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# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

June 19, 2023

Stephen Journey, Commission Counsel  
Commission Advising and Docketing Management  
William B. Travis State Office Building  
1701 N. Congress, 7th Floor  
Austin, Texas 78701

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-22-04394; PUC Docket No. 53719;**  
***Application of Entergy Texas, Inc. for Authority to Change Rates***

Dear Mr. Journey:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. Please notify the undersigned Administrative Law Judge and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**APPLICATION OF ENERGY TEXAS, INC.  
FOR AUTHORITY TO CHANGE RATES**

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## LIST OF ACRONYMS AND DEFINED TERMS

<b>TERM</b>	<b>DEFINITION</b>
AFC	Additional Facilities Charge
ALJ	Administrative Law Judge
ALS	Area Lighting Service
AACE	Americans for Affordable Clean Energy
ChargePoint	ChargePoint, Inc.
Cities	Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, West Orange, and Willis
Commission	Public Utility Commission of Texas
EPE	El Paso Electric Company
ERCOT	Electric Reliability Council of Texas
ETI	Entergy Texas, Inc.
EV	Electric Vehicle
FEA	Federal Executive Agencies
FlashParking	FlashParking, Inc.
Kroger	The Kroger Co.
kW	Kilowatt
kWh	Kilowatt-hour
O&M	Operations and Maintenance
OPUC	Office of Public Utility Counsel
PFD	Proposal for Decision
PURA	Public Utility Regulatory Act
SB	Senate Bill
Sempra	Sempra Infrastructure Partners, LP
SOAH	State Office of Administrative Hearings
SPS	Southwestern Public Service Company

Staff	Staff of the Public Utility Commission of Texas
TAC	Texas Administrative Code
TE	Transportation Electrification
TECDA-1	Transportation Electrification and Charging Demand Adjustment
TECI-1	Transportation Electrification and Charging Infrastructure
TIEC	Texas Industrial Energy Consumers
Walmart	Walmart Inc.

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**APPLICATION OF ENTERGY TEXAS, INC.  
FOR AUTHORITY TO CHANGE RATES**

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**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

Entergy Texas, Inc. (ETI) filed an application with the Public Utility Commission of Texas (Commission) on July 1, 2022, requesting authority to change its rates. ETI is a vertically integrated investor-owned electric utility operating outside of the Electric Reliability Council of Texas (ERCOT) region, providing bundled generation, transmission, distribution, and customer services.<sup>1</sup> ETI serves approximately 486,000 retail customers.<sup>2</sup>

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<sup>1</sup> ETI Ex. 4 (Viamontes Dir.) at 1.

<sup>2</sup> ETI Ex. 4. (Viamontes Dir.) at 1.

In its application, ETI requests approval to increase its annual non-fuel retail base-rate revenue requirement to \$1.2 billion—an increase of approximately \$131.4 million, or 11.2%.<sup>3</sup> Including fuel, the request represents an increase of 6.95%.<sup>4</sup> ETI’s application in this case uses a test year ending December 31, 2021.

The majority of ETI’s application was resolved by settlement and those uncontested issues were remanded to the Commission on May 18, 2023.<sup>5</sup> The two remaining contested issues that are addressed in this Proposal for Decision (PFD) relate to ETI’s proposed electric vehicle (EV) charging riders, which are described in detail below. For the reasons discussed below, the Administrative Law Judge (ALJ) defers to the Commission regarding the comprehensive questions of whether it is appropriate for a vertically integrated electric utility, including ETI, to own EV charging facilities or other transportation electrification (TE) and charging infrastructure.<sup>6</sup> Additionally, if the Commission determines ETI should be allowed to own such infrastructure and facilities, the ALJ recommends approval of ETI’s proposed TECI-1 Rider and denial of the proposed TECDA-1 Rider.<sup>7</sup> If the Commission determines ETI should not be allowed to own such infrastructure or facilities, the ALJ concludes the proposed EV charging riders should be denied.

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<sup>3</sup> ETI Ex. 1 (Application) at 15.

<sup>4</sup> ETI Ex. 1 (Application) at 2.

<sup>5</sup> SOAH Order No. 20 (May 18, 2023).

<sup>6</sup> *See* Preliminary Order Issue Nos. 68 and 69.

<sup>7</sup> Each proposed EV charging rider will be defined and discussed below.



## II. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested and are therefore addressed only in the Findings of Fact and Conclusions of Law.

The Commission has jurisdiction over this proceeding under Public Utility Regulatory Act (PURA)<sup>8</sup> §§ 14.001, 32.001, 36.001-.112, and 36.211, 39.452(k), and 16 Texas Administrative Code §§ 25.130 and 25.231. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of the hearing in this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.

ETI filed its application with the Commission and each municipality in ETI's service territory that has not ceded its original jurisdiction as a regulatory authority to the Commission. ETI appealed the municipalities' actions regarding the application, and the appeals were consolidated with this docket.<sup>9</sup>

On July 6, 2022, the Commission referred this case to SOAH. The Commission issued its Preliminary Order on August 4, 2022, identifying 81 issues to be addressed in this proceeding.

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<sup>8</sup> Tex. Util. Code §§ 11.001-66.016.

<sup>9</sup> SOAH Order No. 3 (Aug. 19, 2022); SOAH Order No. 4 (Sept. 7, 2022); SOAH Order No. 5 (Sept. 19, 2022); SOAH Order No. 8 (Oct. 8, 2022); SOAH Order No. 11 (Dec. 1, 2022); SOAH Order No. 13 (Dec. 16, 2022); SOAH Order No. 15 (Jan. 15, 2023); SOAH Order No. 16 (Feb. 16, 2023); Commission Office of Policy and Docket Management Order No. 1 (Jun. 6, 2023).

On July 11, 2022, the SOAH ALJs suspended ETI's requested effective date for the proposed rates for 150 days.<sup>10</sup> At the prehearing conference on July 22, 2022, the ALJs found ETI's application and notice sufficient and memorialized those findings through a SOAH order filed on July 29, 2022.<sup>11</sup> To allow sufficient time for the ALJs and the Commission to process this case, ETI agreed to further suspend the effective date for its proposed rates such that the Commission's deadline to issue a final order was extended to May 25, 2023.<sup>12</sup> On May 10, 2023, ETI filed a letter agreeing to further extend the deadline to June 29, 2023.<sup>13</sup> On June 13, 2023, ETI filed a letter agreeing to an additional extension to July 20, 2023.<sup>14</sup>

The following entities intervened in this case and were admitted as parties: Cities;<sup>15</sup> Texas Industrial Energy Consumers (TIEC); ChargePoint, Inc. (ChargePoint); FlashParking, Inc. (FlashParking); Walmart Inc. (Walmart); the Kroger Co. (Kroger); Sierra Club; Southwestern Public Service Company (SPS); Sempra Infrastructure Partners, LP (Sempra); Americans for Affordable Clean Energy (AACE); El Paso Electric Company (EPE); Federal Executive Agencies

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<sup>10</sup> SOAH Order No. 1 (July 11, 2022).

<sup>11</sup> See Order Memorializing Prehearing Conference; Adopting Procedural Schedule; and Setting Hearing on the Merits (Jul. 29, 2022).

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

<sup>13</sup> ETI Letter (May 10, 2023).

<sup>14</sup> ETI Letter (June 13, 2023). ETI states that its agreement to extend the deadline does not affect the relate-back date of December 3, 2022.

<sup>15</sup> Cities refers to the Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, West Orange, and Willis.

(FEA); and the Office of Public Utility Counsel (OPUC). Commission staff (Staff) also participated as a party.

On December 9, 2022, ETI filed a motion to abate the proceeding to allow the parties to develop settlement documents resolving all issues except Preliminary Order Issue Nos. 68 and 69 concerning ETI's proposed EV charging riders. The motion also requested that the remaining contested issues be decided on written submission. The motion was granted.<sup>16</sup>

On May 10, 2023, ETI filed an Unopposed Stipulation Agreement (Stipulation) entered into by ETI, Staff, OPUC, TIEC, Sierra Club, Kroger, FEA, and Walmart. Cities, AACE, ChargePoint, SPS, EPE, and Sempra were not signatories to the Stipulation, but do not oppose it. The Stipulation resolved all issues in this proceeding except for Issue Nos. 68 and 69. The record closed at the time of the filing of the Stipulation.

On May 18, 2023, SOAH Order No. 20 admitted the evidence attached to the Stipulation and partially remanded the proceeding to the Commission. This PFD provides a recommendation on the remaining questions, Preliminary Order Issue Nos. 68 and 69.

Regarding Issue No. 68, ETI supports a finding that it is appropriate for vertically integrated utilities as whole to own TE and charging infrastructure and equipment. SPS filed testimony and briefing in favor of vertically integrated utilities

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<sup>16</sup> SOAH Order No. 12 (Dec. 12, 2022).

as a whole owning such infrastructure and equipment.<sup>17</sup> EPE filed a statement of position and briefing generally supporting ETI's position on Preliminary Order Issue No. 68. In contrast, OPUC and Staff filed testimony and briefing disagreeing with ETI's positions. Falling somewhere in the middle, AACE and ChargePoint filed a statement of position and testimony, respectively, as well as briefing arguing that vertically integrated electric utilities should not own the EV charging stations themselves but may own the related make-ready infrastructure.

Regarding Issue No. 69, ETI requests approval to own TE and charging infrastructure and proposes EV riders related to that request. EPE, ChargePoint, and FlashParking support ETI's ownership of such infrastructure and equipment and approval of ETI's proposed EV charging riders.<sup>18</sup> AACE, OPUC, and Commission Staff oppose ETI's proposed ownership and EV charging riders. The remaining parties did not address EV charging issues.

### **III. APPLICABLE LAW**

PURA § 31.002(6) defines an electric utility as a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. During the 87th legislative session, the Texas Legislature passed Senate Bill 1202, which excluded from this definition a person who is not otherwise an electric utility and who owns

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<sup>17</sup> SPS declined to state a position on ETI's proposed EV charging riders. SPS Initial Brief at 16.

<sup>18</sup> FlashParking does not address whether, as a general matter, vertically integrated utilities should be able to own TE infrastructure and equipment. FlashParking Initial Brief at 3-4.

or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle.<sup>19</sup>

PURA § 11.002(b) provides that, since public utilities are traditionally monopolies in the areas they serve, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

PURA § 36.007(a) states that, on application by an electric utility, the Commission may approve wholesale or retail tariffs containing charges that are less than rates approved by the Commission, but not less than the utility's marginal cost. However, the charges may not be unreasonably preferential, prejudicial, or discriminatory. PURA § 36.007(d) provides that the Commission shall ensure that the electric utility's allocable costs of serving customers paying discounted rates under this section are not borne by the utility's other customers.

#### **IV. VERTICALLY INTEGRATED ELECTRIC UTILITY OWNERSHIP OF TE AND CHARGING INFRASTRUCTURE**

Preliminary Order Issue No. 68 asks: is it appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other TE and charging infrastructure or should the ownership of such facilities be left to competitive providers?

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<sup>19</sup> Act of May 24, 2021, 87th Leg., R.S., Ch. 389 (S.B. 1202), Sec. 1, eff. September 1, 2021 (adding PURA § 31.002(6)(J)(iv)). An "alternatively fueled vehicle" is a motor vehicle that is capable of using a fuel other than gasoline or diesel fuel. Tex. Transp. Code § 502.004(a).

## A. ETI'S POSITION

ETI argues such ownership by a vertically integrated electric utility is appropriate and contends that, with regard to its specific discharge of duties as an electric utility, providing TE and charging infrastructure and facilities is within the scope of its responsibilities to its customers.<sup>20</sup> For the reasons addressed in more detail below, ETI argues that a vertically integrated utility is uniquely able to address emerging issues surrounding the proliferation of EV charging facilities, or lack thereof, with the installation of such facilities within its service footprint.<sup>21</sup>

ETI asserts that an imminent need exists for TE and charging infrastructure and investment.<sup>22</sup> It also states that vertically integrated utilities are well-positioned to respond to that need, and they should be permitted to own all aspects of EV infrastructure, including the line extension required for the EV charging installation, the make-ready infrastructure, and the EV charging stations.<sup>23</sup>

Moreover, ETI notes that the Texas Legislature recently amended PURA to except someone who owns or operates equipment used solely to provide “electricity charging service for consumption by an alternatively fueled vehicle” from the definition of an electric utility.<sup>24</sup> ETI opines that the Texas Legislature’s decision to

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<sup>20</sup> ETI Initial Brief at 1, 3.

<sup>21</sup> ETI Initial Brief at 2.

<sup>22</sup> ETI Initial Brief at 1.

<sup>23</sup> ETI Initial Brief at 2 and 11.

<sup>24</sup> ETI Initial Brief at 13; *see* PURA § 31.002(6)(J)(iv).

allow new entrants to participate in this aspect of the market does not prohibit electric utilities from providing the same services.<sup>25</sup> ETI concludes that, because the Texas Legislature could have, but did not, prohibit electric utilities from owning this type of equipment, electric utilities are permitted to own these types of facilities.<sup>26</sup> Thus, ETI maintains that it is within the Commission's authority to approve vertically integrated electric utilities' requests for ownership of such infrastructure and equipment.

## **B. SPS'S POSITION**

SPS states that it intervened in this proceeding specifically to opine on the TE and charging infrastructure topics listed in Preliminary Order Issue Nos. 68 and 69.<sup>27</sup> It declines to state a position on whether ETI's EV-specific riders should be approved, only responding to the general proposition of whether it is appropriate for vertically integrated utilities to own TE and charging infrastructure.<sup>28</sup>

Like ETI, SPS argues that vertically integrated utilities are not *per se* prohibited from seeking and obtaining Commission approval of utility ownership of TE equipment.<sup>29</sup> As with ETI's discussion, the vast majority of SPS's arguments are policy considerations in support of regulatory moves that would facilitate an increase

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<sup>25</sup> ETI Initial Brief at 13.

<sup>26</sup> ETI Initial Brief at 13.

<sup>27</sup> SPS Initial Brief at 2.

<sup>28</sup> SPS Initial Brief at 2.

<sup>29</sup> SPS Initial Brief at 1.

in EV charging growth and adoption.<sup>30</sup> SPS argues that utility ownership of EV facilities would allow for greater diversity in the market, ensure investment in all areas of the state, could work alongside the competitive market without derailing it, and would address a demonstrated need for EV charging infrastructure, amongst a host of other policy reasons.<sup>31</sup>

SPS notes that it does not propose that utilities be the sole provider of EV charging infrastructure in their service territories; rather, they should not be prohibited from participating in the competitive space already inhabited by EV charging providers.<sup>32</sup>

### **C. EPE'S POSITION**

EPE filed a statement of position and briefing supporting the general proposition that it is appropriate for vertically integrated utilities to have the ability to own TE and charging infrastructure.<sup>33</sup> EPE takes the position that utilities should proactively prepare for the increased number of EVs in their respective service areas.<sup>34</sup> Additionally, it rebuts the concerns (discussed below) regarding the stifling of competition, because retail competition is inapplicable to areas of Texas served by vertically integrated utilities.<sup>35</sup>

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<sup>30</sup> SPS Initial Brief at 3-16.

<sup>31</sup> SPS Initial Brief at 3-16.

<sup>32</sup> SPS Initial Brief at 13.

<sup>33</sup> EPE Reply Brief at 1.

<sup>34</sup> EPE Reply Brief at 3.

<sup>35</sup> EPE Reply Brief at 5.



## D. AACE'S POSITION

By contrast, AACE proposes to bifurcate ownership, arguing that vertically integrated utilities should not be able to own EV charging stations, but should be able to own the make-ready infrastructure, which includes all of the necessary electric grid, transmission, and infrastructure upstream of but not including the actual EV charging stations.<sup>36</sup>

AACE argues that an electric utility should focus on building the infrastructure necessary to accommodate EV charging stations and grid modernization and play a supporting role in the competitive market for EV charging, rather than participating in it.<sup>37</sup>

Additionally, AACE asserts that electric utilities would have an unfair advantage in the competitive market, and their participation would disincentivize unregulated, private businesses from continuing to participate.<sup>38</sup> For example, electric utilities have the ability to recover costs from ratepayers, making them more financially stable and able to absorb the instability inherent in participating in an emerging competitive market.<sup>39</sup> Moreover, according to AACE, allowing electric

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<sup>36</sup> AACE Initial Brief at 2.

<sup>37</sup> AACE Initial Brief at 2.

<sup>38</sup> AACE Initial Brief at 3.

<sup>39</sup> AACE Initial Brief at 3.

utilities to own EV charging equipment goes against the intent of PURA, which requires generation and retail services to be subject to a competitive market.<sup>40</sup>

As to the amendment of PURA § 31.002(6) to except a person<sup>41</sup> not otherwise an electric utility that owns or operates equipment used solely to provide electricity charging service, AACE argues that the Texas Legislature added this language to provide regulatory clarity as to the definition of an electric utility, addressing the concern of unregulated business being labeled, and therefore regulated, as an electric utility. AACE does not support ETI's argument that the amendment speaks in favor of a utility to own all aspects of EV charging-related infrastructure and equipment.<sup>42</sup>

#### **E. CHARGEPOINT'S POSITION**

ChargePoint generally supports the proposition that vertically integrated utilities should be able to own TE and charging infrastructure and facilities; however, it also discusses what tools may be implemented to prevent such utility ownership from causing market distortion.<sup>43</sup>

ChargePoint endorses the make-ready model of electric utility ownership of TE and charging infrastructure.<sup>44</sup> Like AACE, it defines the make-ready model as

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<sup>40</sup> AACE Initial Brief at 3.

<sup>41</sup> PURA § 11.003(14) ("Person" includes "an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative").

<sup>42</sup> AACE Reply Brief at 7-8.

<sup>43</sup> ChargePoint Initial Brief at 17.

<sup>44</sup> ChargePoint Initial Brief at 3.

one where the utility provides all of the wiring, conduit, trenching, and civil construction work on the utility-side and customer-side of the meter required to provide power to the EV charging units, which are owned by the customer hosting the site.<sup>45</sup> ChargePoint opines that bifurcating ownership between the infrastructure leading up to the EV chargers and the EV charging units themselves avoids potential market distortions that may result from allowing a utility to own all EV charging-related infrastructure and equipment wholesale.<sup>46</sup>

ChargePoint notes that electric utilities do not face the same competitive pressures as private, unregulated businesses, because the utilities can recover a portion, or even all, of the cost of providing EV charging stations and related infrastructure from their ratepayers.<sup>47</sup> However, according to chargepoint customer choice in EV charging stations is important to foster competition and avoid market distortions that may result from even a utility's partial ownership of TE and charging infrastructure.<sup>48</sup>

## **F. OPUC'S AND STAFF'S POSITIONS**

Both OPUC and Staff argue that is not appropriate for a vertically integrated utility to own EV charging facilities or other TE and charging infrastructure for one overarching reason: ownership should be left to the competitive market.<sup>49</sup>

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<sup>45</sup> ChargePoint Initial Brief at 4.

<sup>46</sup> ChargePoint Initial Brief at 4.

<sup>47</sup> ChargePoint Initial Brief at 7.

<sup>48</sup> ChargePoint Initial Brief at 7.

<sup>49</sup> Staff Initial Brief at 1-2; OPUC Initial Brief at 2.

Specifically, OPUC argues that it would be inappropriate to allow a regulated monopoly to provide a competitive service.<sup>50</sup> It also states that offerings made in competitive markets should not be subsidized by regulated electric service customers.<sup>51</sup>

Staff takes a different approach by citing PURA § 11.002(b), which provides:

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

Staff argues that, given the above, the essential inquiry is whether reasonable and adequate service is already provided by the competitive market, so as to justify the participation of a regulated monopoly in a competitive space.<sup>52</sup>

Additionally, Staff contends that there are other programs available to aid in the proliferation of EV charging infrastructure and equipment, such as federal and state funding, and the Texas Electric Vehicle Infrastructure Plan.<sup>53</sup> Thus, it is

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<sup>50</sup> OPUC Initial Brief at 2.

<sup>51</sup> OPUC Initial Brief at 2-3.

<sup>52</sup> Staff Initial Brief at 3.

<sup>53</sup> Staff Initial Brief at 4, citing SPS Exhibit 1 at JWC-3. The Texas Department of Transportation submitted the Texas Electric Vehicle Infrastructure Plan to the Federal Highway Commission on July 28, 2022, describing how it will use federal funds, in collaboration with the Texas Commission on Environmental Quality and the State Energy Conservation Office at the Texas Comptroller.

premature to decide whether to allow a vertically integrated utility to participate in the competitive market for EV charging, according to Staff.<sup>54</sup>

### **G. ALJ'S ANALYSIS**

When ETI filed its application, and the parties filed their briefing, there was no existing law directly addressing whether vertically integrated utilities could own TE and charging infrastructure. In asking whether vertically integrated utilities should be permitted to own such infrastructure, Preliminary Order Issue No. 68 asks a question of general applicability that will undoubtedly affect multiple stakeholders not party to this proceeding. The impact of this fact is proven by the uncommon interventions of SPS and EPE, separate electric utilities, into this proceeding for the sole purpose of opining on Issue Nos. 68 and 69. Because of these two factors, the question presented is primarily a policy issue, one not typically examined in the context of a contested case as pointed out by various parties to this case.

The ALJ begins by addressing one of the few statutes referenced by the parties on this topic. ETI notes that the Legislature's recent amendment to the definition of electric utility in PURA § 31.002(6) did not explicitly prohibit electric utilities from owning EV-related infrastructure, including EV charging stations. In ETI's view, the Legislature's failure to explicitly prohibit ETI and other vertically integrated electric utilities from owning TE and charging infrastructure means there is no statutory restriction, and, therefore, that vertically integrated electric utilities, including ETI, should be able to own such infrastructure and equipment.

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<sup>54</sup> Staff Initial Brief at 4.

However, the ALJ is persuaded by AACE’s argument that the amendment was intended to provide regulatory clarity regarding the status of companies that primarily provide EV charging services.<sup>55</sup> The purpose of that amendment was to exempt EV charging companies from the definition of electric utilities, thereby removing the companies that qualify for that exemption from the regulation of the Commission.<sup>56</sup> The ALJ finds that the Legislature’s focus on carving out EV charging companies from the Commission’s regulation of electric utilities poses a wholly different proposition from whether electric utilities themselves should be permitted to own TE and charging infrastructure. As such, the ALJ does not agree that the recent amendment to PURA § 31.002(6) supports ETI’s position that the current statutory framework authorizes integrated electric utilities to own all aspects of EV charging-related infrastructure and equipment.

However, the Legislature recently passed Senate Bill (SB) 1002 that created a new chapter in PURA effective September 1, 2023, that addresses EV charging facilities and establishes a framework for related issues. Specifically, SB 1002 provides conditions on how electric utilities operating outside of and within ERCOT may provide EV charging service directly to customers, including authorizing the ownership of EV charging facilities and EV-related infrastructure and equipment.<sup>57</sup> Thus, the ALJ concludes that as of September 1, 2023, it is appropriate for a vertically integrated electric utility to own such infrastructure and equipment in

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<sup>55</sup> AACE Reply Brief at 7-8.

<sup>56</sup> ETI Initial Brief at 4, citing Senate Research Center, Bill Analysis, Tex. S.B. 1202, 87th Leg., R.S. (Mar. 19, 2021).

<sup>57</sup> Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. ch. 53 (S.B. 1002) (to be codified at Tex. Util. Code ch. 42).

accordance with the soon to be codified PURA chapter 42. However, because SB 1002 does not go into effect until that date, as well as the potential policy implications involved in setting precedent under new laws, the ALJ finds it prudent to defer to the Commission on Issue No. 68 concerning the appropriateness of any vertically integrated electric utility owning TE and charging infrastructure as considered in the current proceeding.

## **V. ETI OWNERSHIP OF TE AND CHARGING INFRASTRUCTURE AND PROPOSED RIDERS**

Preliminary Order Issue No. 69 poses a narrower question: whether ETI specifically should be allowed to own TE and charging infrastructure, in the manner it has proposed in its application, or if such ownership should be wholly left to customers or third parties?

ETI's proposed EV-related riders present two issues: (1) the ownership issue, addressed in Preliminary Order Issue No. 68; and (2) the rate-oriented issue, i.e., regarding how ETI proposes to recover EV-related costs under the riders. As recommended in the previous discussion, the ALJ defers to the Commission regarding whether it is appropriate for ETI to own EV charging facilities and TE and charging infrastructure. However, to the extent the riders address rate-related issues, and in the event that the Commission decides under Issue No. 68 that ownership is permissible, the ALJ recommends approval of the proposed Transportation Electrification and Charging Infrastructure (TECI-1) Rider and

denial of the the Transportation Electrification and Charging Demand Adjustment (TECDA-1) Rider.<sup>58</sup>

### **A. ETI'S PROPOSED TECI-1 AND TECDA-1 RIDERS**

Citing the modest adoption of TE across most of the United States and Texas, ETI asserts that its proposed TECI-1 and TECDA-1 Riders will aid in the proliferation of EV charging stations by giving non-residential customers the opportunity to install EV charging units on their premises and decreasing the unpredictability in their bills. Additionally, ETI posits that it is within the Commission's regulatory authority to approve the proposed riders, that the Commission has the authority to decide the ownership issues related to the TECI-1 Rider, and that no additional legislation is necessary for the Commission to do so.<sup>59</sup>

#### **1. TECI-1 Rider**

The TECI-1 Rider allows a non-residential customer to partner with ETI to plan TE and charging infrastructure and equipment on the requesting customer's property for its own use and, if it so chooses, for public use.<sup>60</sup> This rider would allow a qualifying customer<sup>61</sup> to enter into an agreement with ETI for ETI to construct the customer's requested TE infrastructure and equipment, up to and including a

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<sup>58</sup> ETI Ex. 40 (Hill Dir.) at 2-3.

<sup>59</sup> ETI Initial Brief at 2-3, citing Senate Research Center, Bill Analysis, Tex. S.B. 1202, 87th Leg., R.S. (Mar. 19, 2021).

<sup>60</sup> ETI Ex. 40 (Hill Dir.) at 8.

<sup>61</sup> The TECI-1 rider would only be available to non-residential customers. *See* ETI Ex. 40 (Hill Dir.) at SFH-1 at 1.



“turnkey” TE option.<sup>62</sup> The “turnkey” option would allow a customer to have ETI build out the necessary infrastructure and equipment, up to and including the EV charging equipment on site.<sup>63</sup>

Under the agreement, ETI would organize and oversee each aspect of the installation, including working with third parties to provide a site assessment and supervising the permitting and inspections required for the installation.<sup>64</sup> After the installation is completed, ETI would construct, own, and maintain only the portions of the TE and charging infrastructure and equipment that the customer does not itself want to own and maintain.<sup>65</sup> Ownership of the infrastructure and equipment lies at the option of the customer: (1) a customer may own the entirety of the TE and charging infrastructure and equipment, with ETI’s role limited to providing electric service;<sup>66</sup> (2) a customer may divide ownership, with ETI owning the TE infrastructure up to the EV chargers and the customer owning the EV chargers; or (3) ETI may own all of the TE and charging infrastructure and equipment including the EV chargers, also known as the turnkey option. If a customer decides to divide ownership, the customer may choose a third-party provider from a list of ETI approved vendors to install the EV charging equipment.<sup>67</sup>

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<sup>62</sup> ETI Ex. 40 (Hill Dir.) at 8.

<sup>63</sup> ETI Initial Brief at 15-16.

<sup>64</sup> ETI Ex. 40 (Hill Dir.) at 8.

<sup>65</sup> ETI Ex. 40 (Hill Dir.) at 8. See SPS Initial Brief at 3 for a visual representation of the TE and charging infrastructure and equipment.

<sup>66</sup> ETI Ex. 40 (Hill Dir.) at 9.

<sup>67</sup> ETI Ex. 40 (Hill Dir.) at 8-9.

The costs associated with installing the TE and charging infrastructure and equipment would be collected under the TECI-1 Rider and added to the requesting customer's net monthly bill.<sup>68</sup> If the customer chooses to allow ETI to service the EV charging stations after installation, then the associated operations and maintenance (O&M) costs would be added separately to the customer's monthly bill.<sup>69</sup> The TECI-1 Rider describes how ETI would credit the customer with a portion of the incremental non-fuel revenues projected to result from TE and charging infrastructure to partially offset the overall cost.<sup>70</sup> Generally, ETI proposes to book the monthly revenues received under the TECI-1 Rider under Federal Energy Regulatory Commission revenue account 456 and treat it as an offset against ETI's overall revenue requirement.<sup>71</sup>

If ETI must construct new facilities to extend electric service from ETI's existing infrastructure to the site where a customer requests to have the EV chargers installed, the customer is not required to reimburse ETI for the cost of construction if the projected revenues for the EV chargers within the first four years of the contract term are equal to or exceed the projected cost to construct and install the TE and charging equipment and any related infrastructure necessary to serve the associated new load.<sup>72</sup> Under the TECI-1 Rider, ETI would determine whether the projected revenues for each TE and charging infrastructure installation will reach

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<sup>68</sup> ETI Ex. 40 (Hill Dir.) at 11-12.

<sup>69</sup> ETI Ex. 40 (Hill Dir.) at 17.

<sup>70</sup> ETI Ex. 40 (Hill Dir.) at 18.

<sup>71</sup> ETI Ex. 40 (Hill. Dir.) at 21.

<sup>72</sup> ETI Ex. 40 (Hill Dir.) at SFH-1 at 2.

this threshold.<sup>73</sup> If ETI determines that a customer must share these costs, the rider states that ETI will structure the customer's payments to fully recover the installation costs by the end of the recovery term set by the agreement, initially 10 years, with the option of extensions.<sup>74</sup>

Because customers must opt into the TECI-1 Rider program, ETI contends that non-participating customers will not be affected by any costs incurred by ETI with respect to the rider.<sup>75</sup> ETI states that the net monthly payments collected under this rider will offset ETI's overall revenue requirement, which will benefit ETI's other customers, including those that do not opt into the program.<sup>76</sup>

ETI proposes that any grid investments made under the TECI-1 Rider will be booked as they are today, and that ETI will categorize certain costs, such as depreciation expenses and ongoing maintenance expenses.<sup>77</sup>

## **2. TECDA-1 Rider**

The TECDA-1 Rider addresses demand charges in EV charger billing. Under Rate Schedule General Service (GS), a customer's demand is measured as the highest 30 minutes of demand in kilowatts (kW) measured during the month, subject

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<sup>73</sup> ETI Ex. 40 (Hill Dir.) at SFH-1 at 2.

<sup>74</sup> ETI Initial Brief at 16.

<sup>75</sup> ETI Initial Brief at 17.

<sup>76</sup> ETI Initial Brief at 16; ETI Reply Brief at 12.

<sup>77</sup> ETI Ex. 40 (Hill Dir.) at 20.

to other factors in the rate schedule.<sup>78</sup> The customer's demand, otherwise known as load, may be assessed as the ratio of use of electrical energy during a certain timeframe to the maximum amount of energy that would have been used in that timeframe, based on the customer's demand.<sup>79</sup>

Under the current rate structure, the demand charges were designed to recover demand-related costs from conventional electric customers.<sup>80</sup> A separately metered EV charging station might experience uncertain electric service costs on a per kilowatt hour (kWh) basis. Thus, the impact to EV charging station customers under the current rate structure would be widely variable, as their load factors change due to changing EV charging use.<sup>81</sup>

According to ETI, the proposed TECDA-1 Rider would limit the amount of demand billed under Rate Schedule GS to a qualifying customer during any billing period in which the actual calculated load factor is less than 15 percent.<sup>82</sup> Under the rider, the amount of billing demand billed to EV charging stations would be the lesser of: (1) measured demand (kW), as conventionally determined and subject to the GS terms; or (2) adjusted demand (kW), as calculated based on actual usage and a minimum 15 percent monthly load factor.<sup>83</sup> ETI maintains that the resulting effect

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<sup>78</sup> ETI Ex. 40 (Hill. Dir.) at 30.

<sup>79</sup> ETI Ex. 40 (Hill. Dir.) at 30.

<sup>80</sup> ETI Ex. 40 (Hill. Dir.) at 32.

<sup>81</sup> ETI Ex. 40 (Hill. Dir.) at 32.

<sup>82</sup> ETI Ex. 40 (Hill. Dir.) at 27.

<sup>83</sup> ETI Ex. 40 (Hill. Dir.) at 27.

limits the effective cost per kWh under Rate Schedule GS to a narrow band between \$0.15 and \$0.20 per kWh, based on current rates and riders.<sup>84</sup>

Only customers subject to ETI's existing Rate Schedule GS that have qualifying, separately metered TE and charging equipment would qualify to opt in to the TECDA-1 Rider.<sup>85</sup> ETI characterizes the rider as self-adjusting, since the billed amount of demand is limited to an EV charging station with a load factor lower than 15 percent, and only for that particular month.<sup>86</sup>

ETI states that its proposed TECDA-1 Rider would not materially impact qualified customers that do not opt in to the program.<sup>87</sup> Its proposal would limit the rider's application to a customer with an electric load less than or equal to 1,500 kW, and for a term of five years.<sup>88</sup> Moreover, it would be available for the first 30,000 kW of electric load that enrolls and becomes operational after the rider is approved, and would be in operation for five years.<sup>89</sup>

Under the TECDA-1 Rider, ETI would not own any of the charging equipment, unlike with the TECI-1 Rider.

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<sup>84</sup> ETI Ex. 40 (Hill Dir.) at 33-34.

<sup>85</sup> ETI Ex. 40 (Hill Dir.) at 27.

<sup>86</sup> ETI Ex. 40 (Hill Dir.) at 35.

<sup>87</sup> ETI Ex. 40 (Hill Dir.) at 37.

<sup>88</sup> ETI Ex. 40 (Hill Dir.) at 38.

<sup>89</sup> ETI Ex. 40 (Hill Dir.) at 38.

## **B. DISCUSSION AND ANALYSIS ON PROPOSED RIDERS**

### **1. TECI-1 Rider**

#### **a) SPS's Position**

As noted above, SPS declined to take a position as to whether the Commission should approve either of ETI's EV-specific riders and instead only opined on the general question of whether vertically integrated utilities should be able to own vehicle-charging facilities.<sup>90</sup> However, with regard to Issue No. 69, SPS expands on its prior arguments and asserts that, in situations where a customer wants a turnkey, full-service option, namely, where ETI owns both the EV infrastructure and equipment including the charging stations, or if the customer does not need additional infrastructure but requests equipment owned by the utility, then ETI should not have to offer an expanded number of options for third parties who could provide services related to EV charging stations.<sup>91</sup>

Additionally, SPS addresses some intervenors' concerns regarding line extensions necessary to integrate customers' requested EV charging facilities by stating that any cost-shifting concerns to customers that have not opted into the program do not warrant an imposition of a wholesale bar on utility ownership of EV

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<sup>90</sup> SPS Initial Brief at 1. The ALJs also considered SPS's arguments identified here when making a determination about the proposed TECDA-1 Rider and, as such, they are not reiterated in the following section concerning the parties' positions on the TECDA-1 Rider.

<sup>91</sup> SPS Initial Brief at 16.

facilities.<sup>92</sup> SPS further states that a utility runs the risk of a customer defaulting and the utility incurring bad debt at any time while providing a service.<sup>93</sup>

### **b) ChargePoint's Position**

ChargePoint supports approval of ETI's proposed TECI-1 rider, consistent with its general support of vertically integrated utilities being able to own TE and charging infrastructure and facilities, as previously discussed.<sup>94</sup>

However, ChargePoint's recommendation is not without reservation. It argues that ETI's proposal poses potential competition issues, since the services ETI would provide are equivalent to a turn-key installation service already provided by non-utility businesses.<sup>95</sup> Moreover, ETI's proposal to recover costs through the rider is functionally equivalent to a financing offering, also already provided by non-utility competitors.<sup>96</sup> In order to address its concerns regarding competition, ChargePoint proposes that, if the TECI-1 Rider is approved, the Commission order ETI to allow site hosts to be able to choose the charging equipment and network service provider that best meets its needs and preferences.<sup>97</sup>

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<sup>92</sup> SPS Initial Brief at 17-18.

<sup>93</sup> SPS Initial Brief at 18.

<sup>94</sup> ChargePoint Initial Brief at 17.

<sup>95</sup> ChargePoint Initial Brief at 9.

<sup>96</sup> ChargePoint Initial Brief at 9.

<sup>97</sup> ChargePoint Initial Brief at 10-11.

### **c) FlashParking's Position**

FlashParking states that ETI should be able to own TE and charging infrastructure and equipment as proposed in the application with conditions.<sup>98</sup> Specifically, it proposes: (1) for the Commission to order ETI to inform customers of available installers and service providers that may offer EV charging services that may also accommodate the customers' needs, and (2) that the Commission eliminate the requirement in the TECI-1 Rider that only allows for the installation and maintenance of EV charging equipment by companies pre-approved by ETI.<sup>99</sup>

FlashParking argues that, despite the need for a rulemaking by the Commission for all issues regarding the implementation, process, and other policy questions regarding EV issues, Issue No. 69 is narrow enough to be answered in a contested case.<sup>100</sup> FlashParking also raises a concern that the many global issues regarding EVs should not be addressed in a single base-rate case.<sup>101</sup>

### **d) AACE's Position**

AACE incorporates its arguments from the previously discussed issue to support its position that ETI should not be allowed to own EV charging stations, as proposed in the TECI-1 Rider.<sup>102</sup> Additionally, AACE contends that denying the

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<sup>98</sup> FlashParking Initial Brief at 7.

<sup>99</sup> FlashParking Initial Brief at 9.

<sup>100</sup> FlashParking Initial Brief at 6.

<sup>101</sup> FlashParking Initial Brief at 6.

<sup>102</sup> AACE Initial Brief at 6.



rider in this contested case is appropriate, because it would establish precedent regarding whether other vertically integrated utilities are able to own EV charging stations.<sup>103</sup>

If the Commission approves ETI's TECI-1 rider, AACE argues that ETI should be ordered to maintain related expenses in a separate account to be considered in its next base-rate case, to avoid costs associated with this rider being distributed amongst customers who did not opt into the EV charging program available through the TECI-I Rider.<sup>104</sup>

#### **e) OPUC's and Staff's Positions**

OPUC and Staff contend that ETI should not be allowed to own TE and charging infrastructure as proposed in the application and request that the Commission reject ETI's proposed TECI-1 Rider.<sup>105</sup> OPUC generally stresses that TE and EV charging-related issues and riders should be addressed in a separate docket that would include participation from all four vertically integrated, non ERCOT investor-owned electric utilities, in order to comprehensively address the policy implications inherent in this issue efficiently.<sup>106</sup> Staff generally argues that ETI's proposed TECI-1 Rider, and ownership of EV-related infrastructure as proposed under the rider, should be denied as it is unreasonably preferential,

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<sup>103</sup> AACE Initial Brief at 6.

<sup>104</sup> AACE Initial Brief at 6.

<sup>105</sup> OPUC Initial Brief at 3.

<sup>106</sup> OPUC Initial Brief at 6-7.

discriminatory, inequitable, and not just and reasonable.<sup>107</sup> Specifically, Staff contends that approval of the rider would inappropriately allow a regulated monopoly to provide a competitive service, where there is insufficient evidence that the competitive market is unable to provide the service.<sup>108</sup>

Both parties expand on arguments they made regarding Issue No. 68 and focus on concerns regarding the potential for costs to shift from participating to non-participating customers.<sup>109</sup> Staff argues that the TECI-1 Rider poses a risk to non-participating customers if the costs and revenues associated with the rider do not align.<sup>110</sup> OPUC and Staff further allege that ETI lacks adequate protections for non-participating customers if a participating customer defaults on its agreement with ETI.<sup>111</sup> Staff also raises concerns about its ability to analyze infrastructure costs and rider revenues due to the lack of information provided by ETI regarding customer-specific details,<sup>112</sup> and OPUC proposes that any rate-case expenses related to litigating the EV-related riders should be recorded separately and not recovered from the Residential Service and other non-participating customer classes.<sup>113</sup> Furthermore, OPUC opines on the competitive aspect of approving ETI's proposed

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<sup>107</sup> Staff Initial Brief at 8 and 10.

<sup>108</sup> Staff Initial Brief at 8.

<sup>109</sup> Staff Initial Brief at 9; OPUC Initial Brief at 4.

<sup>110</sup> Staff Initial Brief at 9.

<sup>111</sup> OPUC Initial Brief at 3, 5; Staff Initial Brief at 9.

<sup>112</sup> Staff Initial Brief at 9.

<sup>113</sup> OPUC Initial Brief at 6.

riders, arguing generally that offering these types of services should be left to the companies already providing them in the competitive market.<sup>114</sup>

However, if the TECI-1 Rider is approved, OPUC alternatively requests that the Commission establish safeguards to ensure that ETI's participation does not affect the competitive market and that associated costs are appropriately allocated.<sup>115</sup> This includes requiring customers who opt into the program to reimburse ETI for the cost of construction and installation of new facilities necessary to extend electric service to the site in excess of two years' anticipated annual base revenues, instead of ETI's proposed four years.<sup>116</sup> Staff supports OPUC's alternative proposal if the TECI-1 Rider is approved.<sup>117</sup>

#### **f) ETI's Position**

ETI reiterates much of its arguments related to the previous issue, emphasizing that costs will be collected from only the customers that have opted into the EV charging program,<sup>118</sup> and thus, this mechanism would not improperly shift costs to non-participating customers.<sup>119</sup> ETI contends that the TECI-1 rider is functionally similar to its existing Additional Facilities Charge (AFC) Rider and Area Lighting Service (ALS) Rider and that the only reason that it did not use those riders

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<sup>114</sup> OPUC Initial Brief at 3.

<sup>115</sup> OPUC Initial Brief at 4.

<sup>116</sup> OPUC Initial Brief at 5.

<sup>117</sup> OPUC Ex. 57 at 13-14; Staff Initial Brief at 10.

<sup>118</sup> ETI Initial Brief at 15.

<sup>119</sup> ETI Initial Brief at 17.

for these purposes is because it does not have the line extension policy that would be necessary for building the infrastructure to integrate requested EV charging stations into ETI's existing infrastructure.<sup>120</sup> Under the AFC Rider, ETI constructs, owns, and maintains electrical infrastructure on behalf of a customer who pays for that infrastructure via a fixed monthly payment.<sup>121</sup> Similarly, under the ALS Rider, ETI installs, owns, and maintains area lighting facilities at the request of a customer, who, in turn, pays for the entirety of the cost of the property and services.<sup>122</sup>

Some intervenors raised concerns regarding the possibility of costs caused by defaulting customers being borne by non-participating customers.<sup>123</sup> ETI responds that this is not a risk inherent for customers seeking to build TE and charging infrastructure, and that the potential risk is no different from the risk ETI faces when constructing dedicated facilities on behalf of its customers under the AFC and ALS Riders.<sup>124</sup>

Finally, ETI stresses that other jurisdictions have implemented similar riders.<sup>125</sup>

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<sup>120</sup> ETI Initial Brief at 17.

<sup>121</sup> ETI Initial Brief at 16.

<sup>122</sup> ETI Initial Brief at 16-17.

<sup>123</sup> Staff Initial Brief at 9; OPUC Initial Brief at 4.

<sup>124</sup> ETI Initial Brief at 18.

<sup>125</sup> ETI Initial Brief at 21 (citing ETI riders that were approved by the Mississippi Public Service Commission and the City Council of New Orleans, and a Virginia Electric and Power Company rider approved by the Commonwealth of Virginia State Corporation Commission).

### **g) ALJ's Analysis**

Consistent with the previous issue, the ALJ defers to the Commission regarding the ownership issue raised in Preliminary Order Issue No. 69.

As to the rate-related aspect of the TECI-1 Rider, and contingent upon the Commission finding it appropriate for ETI to own TE and charging infrastructure, the ALJ recommends approval of ETI's proposed TECI-1 Rider.

Staff and OPUC raise the concern of a requesting customer potentially defaulting on its payment agreement with ETI for installation of TE and charging infrastructure. However, the ALJ is persuaded that an electric utility, including ETI, already bears the risk of a defaulting customer, regardless of whether it is a result of an arrangement made under the TECI-1 Rider or some other contract, and that the existence of this risk does not support denial of the TECI-1 Rider.

Under the TECI-1 Rider, the associated cost of each EV charging unit and monthly O&M costs, if any, will be integrated into the opting-in customer's monthly bill.<sup>126</sup> Thus, these costs are recovered directly from the customer and will not be shifted to non-participating customers. However, the calculation of costs for TE and charging infrastructure is not as clear; whether the requesting customer pays for the infrastructure, as opposed to ETI, varies on a case-by-case basis. The mechanism by which ETI proposes to recover such costs involves a determination by ETI of whether the projected costs and revenues reach a certain threshold over a four-year

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<sup>126</sup> ETI Ex. 40 (Hill Dir.) at SFH-1 at 2.

timeframe, on a case-by-case basis. If the projected revenues are equal to or exceed ETI's projected investment to construct and install the TE and charging infrastructure, then the customer is not required to reimburse ETI for building out the infrastructure to meet that customer's needs.<sup>127</sup> If it is determined that ETI will pay those costs, ETI may or may not be able to recover those expenses from non-participating customers under the rider. Even if ETI determines that it will not be covering the incremental costs connected with a specific customer's request, there is a risk of other customers potentially incurring charges as a result, but the net benefits to the customers outweigh that risk.

ETI argues that the line extension component in the proposed rider is similar to riders already approved by the Commission, namely, the AFC and ALS Riders, which address costs for utility-owned infrastructure generally and lighting, respectively.<sup>128</sup> ETI maintains that this infrastructure benefits all of its customers, even if only incrementally, and the same would be true of TE and charging infrastructure.

The ALJ agrees and concludes ETI's customers would similarly benefit with respect to TE infrastructure. Even if ETI incurs the costs for installation of the EV-related infrastructure and the incremental costs for infrastructure built by a requesting customer under the TECI-1 Rider are shared by other customers, that infrastructure is integrated into ETI's overall infrastructure, resulting in potential net benefits to other ETI customers, such as increased reliability and a greater

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<sup>127</sup> ETI Ex. 40 (Hill Dir.) at SFH-1 at 3.

<sup>128</sup> ETI Ex. 53 (Hill Reb.) at 14-15.

network upon which other customers can have line extensions built. Moreover, the ALJ recommends that the line extension component in the TECI-1 Rider is similar to previously approved riders so as to justify approval of the rate-related components of the rider as a cost-recovery mechanism for ETI in connection with a participating customer's request to install TE and charging infrastructure under the rider.

## **2. TECDA-1 Rider**

### **a) ChargePoint's, FlashParking's, and AACE's Positions**

ChargePoint, FlashParking, and AACE all contend that the TECDA-1 Rider should be approved.<sup>129</sup>

However, ChargePoint proposes modifications to the TECDA-1 Rider to remove the timeframe limiting customer participation, increase the ceiling of electric load to which it applies from 30,000 kW to 50,000 kW, and make it available to all separately metered charging sites that meet the load requirements, regardless of when the charging site became operational.<sup>130</sup>

### **b) Staff's and OPUC's Positions**

Staff and OPUC both argue that the Commission should deny ETI's TECDA-1 Rider, because it is unreasonably preferential and discriminatory.<sup>131</sup>

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<sup>129</sup> ChargePoint Initial Brief at 17; FlashParking Initial Brief at 9; and AACE Initial Brief at 1.

<sup>130</sup> ChargePoint Initial Brief at 13-14.

<sup>131</sup> Staff Initial Brief at 10; OPUC Initial Brief at 6.

Specifically, Staff argues that the TECDA-1 Rider will impact non-participating customers by allowing qualifying customers to pay only a portion of their capacity costs that they cause ETI to incur, thereby discriminating against non-participating customers with identical usage and load.<sup>132</sup> OPUC cites PURA § 36.007(d), which addresses discounted rates, and argues that the under-recovered demand revenues that result from the application of the billing demand cap should not be borne by other customers.<sup>133</sup> Moreover, no other customers within the GS, Large General Service (LGS), or Industrial Power Service rate classes have similar demand caps.<sup>134</sup>

Finally, OPUC again proposes that the Commission consider the TE issues and ETI's associated riders in a separate docket in order to solicit and receive input from all four vertically integrated, non-ERCOT investor-owned electric utilities.<sup>135</sup>

### **c) ETI's Position**

ETI argues that the Commission should approve the TECDA-1 Rider because it was designed to reduce electric bill uncertainty for Schedule GS customers that

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<sup>132</sup> Staff Initial Brief at 11.

<sup>133</sup> OPUC Initial Brief at 6.

<sup>134</sup> OPUC Initial Brief at 6.

<sup>135</sup> OPUC Initial Brief at 6-7.



have installed separately metered EV charging equipment, which, ETI argues, is an impediment to investment in EV charging stations.<sup>136</sup>

ETI contests OPUC's and Staff's arguments that the TECDA Rider is unreasonably preferential and discriminatory, noting that it has two other riders previously approved by the Commission that also make rate distinctions based on the type of customer: (1) its Special Minimum Charge Rider to Schedules Small General Service (SGS), GS, and LGS (Schedule SMC), which offers a potential reduction to an eligible customer's billing load in calculating the monthly bill,<sup>137</sup> and (2) its Rider for Institutions of Higher Learning, which discounts the customer's monthly bill by 20 percent, net of the fuel adjustment.<sup>138</sup> In both of these instances, the Commission approved the application of different billing treatment for certain customers on the same rate schedules.<sup>139</sup>

Finally, ETI states the proposed TECDA-1 Rider is similar to mechanisms that have been approved by regulators in other jurisdictions.<sup>140</sup>

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<sup>136</sup> ETI Initial Brief at 21. It is unclear whether the TECDA-1 Rider would only be available to customers who have entered into an agreement with ETI under TECI-1, if approved by the Commission, or if it would be available to all customers who have separately metered EV charging equipment.

<sup>137</sup> ETI Initial Brief at 26.

<sup>138</sup> ETI Initial Brief at 26-27.

<sup>139</sup> ETI Reply Brief at 17.

<sup>140</sup> ETI Initial Brief at 23. ETI is referring to approvals for Florida Power and Light and Xcel Energy Minnesota, which involve "demand limiter" provisions, a mechanism similar to that proposed by ETI in its TECDA-1 Rider.

ETI acknowledges that it is possible for a non-participating customer with the same load and usage to potentially pay more than a customer that is charged under the TECDA-1 Rider.<sup>141</sup> Nevertheless, it argues that there are “good policy reasons” for adopting the rider for a limited amount of time and that it was designed to be a temporary solution.<sup>142</sup> ETI asserts that increased revenues from charger usage would help to cover fixed infrastructure and other costs and put downward pressure on rates for all of ETI’s customers.<sup>143</sup>

#### **d) ALJ’s Analysis**

The ALJ is persuaded by Staff’s and OPUC’s arguments that there are potential cost-shifting concerns inherent in ETI’s proposed TECDA-1 Rider.

Staff and OPUC characterize the TECDA-1 Rider as a discounted rate under PURA § 36.007(d), which should not be borne by the utility’s other customers.<sup>144</sup> ETI counters by stating that approval of the TECDA-1 Rider would generate incremental revenues that would not exist but for the existence of the rider, theoretically putting downward pressure on rates for all customers.<sup>145</sup>

The ALJ is not convinced that OPUC and Staff properly characterized the mechanism included in the TECDA-1 Rider as discounted rates under PURA §

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<sup>141</sup> ETI Ex. 53 (Hill Reb.) at 35.

<sup>142</sup> ETI Ex. 53 (Hill Reb.) at 35.

<sup>143</sup> ETI Ex. 53 (Hill Reb.) at 39.

<sup>144</sup> Staff Initial Brief at 12; OPUC Initial Brief at 6.

<sup>145</sup> ETI Ex. 53 (Hill Reb.) at 38-39.

37.004, because the “discount” would be imposed on rates in the tariff, not made within the tariff itself. However, they do raise the issue of potential under-recovered revenues. Moreover, the ALJ is not persuaded by ETI’s counter to their argument. ETI’s response does not sufficiently rebut Staff’s and OPUC’s concerns, as it only presents one hypothetical situation in which incremental revenues generated by the TECDA-1 Rider cover the under-recovered revenues that ETI would have recovered from the same customers if the TECDA-1 Rider were not in place. The record fails to reflect whether ETI would obtain those under-recovered revenues from other classes of customers or if, perhaps, ETI would absorb those costs.

Due to the cost-shifting concerns, the ALJ is unconvinced that the terms of the TECDA-1 Rider are not unreasonably preferential, prejudicial, or discriminatory. Thus, the ALJ recommends denial of the TECDA-1 Rider.

## **VI. CONCLUSION**

The ALJ defers to the Commission regarding the questions of whether it is appropriate for any vertically integrated electric utility, or ETI specifically, to own TE and charging infrastructure, given the policy considerations, potential precedential impact of those issues, and the recent passage of SB 1002 specifically addressing the matter. With respect to the rate-related aspects of ETI’s proposed riders, and contingent upon the Commission finding it appropriate for ETI to own such infrastructure and equipment, the ALJ recommends approval of the TECI-1 Rider and denial of the TECDA-1 Rider, based on the reasons discussed above.

## VII. FINDINGS OF FACT

### Applicant

1. Entergy Texas, Inc. (ETI) is a Texas corporation registered with the Texas secretary of state under filing number 800911623.
2. ETI owns and operates for compensation equipment and facilities to generate, transmit, distribute, and sell electricity in Texas.
3. ETI is required under certificate of convenience and necessity (CCN) number 30076 to provide service to the public and to provide retail electric utility service within its certificated service area.

### Application

4. On July 1, 2022, ETI filed an application requesting authority to change its Texas retail rates based on a historical test year of January 1, 2021 through December 31, 2021, adjusted for known and measurable changes. The application included a request for approval of new Transportation Electrification and Charging Infrastructure (TECI) and Transportation Electrification and Charging Demand Adjustment (TECDA) Riders.
5. ETI's application included the direct testimony of 37 witnesses.
6. ETI filed errata to its application on September 16, 2022.
7. At the prehearing conference on July 22, 2022, the State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) found ETI' application sufficient and memorialized that finding in SOAH Order No. 1 on July 29, 2023.

### Effective Date of Proposed Rates

8. ETI proposed an effective date of August 5, 2022.
9. ETI requested that, if the new rates were suspended for a period beyond 155 days after ETI filed its application, then final rates would relate back and be

made effective for consumption on and after the 155th day after the rate filing package was filed.

10. In SOAH Order No. 1 issued on July 11, 2022, the SOAH ALJs suspended the effective date of the proposed rates until January 2, 2023.
11. ETI agreed to multiple extensions of the effective date, the final extension ending on July 20, 2023.

### **Notice of the Application**

12. On September 21, 2022, ETI filed the affidavit of Stuart Barrett, attesting that ETI had provided notice of the application via email to all municipalities within ETI's service area. Mr. Barrett also attested that ETI had provided notice of the application to the Office of Public Utility Counsel (OPUC).
13. On September 21, 2022, ETI filed the affidavit of Kendra James, attesting that ETI had mailed notice of the application to all affected customers in ETI's service territory. Further, Ms. James attested that ETI had published notice at least once a week for four consecutive weeks prior to the effective date of the proposed rate change in newspapers having general circulation in each county of ETI's service territory.
14. In SOAH Order No. 1 issued on July 11, 2022, the SOAH ALJs suspended the effective date of the proposed rates until January 2, 2023.
15. At the prehearing conference on July 22, 2022, the SOAH ALJs found ETI's notice sufficient and memorialized that finding in SOAH Order No. 1 on July 29, 2022.

### **Interventions**

16. At the prehearing conference on July 22, 2022, the SOAH ALJs granted intervenor status to the following parties: OPUC, Texas Industrial Energy Consumers (TIEC), and the Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Rose City, Shenandoah, Silsbee, Sour Lake, Splendor, Vidor, West Orange, and Willis (collectively, Cities).

17. In SOAH Order No. 3 issued on August 19, 2022, the SOAH ALJs granted the interventions of: The Kroger Co. (Kroger); the United States Department of Energy, on behalf of itself and all other affected Federal Executive Agencies (FEA); Walmart Inc. (Walmart); FlashParking, Inc. (FlashParking); and Sierra Club.
18. In SOAH Order No. 4 issued on September 7, 2022, the SOAH ALJs denied Southwestern Public Service Company's (SPS) late motion to intervene.
19. SPS appealed SOAH Order No. 4, and the Commission granted the appeal. In the Commission's Order on Appeal of SOAH Order No. 4 issued on October 20, 2022, the Commission overturned the SOAH ALJs' denial and granted SPS's late motion to intervene.
20. In SOAH Order No. 5 issued on September 19, 2022, the SOAH ALJs granted ChargePoint, Inc.'s (ChargePoint) late motion to intervene.
21. In SOAH Order No. 6 issued on October 6, 2022, the SOAH ALJs granted Sempra Infrastructure Partners, L.P.'s (Sempra) late motion to intervene.
22. In SOAH Order No. 8 issued on October 25, 2022, the SOAH ALJs granted Americans for Affordable Clean Energy's (AACE) and El Paso Electric Company's (EPE) late motions to intervene.

### *Appeals of Municipal Ordinances*

23. ETI timely filed with the Commission petitions for review of rate ordinances of the municipalities exercising original jurisdiction within its service territory.
24. In SOAH Order No. 3 issued on August 19, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Hearne, Patton Village, Daisetta, Madisonville, Bedias, Kosse, New Waverly, Somerville, Iola, Anderson, Todd Mission, Trinity, Franklin, Ames, Caldwell, Colmesneil, Bremond, Taylor Landing, Midway, Groveton, Woodbranch Village, Calvert, Woodloch, Nome, Riverside, Woodville, and Lumberton.
25. In SOAH Order No. 4 issued on September 7, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the

following cities/towns: Kountze, Cleveland, Normangee, Plum Grover, Hardin, Devers, North Cleveland, Plantersville, and China.

26. In SOAH Order No. 5 issued on September 19, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Cut and Shoot, Corrigan, Bevil Oaks, and Chester.
27. In SOAH Order No. 8 issued on October 25, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Willis, Groves, and Nederland.
28. In SOAH Order No. 11 issued on December 1, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Dayton, Sour Lake, Port Neches, Navasota, Orange, Liberty, Pinehurst, Port Arthur, Anahuac, Bridge City, Rose City, Vidor, and Roman Forest.
29. In SOAH Order No. 13 issued on December 16, 2022, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Silsbee, Beaumont, and Pine Forest.
30. In SOAH Order No. 15 issued on January 24, 2023, the SOAH ALJs consolidated the review of the municipal ordinance adopted by the City of West Orange.
31. In SOAH Order No. 16 issued on February 16, 2023, the SOAH ALJs consolidated the review of the municipal ordinances adopted by the following cities/towns: Huntsville, Splendor, Montgomery, Conroe, Shenandoah, Panorama Village, and Rose Hill Acres.
32. In Order No. 1 issued on June 6, 2023, the Commission ALJ consolidated the review of the municipal ordinances adopted by the following cities/towns: Oak Ridge North and Shepherd.

### **Testimonies and Statements of Position**

33. On October 26, 2022, the following intervenors filed direct testimony: Walmart, SPS, Sierra Club, Cities, OPUC, TIEC, ChargePoint, and FlashParking.

34. On October 26, 2022, the following intervenors filed statements of position: AACE and EPE.
35. On November 2, 2022, Staff filed direct testimony.
36. On November 9, 2022, Staff filed late direct testimony.
37. On November 16, 2022, ETI filed rebuttal testimony.
38. On November 16, the following parties filed cross-rebuttal testimony: ChargePoint, SPS, Cities, OPUC, and TIEC.
39. On November 30, 2022, the following intervenors filed statements of position: Sempra, AACE, and Sierra Club.

**Referral to SOAH and Evidentiary Record**

40. On July 6, 2022, the Commission referred this case to SOAH.
41. On August 4, 2022, the Commission issued a preliminary order.
42. In SOAH Order No. 11 issued on December 1, 2022, the SOAH ALJs adopted ETI's proposal to have Preliminary Order Issue Nos. 68 and 69 decided on written submission.
43. On December 16, 2022, ETI filed a Joint Motion to Admit Evidence on behalf of itself, Staff, OPUC, Cities, TIEC, Sierra Club, Kroger, FEA, Walmart, FlashParking, SPS, ChargePoint, Sempra, AACE, and EPE.
44. ETI requested that the documents identified in Exhibit A to its Joint Motion be admitted into evidence.
45. In SOAH Order No. 14 issued on December 28, 2022, the SOAH ALJs admitted the documents listed in Exhibit A to the Joint Motion.
46. On May 10, 2023, ETI filed an Unopposed Stipulation and Settlement Agreement (Stipulation) on behalf of itself, Staff, OPUC, TIEC, Sierra Club, Kroger, FEA, and Walmart. Cities, AACE, ChargePoint, sps, epe, Sempra, and FlashParking were not signatories to the Stipulation, but did not oppose it.



47. On May 10, 2023, ETI filed a second Joint Motion to Admit Evidence on behalf of itself, Staff, OPUC, Cities, TIEC, Sierra Club, Kroger, FEA, Walmart, FlashParking, SPS, ChargePoint, Sempra, AACE, and EPE.
48. In SOAH Order No. 20 issued on May 10, 2023, the SOAH ALJ admitted the documents listed in Exhibit A to the second Joint Motion to Admit Evidence and granted a partial remand to the Commission of the settled contested issues, excluding contested Preliminary Issue Nos. 68 and 69.

**Briefs Regarding Preliminary Order Issue Nos. 68 and 69**

49. The following parties submitted initial briefs on Preliminary Order Issue Nos. 68 and 69 on January 13, 2023: ETI, SPS, AACE, FlashParking, ChargePoint, OPUC, and Staff.
50. The following parties submitted reply briefs on Preliminary Order Issue Nos. 68 and 69 on January 27, 2023: ETI, SPS, EPE, AACE, ChargePoint, OPUC, and Staff.
51. The parties' proposed findings of fact, conclusions of law, and ordering paragraphs regarding Preliminary Order Issue Nos. 68 and 69 were filed on January 31, 2023.

**Preliminary Order Issue No. 68**

52. Due to the recent passage of Senate Bill 1002 and the inherent policy and precedent-setting considerations, the SOAH ALJ deferred to the Commission regarding the appropriateness of vertically integrated electric utilities owning vehicle-charging facilities or other transportation electrification (TE) and charging infrastructure for purposes of this proceeding.

**Preliminary Order Issue No. 69**

**A. TECI-1 Rider**

53. Under ETI's proposed TECI-1 Rider, Rate Schedule General Service (GS) customers would be able to contract with ETI to obtain TE infrastructure and equipment.

54. ETI would partner with existing competitive TE providers to provide customers choices regarding infrastructure types, initial cost, operations and maintenance plans, and other features that will suit a specific customer's needs.
55. Customers that choose to participate in the TECI-1 Rider would be able to choose the charging equipment and the network service provider from a list of prequalified vendors.
56. The costs incurred by ETI for the equipment, installation, and ongoing operations and maintenance expenses would be added to each participating TECI-1 Rider customer's monthly electric bill as a fixed payment.
57. ETI's cost recovery from participating TECI-1 Rider customers is reasonable, fair, and appropriate.

#### **B. TECDA-1 Rider**

58. ETI's TECDA-1 Rider is designed to provide demand charge relief and to reduce electric bill uncertainty for customers installing separately metered charging equipment.
59. The TECDA-1 Rider would limit the amount of demand billed under Rate Schedule GS to a qualifying customer during any billing period in which the actual calculated load factor is less than 15 percent.
60. With the TECDA-1 Rider applied, the amount of Billing Demand billed to electric vehicle (EV) charging stations would be the lesser of: (a) measured demand (kilowatts (kW)), as conventionally determined and subject to the GS terms; or (b) adjusted demand (kW), as calculated based on actual usage and a minimum 15 percent monthly load factor.
61. The TECDA-1 Rider would be self-correcting and would phase out over time. As charging station utilization improves with the increased adoption of EVs above the 15 percent monthly load factor floor, the participating customers' bills would automatically adjust to the standard rates under Rate Schedule GS.
62. The TECDA-1 Rider would be limited to customers with electric load less than or equal to 1,500 kW for a term of five years and would be available for

only the first 30,000 kW of electric load that enrolls and becomes operational after the TECDA-1 Rider is approved.

63. It is unknown whether the potential incremental revenues generated by the TECDA-1 Rider would cover the under-recovered revenues that ETI would have recovered from the same customers were the rider not implemented.
64. ETI failed to show that its cost recovery from participating TECDA-1 Rider customers would not be unreasonably preferential, prejudicial, or discriminatory.

### **VIII. CONCLUSIONS OF LAW**

1. ETI is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over ETI and the subject matter of this application under PURA §§ 14.001, 32.001, 36.001-.112, and 36.211, 39.452(k), and 16 Texas Administrative Code (TAC) §§ 25.130 and 25.231.
3. The Commission has jurisdiction over an appeal from municipalities' rate proceedings under PURA § 33.051.
4. SOAH exercised jurisdiction over this proceeding under PURA § 14.053 and Texas Government Code § 2003.049.
5. This docket was processed in accordance with the requirements of PURA, the Texas Administrative Procedure Act, and Commission rules.
6. ETI provided adequate notice of its application in compliance with PURA § 36.103 and 16 TAC § 22.51(a) and filed affidavits attesting to the completion of notice in compliance with 16 TAC § 22.51(d).
7. The recent amendment to PURA § 31.002(6) does not support the position that vertically integrated electric utilities may own all aspects of EV charging-related infrastructure and equipment. *See* Act of May 24, 2021, 87th Leg., R.S. Ch. 389 (S.B. 1202), Sec. 1, eff. September 1, 2021.

8. Beginning September 1, 2023, it is appropriate for a vertically integrated electric utility to own vehicle-charging facilities or other TE and charging infrastructure in accordance with the soon-to-be codified chapter 42 of PURA, as enacted by the recent passage of SB 1002. Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (to be codified as Tex. Util. Code ch. 42).
9. If the Commission determines it is appropriate for ETI to own TE and charging infrastructure, including charging stations:
  - a. ETI's proposed TECI-1 Rider should be approved as it is not unreasonably preferential, prejudicial, or discriminatory. PURA § 36.603; 16 TAC § 25.234.
  - b. ETI's proposed TECDA-1 Rider should be denied as it is unreasonably preferential, prejudicial, or discriminatory. PURA § 36.603; 16 TAC § 25.234.

## **IX. PROPOSED ORDERING PARAGRAPHS**

1. If the Commission determines it is appropriate for ETI to own TE and charging infrastructure, including charging stations, ETI's proposed TECI-1 Rider is approved and its proposed TECDA-1 Rider is denied.
2. Within 20 days of the date of this Order, ETI must file a clean record copy of the tariffs approved in this Order, with the approved effective dates, with Central Records to be marked *Approved* and filed in the Commission's tariff books.
3. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed June 19, 2023**



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Rachelle Nicolette Robles,  
Administrative Law Judge