers may have high demand and lower monthly energy usage leading to "high effective cost per kWh, where the total bill is divided by a relatively low volume of energy usage (kWh)"[30] does not warrant other customers subsidizing these customers. It is common for commercial and industrial customers to experience these conditions as they begin operations. However, ETI does not offer similar discount rates for all customers until their usage characteristics become mature. Furthermore, PURA does not contain any provision that would allow utilities to recover from other customers the under-recovered revenues associated with such discounts until their usage patterns mature.

C. **Rate Case Expenses Associated with the TECI and TECDA Riders**

It remains 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 customer classes for which these riders are not applicable. Residential Service and other non-participating customer classes will not benefit from these riders and should not bear the costs ETI incurs to seek their approval. Furthermore, 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 and promote greater participatory engagement from all four vertically-integrated,

[30] *Id.* at 5.

non-ERCOT investor-owned electric utilities and other interested parties and all associated issues could be more completely considered by all parties.

V. 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 ALJs 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,

Courtney Hjaltman
Chief Executive and Public Counsel
State Bar No.24070294

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Justin Swearingen
Senior Assistant Public Counsel
State Bar No. 24096794
Chris Ekoh
Senior Managing Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
renee.wiersema@opuc.texas.gov (Service)
justin.swearingen@opuc.texas.gov (Service)
chris.ekoh@opuc.texas.gov (Service)
opuc_eservice@opuc.texas.gov (Service)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

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 27th day of January, 2023, by facsimile, electronic mail, and/or first class, U.S. Mail.

Renee Wiersema