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

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

**AMERICANS FOR AFFORDABLE CLEAN ENERGY'S
EXCEPTIONS TO PROPOSAL FOR DECISION**

JULY 12, 2023

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Americans for Affordable Clean Energy (AACE) timely files these Exceptions to the Proposal for Decision for consideration by the Public Utility Commission of Texas (Commission) and respectfully shows as follows:

**I. INTRODUCTION AND MOTION TO DISMISS THE ISSUES WITHOUT
PREJUDICE**

Entergy Texas, Inc. (ETI or Company) filed an application with the Commission on July 1, 2022, requesting authority to change its rates.¹ On December 1, 2022, two issues relating to electric vehicle (EV) charging, Issue Nos. 68 and 69, were severed from the hearing and instead decided on written submission.² The Administrative Law Judge (ALJ), filed its Proposal for Decision (PFD) on June 19, 2023.³ In between the date the application was submitted, and the Proposal for Decision was filed, the Legislature passed Senate Bill (SB) 1002. SB 1002 created a new chapter, Chapter 42, of the Public Utility Regulatory Act (PURA) that addresses EV charging facilities and establishes a framework for related issues.⁴ This new chapter becomes effective September 1, 2023.⁵ As the ALJ noted in the PFD, SB 1002 specifically “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.”⁶ Due to the impending change in law, the ALJ deferred both the decision of Issue No. 68 and 69 to the Commission.

¹ ETI’s Statement of Intent and Application for Authority to Change Rates (Jul. 1, 2022).

² SOAH Order No. 11 – Memorializing Prehearing Conference and Motions to Consolidate (Dec. 1, 2022).

³ SOAH Proposal for Decision with Memorandum (Jun. 19, 2023) (PFD).

⁴ *Id.* at 16.

⁵ *Id.*

⁶ PFD at 16, citing Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B.

Given that SB 1002 directly impacts both pending issues and was passed after the filing of ETI's application, AACE respectfully requests that the Commission dismiss Issues Nos. 68 and 69, without prejudice. This would allow ETI to file its Transportation Electrification and Charging Infrastructure (TECI) Rider and Transportation Electrification and Charging Demand Adjustment (TECDA) Rider in a separate filing after PURA Chapter 42 becomes effective. Further, it will allow the Commission time to examine how to best implement the new law without setting precedent in this proceeding that may not align with statute. Deciding these issues prior to implementation of the statute will determine policy and Commission precedent in a time not bound by the imminent law but will surely have broad implications on all applications filed after this order is issued. Severing these two issues from this docket gives the Commission the opportunity to make a guided and accurate decision on the execution of the two riders in line with PURA Chapter 42 after its implementation.

However, if the Commission chooses not to dismiss Issues Nos. 68 and 69 without prejudice, AACE reasserts its recommendations that the Commission deny the TECI Rider and approve the TECDA Rider, as discussed below.

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

In the PFD, the ALJ finds that, as of the effective date of the new PURA chapter under SB 1002, it is appropriate for a vertically integrated electric utility to own transportation electrification (TE) charging infrastructure and equipment.⁷ However, since the effective date is in the future, the ALJ defers the issue of appropriateness of vertically integrated electric utility ownership of TE and charging infrastructure as it is considered in the current proceeding to the Commission.⁸

If the Commission does not dismiss Issue Nos. 68 and 69, AACE urges the Commission to approve the ALJ's finding that AACE's argument regarding legislative intent related to EV charging in PURA is persuasive. AACE reiterates its position that the Legislature's amendment to PURA § 31.002(6) was intended to provide regulatory clarity regarding the status of companies that primarily provide EV charging stations, specifically by exempting EV charging companies

1002) (to be codified at Tex. Util. Code Ch. 42).

⁷ PFD at 16-17.

⁸ *Id.* at 17.

from the definition of electric utilities, thereby removing those companies from the regulation of the Commission.⁹ The ALJ appropriately disagreed with ETI's position that the current statutory framework authorizes integrated electric utilities to own all aspects of EV charging-related infrastructure and equipment.¹⁰ AACE agrees with the ALJ's finding, however, the ALJ erred in not taking AACE's other arguments into consideration.

To the extent the Commission determines to decide this issue before implementation of SB 1002, AACE reiterates its previous arguments regarding the appropriateness of utility ownership of EV charging stations. AACE reiterates its position that it is currently not appropriate for an electric utility in a vertically integrated area to own EV charging stations, however, it is appropriate for an electric utility in a vertically integrated area to own make-ready infrastructure.¹¹ Additionally, a monopoly, such as an electric utility, should not compete in a competitive market, like the EV charging station market.¹²

To begin, a make-ready model – in which the utility owns and operates the make-ready EV charging infrastructure and unregulated businesses, referred to as site hosts, own and operate EV charging stations – allows for the much needed proliferation of TE infrastructure and EV charging stations. PURA Chapter 42, as laid out in SB 1002, allows for make-ready models in both areas outside and inside of ERCOT. A make-ready model allows for electric utilities and site hosts to focus on their core competencies in order to facilitate the proliferation of TE infrastructure and EV charging stations. As stated by ETI, utilities have expert knowledge of, and experience in installing and maintaining equipment like make-ready EV charging infrastructure.¹³ Alternatively, site hosts have the experience and knowledge in providing customer amenities and other services that customers have come to expect while refueling their vehicles.¹⁴ Moreover, an electric utility

⁹ PFD at 16, citing Americans for Affordable Clean Energy's Reply Brief at 7-8 (Jan. 27, 2023) (AACE's Reply Brief).

¹⁰ PFD at 16.

¹¹ Americans for Affordable Clean Energy's Initial Brief at 2 (Jan. 13, 2023) (AACE's Initial Brief). AACE refers to *EV charging stations* as consumer-facing refueling infrastructure that dispenses electricity into an EV and refers to *make-ready charging infrastructure* as all necessary electric grid, transmission, and other necessary infrastructure upstream of and not including EV charging stations themselves.

¹² AACE's Initial Brief at 3.

¹³ Entergy Texas, Inc.'s Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 at 12 (Jan. 13, 2023) (ETI's Initial Brief).

¹⁴ AACE's Reply Brief at 4.

constructing, owning, and maintaining make-ready EV charging infrastructure would provide the proper support for site hosts to invest in EV charging stations by eliminating the cost barrier of make-ready EV charging infrastructure that site hosts would otherwise confront when opting to provide EV charging services to customers.¹⁵

Additionally, AACE further urges the Commission to consider its position that allowing a monopoly, such as an electric utility in a vertically integrated area, to partake in a competitive market prior to the proper implementation of PURA Chapter 42, would result in an unavoidable disruption to the potential development of a competitive EV charging market. An electric utility has the ability to avoid competitive pressures because the utility can recover the costs of providing EV charging stations from its ratepayers.¹⁶ An unregulated business does not have this ability and, therefore, would be taking on the risk of loss as well as competing with the low prices set by monopolies.¹⁷ This would create an uneven playing field and disincentivize unregulated businesses from investing in EV charging. The intent of the new PURA chapter under SB 1002 aims to lessen the disruption to the competitive EV charging market that would occur through electric utility ownership of EV charging stations. Competition is imperative to a market's innovation and diversity. Competitive forces drive site hosts' actions and decisions on how to participate in the market.

As previously asserted by AACE, the Legislative intent in creating SB 1202 in 2021—creating an amendment to PURA which excepted someone who “owns or operates equipment used solely to provide electricity charging service” from the definition of “electric utility”¹⁸ — was to provide regulatory clarity to the competitive providers of electric charging services in order to help facilitate the development of and competition of EV charging stations for customers.¹⁹ The ALJ found AACE's argument that the amendment was intended to provide regulatory clarity to be persuasive.²⁰ In the PFD, the ALJ states that the purpose of that amendment was to exempt EV

¹⁵ AACE's Initial Brief at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4.

¹⁸ Tex. S.B. 1202, 87th Leg., R.S. (Mar. 19, 2021); PURA § 31.002(6).

¹⁹ AACE's Reply Brief at 7-8, citing Commission Staff's Initial Brief on Issues 68 and 69 at 6. (Jan. 13, 2023) (Commission Staff's Initial Brief).

²⁰ PFD at 16.

charging companies from the definition of electric utilities, which removed the companies from the regulation of the Commission.²¹ The legislature continues to support the competitive market by the creation of Chapter 42 and stating that “it is necessary to implement competitively neutral policies.”²²

AACE reasserts that it is premature for an electric utility to participate in the EV charging market due to an alleged lack of ability by unregulated businesses to provide reasonable and adequate services. SB 1002 addresses this concern by allowing an electric utility operating outside of ERCOT to submit a proposal to provide EV charging service, but also allowing a person other than the electric utility to notify the Commission that they intend to provide EV charging service in an adequate manner.²³ This structure would allow a utility to provide service in an area where there may be inadequate service, but also gives private, unregulated businesses the ability to intervene and show capability of providing reasonable and adequate service in the area before the Commission authorizes a utility to own EV charging stations. If the Commission decides this issue on ETI ownership in this proceeding, private, unregulated businesses will not have the opportunity to intervene and prove their ability to provide adequate EV charging service. That outcome is not authorized in SB 1002. AACE, thus, reiterates that it is inappropriate to authorize electric utilities to enter a competitive EV charging market when the market is still in its early adoption period and market forces have only begun to push private businesses to meet demand.²⁴

It is worth noting that ETI’s proposal to finance the infrastructure and equipment through an on-bill fixed charge over a set term in order to help relieve the burden of costs for site hosts is already being offered by non-utility service providers.²⁵ Similar to the argument above, allowing a monopoly, like ETI, to partake in a competitive market, like providing this service, would deter non-utility providers from partaking in these services, reducing competition and innovation.²⁶

For the foregoing reasons, AACE reasserts its position that it is inappropriate for an electric utility in a vertically integrated area to own EV charging equipment, but it is appropriate for an

²¹ PFD at 16, citing ETI’s Initial Brief at 4.

²² Act of May 19, 2023, 88th Leg., R.S., S.B. 1002 (2023).

²³ *Id.*

²⁴ AACE’s Initial Brief at 5.

²⁵ *Id.* at 4, citing ChargePoint Ex. 1.0 at Bates 15.

²⁶ *Id.* at 4.

electric utility to own make-ready infrastructure. AACE further recommends the Commission find the ALJ's determination that the current statutory framework does not authorize integrated electric utilities to own all aspects of EV charging-related infrastructure and equipment as ETI proposes.²⁷

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

A. ETI's Proposed TECI-1 and TECDA-1 Riders

The ALJ, contingent upon Commission finding ETI's proposed EV charging ownership permissible, recommends the Commission approve the proposed TECI Rider and deny the TECDA Rider.²⁸

B. Discussion and Analysis on Proposed Riders

1. The Commission Should Deny the TECI Rider Because it is Not Appropriate for an Electric Utility in a Vertically Integrated Area to Own EV Charging Stations, it is Not Appropriate for a Monopoly to Compete in a Competitive Market, and the TECI Rider is not Similar and to Previously Approved Riders as related to Issue Nos. 68 and 69.

As to the rate-related aspect of the TECI Rider, the PFD recommends that the TECI Rider should be approved. The ALJ concludes that ETI's customers would benefit with respect to TE infrastructure. Specifically, the ALJ errs in finding that the line extension component of the Rider is similar to other approved riders, ALS and AFC Riders, which justifies 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.²⁹ The ALJ's conclusion that the line extension component of the Rider is similar to the ALS and AFC Riders is inappropriate. The comparison made is one relating to the cost recovery mechanism, which is not the question raised in Issues Nos. 68 and 69 – questions concerning ownership of TE related infrastructure and facilities. Yet, the ALJ acknowledges that there is a risk of other non-participating customers in incurring charges related to the recovery of the costs for TE and charging infrastructure (excluding each EV charging unit and monthly O&M costs).³⁰ Therefore, the ALJ is unjustified in reaching such a conclusion.

²⁷ SOAH PFD at 16.

²⁸ *Id.* at 17-18.

²⁹ SOAH PFD at 32.

³⁰ *Id.* at 32.

AACE reiterates its arguments stated above as they pertain to the TECI Rider. Additionally, AACE assert that as proposed, the pre-approved list of providers that – one that is solely authored and approved by ETI – site hosts would be able to choose from,³¹ raises competitive concerns. By having such a list, a site host, in deciding whether to participate in the TECI Rider or not, is having to make a choice of choosing to work with an electric utility and whichever provider the electric utility allows to provide service, or exploring which competitive provider would be best equipped for their needs. Such a limitation on vendors that site hosts can choose from creates a lack of diversity, which further hinders the competitive market.

Moreover, AACE maintains its position that, if the Commission approves the TECI Rider, the additional costs created by the Rider should not be distributed to ratepayers through ETI's rate base.³² Although ETI claims that recovering costs from the site host who opt to partake in the Rider would ensure costs associated with ETI investment will only be charged to those customers and not non-participating ratepayers,³³ market distortion still occurs since utilities are able to invest risk free. As such, The Commission should reject the ALJ's recommendation to adopt the TECI Rider.

2. The Commission Should Approve the TECDA Rider Because it Would Not Only Benefit Site Hosts, but the EV Market as a Whole, Which Outweighs Cost-Shifting Concerns.

The PFD rejects AACE's recommendation that the Commission approve the TECDA Rider. Instead, the PFD recommends the Commission deny the TECDA Rider due to cost-shifting concerns and because the ALJ was not convinced the TECDA Rider terms are not unreasonably preferential, prejudicial, or discriminatory.³⁴ Specifically, the ALJ relies on the issue raised by Commission Staff and the Office of Public Utility Counsel (OPUC) of potential under-recovered revenues. The ALJ is unpersuaded by ETI's counter argument in which incremental revenues generated by the TECDA Rider would replace the revenues that ETI would have recovered from the same customers if the Rider were not in place.³⁵ The ALJ additionally states that the record

³¹ Commission Staff's Initial Brief at 7.

³² AACE's Reply Brief at 10-11.

³³ AACE's Reply Brief at 11, citing ETI Initial Brief at 16.

³⁴ SOAH PFD at 37.

³⁵ *Id.* at 37.

does not reflect whether ETI would obtain the under-recovered revenues from other classes of customers or if ETI would absorb the costs.³⁶ AACE believes the ALJ erred when analyzing the cost-shifting concerns raised by Staff and OPUC. As the PFD recommends as reasoning in approving the TECI Rider, the benefits to EV market outweigh the cost-shifting concerns of the TECDA Rider.

AACE restates its position that the TECDA Rider should be approved to the extent that it could offer demand relief, something that would benefit site hosts. Demand charges in the EV charging market are high due to the fact that EV charging stations tend to have sporadic periods of high demand, but relatively low energy utilization.³⁷ A limitation on such demand charges, which business customers of ETI have expressed creates a barrier for investment in EV charging stations,³⁸ would encourage investments in EV charging stations by private businesses resulting in the proliferation of EVs in Texas. The TECDA Rider is reasonable because it is limited to being used by the site host for the first five years after initially taking electric service, and at 30,000 KW of load.³⁹ The Rider additionally creates more predictable electric bills by adjusting the variability in utilization and load factors of EV charging stations. As applied, the Rider will result in lower, more certain monthly electricity bills because the customer avoids being billed for any demand that exceeds the limited demand charge amount.

The issue of high level of demand, but relatively low energy utilization is often seen during the early adoption period of charging stations.⁴⁰ The TECDA Rider is a self-correcting solution to this issue. As ETI asserts, the TECDA Rider is self-correcting because the site host bills would automatically adjust back to standard Rate Schedule GS rates if the stations utilization increased above the 15% monthly load factor floor, and thus is expected to “phase out” on its own in the next few years as EVs and EV charging stations increase.⁴¹ As proposed, the TECDA Rider is limited to five years, however, AACE urges the Commission to consider removing this limitation

³⁶ *Id.* at 37.

³⁷ AACE Initial Brief at 8, citing ChargePoint Ex. 1.0 at Bates 19.

³⁸ ETI Ex. 53 at Bates 41.

³⁹ ETI Ex. 53 at Bates 34.

⁴⁰ ETI Ex. 53 at Bates 37.

⁴¹ ETI’s Initial Brief at 24.

since the high demand charges could remain an issue even after five years.⁴² As noted by ChargePoint, the self-correcting design of the Rider allows for site hosts with a load factor below 15% to continue to receive support, while site hosts with a more sufficient utilization (load factor being above 15%) will drop off of the Rider.⁴³ Therefore, AACE reasserts its position that the TECDA Rider is a reasonable effort to mitigate the inherent barrier caused by demand charges that is confronted by unregulated businesses interest in investing in and owning EV charging stations.

In discussing cost shifting concerns, the ALJ fails to make note of the Ratepayer Impact Measure (RIM) test done by ETI. The RIM test considers the incremental benefits of the utility's proposal and the costs associated with providing the service.⁴⁴ The results from the test indicated a lower rate requirement from all customers.⁴⁵ Additionally, the TECDA Rider is temporary, as noted by ChargePoint, the amount of participating customers will decrease over time, which will ensure that any potential impact on non-participating customers would be minimal.⁴⁶ For these reasons, the issue of cost shifting is not a valid reason to deny the TECDA Rider, which as shown by the RIM test, benefits all customers. Additionally, the rider would remove one barrier unregulated businesses face when entering the EV charging station market, resulting in a proliferation of EV charging stations.

Thus, the PFD's recommendation would result in an unjustified denial of the TECDA Rider and should be rejected by the Commission.

VI. CONCLUSION

AACE respectfully requests that the Commission dismiss Issues Nos. 68 and 69, the TECI Rider, and the TECDA Rider without prejudice. If the Commission does not dismiss these then, AACE requests that the Commission deny the TECI Rider and approve the TECDA Rider as indicated above.

⁴² AACE's Initial Brief at 8, citing ChargePoint Ex. 1.0 at Bates 21.

⁴³ ChargePoint's Initial Brief at 13.

⁴⁴ ETI's Initial Brief at 24.

⁴⁵ *Id.* at 24.

⁴⁶ ChargePoint Ex. 1.0 at Bates 21.

Respectfully submitted,

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**ATTORNEYS FOR AMERICANS FOR
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 12, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN