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

ENTERGY TEXAS, INC.'S REPLY BRIEF ADDRESSING PRELIMINARY ORDER ISSUE NOS. 68 AND 69

January 27, 2023

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I. Introduction/Summary

Entergy Texas, Inc. ("ETI") designed and developed the Transportation Electrification and Charging Infrastructure ("TECI") and the Transportation Electrification and Charging Demand Adjustment ("TECDA") Riders to address customers' needs, reduce barriers to investment in transportation electrification ("TE") infrastructure and equipment, and to promote the development of TE for the benefit of ETI customers, businesses, governmental entities, schools, and the environment. The Electric Reliability Council of Texas forecasts that there will be one million electric vehicles ("EVs") in Texas by 2028.[1] According to Electric Edison Institute's ("EEI") estimates, approximately 5,000 public DC fast chargers and more than 110,000 public Level 2 chargers would be needed to support these EVs, meaning that the current number of chargers would need to quadruple in three years.[2] Although there are government programs and funding available, they are insufficient to meet the expected exponential EV adoption growth.[3] As the record in this case reflects, there is broad support for both the ability of vertically integrated utilities to own TE infrastructure, and for ETI's TECI and TECDA proposals in particular. The limited opposition on these issues revolves around misplaced concerns with utilities providing a "competitive service" and/or subsidization among utility customers, neither of which are valid.

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[1] Direct Testimony of Jeremiah W. Cunningham, SPS Ex. 1, Attachment JWC-3 at 22 (Bates 58).

[2] Rebuttal Testimony of Samantha F. Hill, ETI Ex. 53, Exhibit SFH-R-1 at 3.

[3] *Id.*

Vertically integrated utility ownership of TE infrastructure and equipment would not hinder participation or the development of the competitive market as Commission Staff, Office of Public Utility Counsel ("OPUC"), and Americans for Affordable Clean Energy ("AACE") allege. Rather, as evidenced by FlashParking Inc.'s ("FlashParking") and ChargePoint Inc.'s ("ChargePoint") support of ETI's TECI Rider, ownership of TE infrastructure and equipment by electric utilities in vertically integrated areas would *foster and advance* the competitive market. Nor would implementation of ETI's TECI and TECDA proposals result in subsidization among utility customers. The positions taken by Commission Staff and OPUC exhibit a disappointing resistance to new and innovative proposals designed to meet the needs of customers and support the policy of expanding TE infrastructure in Texas. While ETI responds to issues raised in opposing parties' Initial Briefs below, ETI has also thoroughly addressed these concerns through its testimony, exhibits, and prior briefing.

Through the TECI Rider, ETI is planning to rely on, not crowd out, third-party competitive providers. Electric Vehicle Supply Equipment ("EVSE") original equipment manufacturers and Electric Vehicle Supply Providers ("EVSPs") will provide and maintain the charging station equipment and software.[4] ETI also plans to contract with licensed, local third-party TE installers to install the chargers within ETI's service territory,[5] and ETI anticipates contracting with third parties to provide preventative maintenance activities, ongoing monitoring, and other related services.[6] Taken together, ETI's plans to collaborate and partner with competitive providers for the TE equipment and associated installation and maintenance services demonstrates that ETI's mere ownership of EV chargers themselves will not harm or put competitive providers out of business. Instead, ETI's proposal promotes third-party businesses and the competitive market as a whole to meet the needs of Texans and reduce "range anxiety."[7]

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[4] Direct Testimony, Exhibits, and Workpapers of Samantha F. Hill, ETI Ex. 40 at 24-26 (Bates);ETI Ex. 53 at 12, n.25 (Bates).

[5] ETI Ex. 40 at 25.

[6] *Id.* at 21.

[7] ETI Ex. 53 at 26 and Exhibit SFH-R-1 at 3 ("A decision to limit the scope of the current or future programs proposed by Entergy now in favor or a more limited model of electric company investment in electric transportation may unintentionally and unnecessarily delay the market's growth.").

The TECDA Rider is a temporary, self-correcting measure with limited availability intended to provide demand charge relief, a known impediment to TE investment, during the early adoption period. It is meant to entice additional TE investment from ETI customers, leading to incremental revenues, which will be treated as an offset against ETI's overall revenue requirement and which ultimately are expected to lower rates for ETI's other customers. As discussed in ETI's Initial Brief, the results from the Ratepayer Impact Measure ("RIM") test showed positive net benefits across all scenarios.[8]

The expansion of TE infrastructure, through contributions from both the competitive market and regulated industry, is an important policy objective of the State of Texas. This is clear from Governor Greg Abbott's March 22, 2022 directive to the Texas Department of Transportation ("TxDOT"), which called for a plan to "ensure that every Texan can access the infrastructure they need to charge an [electric vehicle ("EV")] . . . and . . . easily get from Beaumont to El Paso and Texline to Brownsville in an EV—with a focus on rural placement and connectivity."[9] EEI, which represents all U.S. investor-owned electric utilities, recognized utility ownership as an important aspect of expanding EV access to all areas:

> As a matter of policy, electric companies should not be prohibited from owning charging infrastructure. Doing so would eliminate any potential for electric companies to provide necessary investments for their customers and would severely restrict the potential for proliferation of EVs in Texas, particularly in underserved and unserved areas with low rates of EV adoption such as rural communities that have not attracted private investment from third-party charging providers. EVgo, the largest provider of open-network public fast charging in the U.S., explicitly recommends electric company ownership of charging infrastructure in these areas as part of its best practices for EV market development.[10]

Just as the Governor made it a priority to expand high-speed internet access to rural communities during the 87th legislative session, resulting in the passage of House Bill 5,[11] the

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[8] Entergy Texas, Inc.'s Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 at 24-25 (Jan. 13, 2023) ("ETI Initial Brief").

[9] SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

[10] ETI Ex. 53, Exhibit SFH-R-1 at 3.

[11] Increasing broadband access throughout Texas was one of only eight Emergency Items that Governor Abbott declared for the 87th Legislature. *See* https:senate.texas.gov/members/d03/press/en/p20210615a.pdf

Governor has now made it a priority to expand TE infrastructure and equipment across the state and especially in the rural communities of Texas.[12] The Texas Legislature recently recognized the increased EV adoptions rates and the resulting needs for charging stations across Texas.[13] Permitting vertically integrated utilities to own TE infrastructure and equipment is consistent with the Governor's and Legislature's intent to expand EV charging access.

Remarkably, Commission Staff interprets the Governor's directive and the resulting TxDOT EV Infrastructure Plan, which of course has its own set of provisions and requirements, as somehow precluding or discouraging other measures, like ETI's proposed TE tariffs, that serve the same policy.[14] It would be an absurd result for the Governor's directive and the resulting TxDOT plan—designed to advance the deployment of adequate TE infrastructure—to be used to undermine other complementary solutions supporting the very same policy. Commission Staff's position unnecessarily constricts investment in TE infrastructure, while ETI's proposals seek to expand such investment to ensure that no Texan is stranded or left behind. EEI frames the issue clearly: "[t]he possibility of electric company ownership of charging infrastructure in no way prohibits third parties from owning and operating public charging, but prohibiting electric company ownership would exclude companies with proven, long-standing expertise in the deployment of electric infrastructure from helping support the nascent charging market."[15]

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?

The parties that participate in or seek to contribute to the development of the EV charging market—FlashParking, ChargePoint, Southwestern Public Service Company ("SPS"), El Paso

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[12] Cross-Rebuttal Testimony of Jeremiah W. Cunningham, SPS Ex. 2 at 17 ("[C]urrently, 128 counties or approximately 50% of the state do not have publicly accessible EV charging infrastructure available. 124 of those 128 counties are located in rural areas such as SPS's service territory.").

[13] Senate Research Center, Bill Analysis, Tex. S.B. 1202, 87th Leg., R.S. (Mar. 19, 2021).

[14] Commission Staff's Initial Brief on Issues 68 and 69 at 4 (Jan. 13, 2023) ("Commission Staff Initial Brief").

[15] ETI Ex. 53 at SFH-R-1 at 3-4.

Electric Company, and ETI—all answered Preliminary Order Issue No. 68 in the affirmative.[16] Commission Staff and OPUC oppose ownership of TE infrastructure and equipment by vertically integrated utilities outright.[17] AACE supports utility ownership of make-ready EV charging infrastructure, but not EV charging stations.[18]

The parties opposing electric utility ownership: (1) ignore the market barriers ETI seeks to address through its TECI and TECDA Riders; (2) advance a new and unsupported test for vertically integrated utilities to satisfy if their proposals are to be adopted; and (3) present the administrative law judges and Commission with a false choice between TE infrastructure ownership exercised exclusively by vertically integrated utilities or exclusively by competitive providers. First, as reflected by Governor Abbott's directive to TxDOT and supported by the record evidence, TE infrastructure in Texas needs to expand beyond what the market has provided, but there are currently market barriers hindering that expansion. Second, as discussed below, there is no applicable statutory or other basis for the new test Commission Staff attempts to impose in this docket—that is, "[w]here 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."[19] ETI and the other vertically integrated utilities with a PURA[20] Chapter 39 carve-out are not subject to the Competitive Energy Services ("CES") Rule (which prohibits applicable utilities from providing CES).[21] Third, the

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[16] FlashParking Inc.'s Initial Brief at 4 (Jan. 13, 2023) ("FlashParking Initial Brief"); ChargePoint Inc.'s Initial Brief at 17 (Jan. 13, 2023) ("ChargePoint Initial Brief"); SPS Initial Brief at 1; El Paso Electric Company's Statement of Position at 1 (Oct. 26, 2022).

[17] Commission Staff Initial Brief at 2; Office of Public Utility Counsel's Post-Hearing Initial Brief on Preliminary Order Issues Nos. 68 and 69 at 2 (Jan. 13, 2023) ("OPUC Initial Brief").

[18] Americans for Affordable Clean Energy's Initial Brief at 2 (Jan. 13, 2023) ("AACE Initial Brief").

[19] Commission Staff Initial Brief at 3.

[20] Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (2021) ("PURA").

[21] Enacted in 1999 as part of Senate Bill 7 (transition to competition), PURA § 39.051(a) provides, "On or before September 1, 2000, each electric utility shall separate from its regulated utility activities its customer energy services business activities that are otherwise also already widely available in the competitive market." The Commission's CES Rule (first adopted in 2000), which implements that provision, provides, "An electric utility shall not provide [CES], except for the administration of energy efficiency programs…" Because ETI is an "electric utility" under PURA § 31.002(6), the CES Rule, on its face, would appear to apply to ETI and other vertically integrated utilities. However, on June 18, 2005 (six years after the enactment of PURA § 39.051), the Texas Legislature enacted PURA Ch. 39, Subchapter J in order to expressly carve out ETI (then EGSI) from the transition

Commission is not being presented with a choice between utility and competitive provider ownership. Notwithstanding the implication by Commission Staff, ETI is not proposing "to operate as an exclusive monopoly service provider"[22] of the TE-related services covered by its TECI Rider. To the contrary, participation in the TECI Rider would be completely voluntary and customers would remain free to ignore the option and address their TE needs through any option provided by the market, either now or in the future. For all the reasons explained here and in ETI's Initial Brief, as well as in the testimonies and briefing of SPS, ChargePoint, and FlashParking, vertically integrated utilities should be able to partner with competitive providers and own TE infrastructure and equipment in addition to competitive providers.

The evidence shows that ownership of TE infrastructure and equipment by electric utilities in vertically integrated areas helps the competitive market.[23] Commission Staff and AACE lodge academic arguments regarding the differences between monopolies and unregulated competitive firms, in an attempt to paint a grim picture of the *potential* harm to competitive providers or the *possibility* of an uneven playing field. But the fact that the two competitive providers that intervened in this case—FlashParking and ChargePoint—both support ownership of TE infrastructure and equipment by vertically integrated utilities like ETI is powerful evidence that Commission Staff's and AACE's concerns are unfounded.[24] Also

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to competition provisions in Chapter 39, including PURA § 39.051 from which the CES Rule emanates. In 2011, the Commission found the CES Rule did not apply to Southwestern Electric Power Company because, like ETI, it was carved out from the transition to competition provisions in Chapter 39 (by Subchapter K). *Petition of Southwestern Electric Power Company to Remove Grandfathering Restrictions of Lighting Tariffs*, Docket No. 39400, Order on Appeal of Order No. 6 at 1 (Sept. 22, 2011) ("the enactment of PURA §§ 39.501-.503 [*i.e.*, Subchapter K] supersedes P.U.C. Subst. R. 25.343 as applied to SWEPCO. Therefore, P.U.C. Subst. R. 25.343 does not apply to SWEPCO at this time").

[22] Commission Staff Brief at 3.

[23] ETI Ex. 40 at 24-26; ETI Ex. 53, Exhibit SFH-R-1 at 5 (Bates 55) (Edison Electric Institute letter dated Nov. 15, 2022) ("As Texas works to implement policies that support greater deployment of EVs and grow the market for all participants, electric companies should not only be permitted to participate in this space but should also be given an important role in designing and implementing programs that best meet the needs of all customers while helping to integrate EV charging into the grid in a cost-effective manner"); Alliance for Transportation Electrification ("ATE") Comments at 2 (Nov. 18, 2022) ("And perhaps most importantly early utility investment can help kickstart the market leading to more EVs on the road and better economics for private investment. In other words, we believe that a rising tide lifts all boats."); Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint Ex. 4.0 at 8.

[24] FlashParking Initial Brief at 4; ChargePoint Initial Brief at 17.

compelling is the evidence in the record of industry associations supporting utility ownership of TE infrastructure and equipment.[25]

In opposing ownership of TE infrastructure and equipment by vertically integrated utilities, Commission Staff and OPUC rely on Commission Staff witness William Abbott's assertion that "[t]he fundamental basis for the 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."[26] Thus, the key premise for Commission Staff's position is that ETI must prove that the competitive market is not providing adequate service and that ETI's proposal is required to achieve adequate service. Mr. Abbott claims his basis for this recommendation is PURA § 11.002 and 16 Texas Administrative Code ("TAC") § 25.1. However, those provisions do not set forth a test like the one proposed by Mr. Abbott.[27] And, as explained above, the Commission has ruled that the statute (PURA § 39.051) and related rule (16 TAC § 25.343) prohibiting utilities from providing CES do not apply to vertically integrated utilities with PURA Ch. 39 carve-outs, such as ETI. Nevertheless, even if that prohibition *did* apply in general (which it does not), TE infrastructure is not "already widely available in the competitive market,"[28] and thus the general prohibition against the provision of this competitive service would not apply anyway.

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[25] ETI Ex. 53, Exhibit SFH-R-1 at 2 (Bates 52); *see* ATE Comments at 2 (Nov. 18, 2022) ("ATE strongly believes that regulated utilities should be permitted and even encouraged to own and operate both the electrical infrastructure to the charging station (make-ready) as well as the actual EVSE as requested by the customer. . . utilities, particularly in these nascent stages of market development when public-facing stations are needed to reduce range anxiety of potential EV owners, should focus on filling gaps when the private non-utility charging market is not sufficient.").

[26] Direct Testimony of William B. Abbott, Staff Ex. 4 at 8.

[27] *See* PURA § 11.002 and 16 TAC § 25.1.

[28] PURA § 39.051(a). *See* ETI Ex. 40 at 6-8, 17 ("Per The Economist, although today many EV owners can plug their cars into their home or place of work to fully charge, by 2040 around 60% of all charging will need to take place away from home, requiring a vast public network of charging stations."); ETI Ex. 53 at Exhibit SFH-R-1 at 3 (cautioning that prohibition of ownership by vertically integrated utilities would "severely restrict the potential for proliferation of EVs in Texas, particularly in underserved and unserved areas with low rates of EV adoption such as rural communities that have not attracted private investment from third-party charging providers."); SPS Ex. 1 at 8-9, 13-21; SPS Ex. 2 at 17-20 ("Given that the competitive market on its own has failed to serve a substantial part of the state, utility participation will clearly help to address gaps in the market."); ChargePoint Ex. 1.0 at 18; ChargePoint Ex. 4.0 at 8-9.

The primary objective in construing a statute is to determine and give effect to the Legislature's intent.[29] Administrative rules are interpreted like statutes under traditional statutory construction principles.[30] Under Texas law, courts "generally avoid construing individual provisions of a statute in isolation from the statute as a whole."[31] Therefore, PURA should be interpreted holistically and "interpreted to give effect to every part."[32] When considered in this manner, PURA § 11.002 and 16 TAC § 25.1 should be read to be consistent with the Legislature's intent for ETI to continue to provide generation, transmission, distribution, and retail service.[33]

In its Initial Brief, ETI discussed how generation was historically within the province of monopoly providers, but today includes several competitive generation providers, including at the customer level.[34] Mr. Abbott's proposal suggests that ETI should be barred from participating in the generation market due to the presence of competitive providers, which is inconsistent with the Legislature's intent for ETI to continue to provide generation.[35] Commission Staff attempts to distinguish ETI's generation example by claiming that electric generation was broadened from the sole hands of monopoly providers to include many competitive providers, while vertically integrated utilities are just now attempting to enter the competitive market relating to TE infrastructure and equipment. But this is a distinction without a difference. The generation example demonstrates that Mr. Abbott's mutually exclusive test is impractical and inconsistent with the Legislature's intent.

While use of Mr. Abbott's test is not supported by PURA or the Commission rules, the key inquiry of that test (whether or not reasonable and adequate service can be provided by

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[29] *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011).

[30] *Id.* at 438.

[31] *R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011) (cert. denied).

[32] *Id.*

[33] PURA §§ 39.452(a), (d), (i).

[34] ETI Initial Brief at 14.

[35] *Id.*

competitive providers)[36] actually militates in favor of vertically integrated utility ownership of TE infrastructure and equipment. Commission Staff attempts to circumvent or downplay the evidence that shows the critical role electric utilities play in the development of TE infrastructure and equipment. For example, Commission Staff asserts, "the fact that ETI's proposal will rely on third parties to install and maintain the [TE] infrastructure is at least some indication that the market is currently capable of providing reasonable and adequate transportation electrification and charging services…"[37] To the contrary, the fact that such third-parties exist, yet TE infrastructure *remains lacking*, demonstrates a need for additional solutions to overcome market barriers. It also unclear how Commission Staff squares this apparent belief that the market is already capable of providing adequate service with the Governor's directive that a TxDOT plan is needed to achieve such adequate service.[38]

Commission Staff also asserts "it is premature to assume that implementation of [TxDOT's] 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."[39] But ETI's proposal is not an attempt to participate in TxDOT's plan. And whether or not something is *required* for TxDOT to achieve its charge is not a basis to preclude proposals such as ETI's that support the same statewide policy. In light of the evidence in this case and the Governor's and Legislature's goal of promoting EV charging infrastructure throughout the state, the Commission should not adopt Commission Staff's wait-and-see approach that would leave Texans in underserved and underdeveloped markets, including rural markets, without access to EV charging infrastructure and equipment. As a utility, ETI has an obligation to ensure reliability, affordability, and accessibility for all of its customers—today and in the future—as the Company works to meet their electrification needs.

Finally, Commission Staff attempts to twist statements made by ChargePoint witness Mr. Wilson in his direct testimony in an effort to discredit him or suggest ETI was non-responsive to

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[36] Commission Staff Initial Brief at 3.

[37] Commission Staff Initial Brief at 3.

[38] SPS Ex. 1, Attachment JWC-2 at 1.

[39] Commission Staff Initial Brief at 4 (emphasis added).

his arguments. But, Commission Staff merely takes Mr. Wilson's statements out of context and disregards his conclusions. First, while it is true that Mr. Wilson represented that "utilities are regulated monopolies that… *can* recover all or a portion of the cost of providing EV charging stations and infrastructure from their ratepayers," Mr. Wilson's statement does not reflect ETI's proposed cost recovery of TE investment and operation and maintenance ("O&M") costs from voluntary, participating TECI Rider customers.[40] Second, as Commission Staff recognized, ETI alleviated ChargePoint's sole source procurement concern, because site hosts may select their preferred EV charging equipment vendors and network service providers from a pre-qualified list.[41] Third, Commission Staff ignores that Mr. Wilson's comparisons of ETI's TECI Rider proposal to turn-key installation services and financing offers by competitive providers was immediately followed by ChargePoint's support of ETI's TECI Rider.[42] To the extent the testimony was muddied, ChargePoint summarized its conclusion in several places: "[w]ith respect to Issue 68, the Commission should find that it is appropriate for utilities to own make-ready infrastructure to support EV chargers. The Commission should also find that it is appropriate for utilities to have limited ownership of EV chargers, provided that site hosts may choose their preferred EV charging equipment and network service provider and have the ability to set pricing to EV drivers."[43]

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?

A. TECI Rider

For the reasons provided in ETI's Initial Brief and above, ETI should be permitted to own TE infrastructure and equipment under the TECI Rider where the participating customer makes

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[40] ETI Ex. 40 at 18-22; ETI Ex. 53 at 18-20.

[41] ETI Ex. 53 at 27.

[42] Direct Testimony of Justin D. Wilson, ChargePoint Ex. 1.0 at 15 ("Q. Does ChargePoint support ETI's proposal? A: Yes, generally.").

[43] ChargePoint Ex. 1.0 at 5, 25; ChargePoint Ex. 4.0 at 2-3, 14; ChargePoint Initial Brief at 17.

that election. This Rider is completely voluntary to ETI's General Service ("GS") customers, is offered in addition to any other solution offered by the market, and allows customer optionality in terms of the level of ETI's investment as well as the selection of the TE infrastructure and equipment. Only Commission Staff, OPUC, and AACE oppose adoption of the proposed TECI Rider outright. Recognizing that ETI's TECI Rider is competitively neutral and allows the customer or site host the flexibility to select their providers according to their needs and preferences, both FlashParking and ChargePoint recommend Commission approval of the Rider, although with minor alterations discussed below.[44]

i. The TECI Rider is not preferential or discriminatory.

Commission Staff and OPUC attempt to characterize the TECI Rider as unreasonably preferential and discriminatory in the event costs and revenues do not match up or a customer defaults.[45] Their arguments against adoption of the TECI Rider fall into three main categories: (1) risk of default by TECI customers; (2) potential mismatches between the costs and revenues under the TECI Rider; and (3) lack of customer-specific data. Not only do these concerns fail to take into account the record evidence of how the TECI rider will operate, they could be raised regarding any of ETI's Commission-approved tariffs. AACE opposes the TECI Rider for policy reasons, and joins OPUC in suggesting that ETI should maintain the TE-related costs in separate accounts to ensure the costs are not distributed to ETI's ratepayers through rate base.

First, the possible risk of default is an inherent risk of providing electric service and is not unique to customers seeking TE infrastructure and equipment.[46] OPUC's claim that "there is no discussion or evidence to show what safeguards are in place for non-participating customers when a participating customer defaults."[47] is contrary to the record evidence. In fact, ETI has policies and procedures in place to mitigate the risk of non-payment by a customer to the extent

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[44] FlashParking Initial Brief at 8-9; ChargePoint Initial Brief at 8-11.

[45] Commission Staff Initial Brief at 9; OPUC Initial Brief at 5.

[46] ETI Ex. 53 at 20; SPS Ex. 2 at 14.

[47] OPUC Initial Brief at 5.

practicable. Such practices include: (1) imposing certain eligibility requirements to participate in the TECI Rider; (2) including certain terms and conditions in the Customer Agreement between the participating customer and ETI; (3) ETI's right to remove and salvage the equipment it owns; (4) imposing a lump sum payment in the event of termination by the participating customer before the end of the initial term; (5) ETI's ability to retain the financial security, if applicable; and (6) the collection process.[48] Commission Staff's and OPUC's arguments regarding the risk of default are pretextual.

Next, similar to ETI's Commission-approved Additional Facilities Charge ("AFC") Rider, Option B and Area Lighting Service ("ALS") Rider, the TECI Rider is designed to recover the costs incurred by ETI for the equipment, installation, and on-going O&M through the fixed payment included in the participating customer's monthly electric bill.[49] This ensures that the costs associated with the TECI Rider are borne by the participating customers that voluntarily elect to enroll in accordance with cost causation principles. The payments are structured so that ETI will fully recover the costs to install the infrastructure from the participating customer by the end of the customer-selected term between one year and ten years (the "Recovery Term").[50] The net monthly payments collected under the Rider will be treated as an offset against ETI's overall revenue requirement, which benefits ETI's other customers.[51]

Because the TECI Rider is based on similar offerings and processes as the AFC Rider and ALS Rider, it will not be difficult to evaluate the costs and revenues associated with the TECI Rider.[52] Therefore, separate accounting for all investment, depreciation, and other related costs under the TECI program, as suggested by OPUC and AACE, are not necessary.[53] In any event, the Commission has the authority and tools to ensure that rates remain equitable and reflect cost causation, and can make adjustments in the next rate case if necessary.

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[48] ETI Ex. 53 at 20-21.

[49] ETI Ex. 40 at 11.

[50] ETI Ex. 53 at 19.

[51] *Id.*

[52] *Id.* at 17-18.

[53] OPUC Initial Brief at 4-5; AACE Initial Brief at 6.

OPUC's own recommendations conflict with each other. OPUC asserts that: (1) the TECI Rider should reflect ETI's approved Electric Extension Policy (which has a four-year revenue justification period); and (2) customers should be required to reimburse the Company for the cost of the TE infrastructure and equipment in excess of *two* years' anticipated annual base revenues instead of ETI's proposed four years' anticipated annual base revenues.[54] Consistent with the first of OPUC's recommendations, based on ETI's Electric Extension Policy, and the evidence in the record, it is reasonable and appropriate to apply the same four to one investment to revenue ratio to TE customers that is applied to all other customers.[55] As explained in Ms. Hill's rebuttal testimony, when the ratio is not met, the applicant is required to pay the Company the difference between the estimated investment and the anticipated four-year revenue.[56] Moreover, the revenue generated after the first four years through the expected 10-year life of the TE infrastructure and equipment will offset the costs of ETI's investment and ultimately benefit all ETI customers.[57] It is fair and appropriate to apply the same extension of service policy to TECI customers as is applied to ETI's other customers.

Finally, while Commission Staff recognizes that a rider may be tailored to individual customers, it raises concerns with the TECI Rider based on the fact that customer-specific data is not available at this time.[58] In doing so, Staff presents a Catch-22—obviously, ETI cannot provide historical costs and revenues associated with a proposed rider it is seeking Commission approval to implement in the first place. In addition, the fact that ETI's TECI Rider is functionally equivalent to the Commission-approved AFC Rider, Option B and ALS Rider demonstrate that the cost recovery design is sound and nondiscriminatory. Indeed, like the proposed TECI Rider, the AFC Rider is customized to the particular customer's facility needs, which facilities are then paid for directly by the requesting customer over their selected Recovery Term.[59] Commission Staff's assertions that the similarities between these Commission-approved

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[54] OPUC Initial Brief at 5.

[55] ETI Ex. 53 at 23-24.

[56] *Id.* at 24.

[57] *Id.*

[58] Commission Staff Initial Brief at 9.

[59] ETI Ex. 40 at 14-15, 19; ETI Ex. 53 at 15-18.

riders and the proposed TECI Rider should be disregarded simply because Commission Staff has not been able to "sufficiently evaluate for *potential* undue cross-subsidization or other form of discriminatory or preferential treatment" should be rejected.[60]

The TECI Rider facilitates investment in TE infrastructure and equipment through competitively neutral means for the benefit of ETI customers, TE competitive providers, and the competitive market overall. The TECI Rider should be approved.

ii. The proposed modifications to the TECI Rider are unnecessary.

ChargePoint supports Commission approval of the TECI Rider on the condition that ETI allows participating site hosts to choose their preferred charging equipment and network services provider from a list of prequalified vendors,[61] which is consistent with ETI's proposal.[62] Recognizing the Rider as competitively neutral, FlashParking also recommends approval of the tariff, but suggests that the Commission order ETI to inform customers interested in the TECI Rider that there are competitive providers available and to eliminate the pre-approved list requirement.[63] Participation in the TECI Rider is completely voluntary—customers may elect to participate or they may choose to invest in the TE infrastructure and equipment themselves, where ETI's role is limited to providing electric service.[64] The pre-qualified list is important, however, to ensure the vendors can meet the appropriate technical requirements.[65] Because ChargePoint's and FlashParking's recommendations are superfluous, they should not be adopted.

B. TECDA Rider

The TECDA Rider is a temporary and self-correcting measure with limited availability designed to reduce electric bill uncertainty for Schedule GS customers installing separately

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[60] Commission Staff Initial Brief at 9 (emphasis added).

[61] ChargePoint Initial Brief at 10-11.

[62] ETI Ex. 53 at 27.

[63] FlashParking Initial Brief at 9.

[64] ETI Ex. 40 at 11.

[65] Response of Entergy Texas, Inc. to ChargePoint's First Request for Information, ChargePoint Ex. 3.0 at 3-4.

metered charging equipment.[66] AACE, FlashParking, and ChargePoint recommend that the Commission approve ETI's TECDA Rider,[67] acknowledging that it provides demand relief, a well-known market barrier to investment in EV charging stations.[68]

Only two parties—Commission Staff and OPUC—oppose the adoption of the TECDA Rider, suggesting that it is discriminatory to ETI's other customers and gives TECDA Rider customers preferential treatment. However, the evidence demonstrates that the Rider was carefully designed to address a known deterrent to TE investment for the benefit of consumers, businesses, and local governments; results in net benefits to ETI customers as demonstrated by the results of the RIM test; and the incremental revenues resulting from the increased TE infrastructure deployment enabled by TECDA are expected to drive down the electric rates for all ETI customers.[69]

i. The TECDA Rider is not preferential or discriminatory.

Commission Staff and OPUC raise concerns that the costs associated with the TECDA Rider or the "under-recovered" demand charges will be borne by non-participating customers. However, as explained in ETI's Initial Brief, it is inaccurate to characterize the demand revenues as "under-recovered."[70] The demand charge relief provided by TECDA will incent new, incremental customer investment in EV charging infrastructure and, thus, new revenues that would not otherwise exist at *any* level.[71] In other words, on a temporary basis and subject to the TECDA Rider's built-in limited availability (first 30,000 kilowatts ("kW") of electric load), the proposed TECDA Rider is expected to generate a given level of incremental revenue and

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[66] ETI Ex. 40 at 29; Direct Testimony of Matthew McCaffree, FlashParking Ex. 1 at 8-9; ChargePoint Ex. 1.0 at 19-20.

[67] AACE Initial Brief at 7-8; FlashParking Initial Brief at 9; ChargePoint Initial Brief at 17.

[68] *See* AACE Initial Brief at 7-8 ("AACE believes the TECDA Rider is a reasonable effort to mitigate the inherent barrier that demand charges pose to EV investment."); FlashParking Initial Brief at 9 ("The prospect of higher demand charges due to EV-related load creates a disincentive for a customer that would otherwise install EV charging at a commercial property."); ChargePoint Initial Brief at 13 ("If approved, Rider [TECDA] would provide meaningful relief from demand charges to site hosts and encourage greater investment in EV charging infrastructure.").

[69] *See* ETI Ex. 53 at 29-47.

[70] ETI Initial Brief at 27.

[71] ETI Ex. 53 at 40-41.

contribution to fixed costs and the portion of that revenue attributable to the demand charge will increase after the Rider times-out or self-corrects based on increased consumption at the applicable meter.[72] Such revenues will offset ETI's overall revenue requirement, resulting in lower rates for all ETI customers.[73]

While a non-EV charger customer with the same load and usage could potentially pay more than the EV charger customer also utilizing the TECDA Rider, EV charging site hosts are differently situated from other customers and there are good policy reasons for implementing the temporary TECDA Rider during the early adoption period.[74] Specifically, the Rider is expected to facilitate investment and promote greater EV adoption by customers, which in turn will result in economic, environmental, and societal benefits to Texans.[75]

Moreover, ETI has implemented safeguards to limit any potential temporary impacts from the TECDA Rider on other customers. A TECDA customer with an electric load less than or equal to 1,500 kW is limited to using the rider for a five-year term, and the Rider is only available to the first 30,000 kW of electric load that enrolls and become operational after the TECDA Rider is approved.[76] And as discussed above, the TECDA Rider is self-correcting, automatically reverting to the unadjusted Rate Schedule GS demand charges if the site's load factor increases above the 15 percent minimum load factor for a given month.[77] These temporary impacts will be offset by the increased revenues discussed above. The results from the RIM test demonstrated that the TECDA Rider will positively impact ETI customers by helping lower overall rates over a ten-year period.[78] Based on this rate design, Commission Staff's and OPUC's cross-subsidization concerns are unfounded.

The TECDA Rider is similar to the Company's other Commission-approved riders that implement special billing provisions specific to certain customers, such as the Special Minimum

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[72] *Id.* at 41.

[73] *Id.*

[74] *Id.* at 37.

[75] ETI Ex. 40 at 40-41.

[76] *Id.* at 40.

[77] *Id.*

[78] ETI Ex. 53 at 33-34.

Charge ("SMC") Rider to Schedules Small General Service, General Service, and Large General Service, which offers a potential reduction to an eligible customer's Billing Load for purposes of calculating the monthly bill.[79] The SMC Rider also allows eligible seasonally operated customers, such as agricultural operations and municipal facilities, the ability to disconnect and reconnect in the same calendar year without incurring additional fees.[80] Additionally, the Rider for Institutions of Higher Learning discounts the customer's monthly bill, net of the fuel adjustment portion, by 20 percent.[81] Thus, in certain instances it is appropriate and consistent with historical Commission practice to apply different billing treatment for certain customers on the same rate schedules.

Finally, OPUC and Commission Staff contend that the billing demand cap should be considered a discounted rate pursuant to PURA § 36.007(a), and the under-recovered demand revenues should not be borne by other customers under PURA § 36.007(d). To provide additional context, PURA § 36.007(a) allows the Commission to approve discounted wholesale or retail rates upon an application by an electric utility. In Docket No. 39647, the Commission approved El Paso Electric's application for approval of a new tariff schedule that imposed a cap on base rates for churches.[82] Thus, this statutory provision does not operate as an absolute ban on rate caps or discounted rates as OPUC implies. Rather, it prohibits a discount without prior Commission approval. In addition, while there is a preference for imposing cost-based rates, the Commission has long history of adopting gradualism adjustments to avoid rate shock. Such adjustments could be characterized as discounts that shift costs to other customers. The Commission's approval of discounts or gradualism adjustments demonstrates they are warranted in particular instances and are deemed just and reasonable rates. Accordingly, ETI's TECDA Rider should be approved.

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[79] ETI Ex. 53 at 29-30.

[80] *Id.* at 30.

[81] *Id.*

[82] *Application of El Paso Electric Company for a Discounted Rate Tariff for Churches using Rate Schedule 24*, Docket No. 39647 (Sep. 21, 2011).

ii. Broadening the applicability of the TECDA Rider or the provision of long-term demand charge relief is not needed given the temporary and self-correcting design.

ChargePoint suggests "slight modifications" to expand the program and demand relief.[83] Specifically, ChargePoint recommends removing the five-year limit on customer participation, increasing the 30,000 kW participation cap to 50,000 kW, and making the TECDA Rider available to all separately metered sites regardless of when they became operational.[84] While a "strong start" in providing demand relief, ChargePoint also suggests that the Commission direct ETI to propose a long-term EV charging rate alternative to traditional demand-based rates as part of its next rate case.[85] AACE agrees with ChargePoint that the Rider should not be limited to five years, but concludes that it is reasonable and beneficial to the EV market as a whole.[86] Although ETI appreciates ChargePoint's and AACE's support and interest in its program, the TECDA Rider is properly designed to provide short-term demand charge relief during the early adoption period.[87] Therefore, ChargePoint's proposals to expand the applicability of the TECDA Rider and to require ETI to provide alternative demand relief in its next rate case should be rejected.

IV. Conclusion

ETI's TECI and TECDA Riders foster innovation and development of the charging market through partnerships with competitive providers all the while enhancing customer choice. These Riders were designed to address ETI's customers' desires and concerns in a competitively neutral manner while also providing important economic, environmental, and societal benefits to ETI customers and the broader community. The Commission has the authority to approve ETI's proposals to promote access to needed TE infrastructure and equipment in the State of Texas.

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[83] ChargePoint Initial Brief at 13.

[84] *Id.* at 13-15.

[85] *Id.* at 15-16.

[86] AACE Initial Brief at 8.

[87] ETI Ex. 53 at 39.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Entergy Texas, Inc.'s Reply Brief was served by electronic delivery on all parties of record in this proceeding on January 27, 2023.

/s/ Sarah Merrick