



Filing Receipt

Filing Date - 2023-07-19 08:46:19 AM

Control Number - 53719

Item Number - 528

**SOAH DOCKET NO. 473-22-04394
P.U.C. DOCKET NO. 53719**

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

**§
§
§**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARING**

CHARGEPOINT, INC.'S REPLY TO EXCEPTIONS

July 19, 2023

TABLE OF CONTENTS

I.	ChargePoint’s Response to AACE’s, Staff’s, and OPUC’s Exceptions Regarding the TECI-1 Rider.....	1
	A. The TECI-Rider is consistent with SB 1002.....	1
	B. The Commission should not dismiss Issue Nos. 68 and 69 and should instead deem Issue No. 68 moot and approve the TECI-1 Rider.	3
	C. The Commission should reject Staff’s and OPUC’s exceptions.	4
II.	Conclusion.....	5

**SOAH DOCKET NO. 473-22-04394
P.U.C. DOCKET NO. 53719**

APPLICATION OF ENERGENCY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARING
---	----------------------	--

CHARGEPOINT, INC.’S REPLY TO EXCEPTIONS

ChargePoint, Inc. (ChargePoint) respectfully provides the following reply to the exceptions to the Proposal for Decision (PFD) filed by Entergy Texas, Inc. (ETI), Staff, Office of Public Utility Counsel (OPUC), and Americans for Affordable Clean Energy (AACE) in the above-captioned proceeding.

I. ChargePoint’s Response to AACE’s, Staff’s, and OPUC’s Exceptions Regarding the TECI-1 Rider.

A. The TECI-Rider is consistent with SB 1002.

ChargePoint agrees with ETI that the TECI-Rider is consistent with SB 1002, which was passed on May 19, 2023 after briefing was completed in this proceeding but does not take effect until September 1, 2023. Specifically, though SB 1002 limits the circumstances in which a utility operating outside of ERCOT (such as ETI) may own and operate EV chargers, the TECI-Rider fits within the exceptions to the general policy regarding utility ownership.

First, as ETI points out,¹ the limits on utility ownership of EV chargers only apply to public chargers; no statutory restrictions apply to chargers that are used by a utility customer or a utility

¹ ETI Exceptions at 4.

customer's tenants, affiliates, or guests and that are not commercially available.² Accordingly, ChargePoint agrees with ETI that any non-public chargers that ETI would own through the TECI-1 Rider would not be subject to the restrictions of SB 1002. That is, the new legislation does not limit ETI's ability to provide utility-owned chargers for non-public use cases, such as fleet, multi-family, or workplace chargers that are not available to the public (if such customers choose the option under the TECI-1 Rider for ETI to own the chargers).

Second, as ETI also points out,³ SB 1002 allows a utility operating outside of ERCOT to own or operate a public EV charger on a utility customer's property provided several conditions are met: a) the utility does not itself provide public charging services, b) the utility does not brand or market the chargers as being owned by the utility, c) the customer determines access to the public charger, d) the customer determines the price for charging, and e) the customer pays for the entire cost of the utility providing the utility-owned charger on the customer's property pursuant to a Commission-approved tariff.⁴ Further, utility-owned chargers meeting these conditions are not required to comply with the new provisions that require a utility to provide notice of its intent to deploy public chargers and provide third parties with the opportunity to meet any public charger need identified by the utility.⁵ ChargePoint agrees with ETI that the TECI-1 Rider meets each of these conditions. By meeting these conditions, any site host that chooses to have ETI install public chargers will be the entity providing public charging services, not ETI. By empowering site hosts to provide public charging rather than ETI providing public charging services itself, the TECI-1

² PURA § 42.0102(7)(B).

³ ETI Exceptions at 4-5.

⁴ PURA § 42.0103(o).

⁵ PURA § 42.0103(q).

Rider avoids the market distortions that can occur when utilities invest ratepayer funds in utility-owned public chargers and provide public charging services directly to the public. The TECI-1 Rider is a cost-based solution that allows site hosts to choose their preferred charging solution and, as a result, will support the competitive charging market.

Finally, ChargePoint appreciates that ETI states in its Exceptions that it is amenable to a September 1, 2023 effective date for the TECI-1 Rider, which is the same date SB 1002 becomes effective.⁶ Establishing an effective date of September 1, 2023 will mean that the Commission does not need to make a determination regarding Issue No. 68 as to whether it is appropriate for vertically integrated utilities such as ETI to own EV chargers prior to September 1, 2023. As discussed, SB 1002 establishes that utility ownership of EV chargers is permitted after September 1, 2023, but only in the specific, narrowly defined use cases that the TECI-1 Rider will serve. In other words, if the TECI-1 Rider does not go into effect until September 1, 2023 when utility ownership is legally permitted under specified circumstances, then Issue No. 68 will be moot. Accordingly, ChargePoint recommends that the Commission direct ETI to establish a September 1, 2023 effective date for the TECI-1 Rider and determine that it does not need to render a decision on Issue No. 68.

B. The Commission should not dismiss Issue Nos. 68 and 69 and should instead deem Issue No. 68 moot and approve the TECI-1 Rider.

Through its Exceptions, AACE moves the Commission to dismiss Issue Nos. 68 and 69 without prejudice based on the passage of SB 1002, which, according to AACE, would allow ETI to file its TECI-1 Rider and TECDA-1 Rider in a separate filing after SB 1002 becomes effective

⁶ ETI Exceptions at 9.

on September 1, 2023.⁷ The Commission should reject AACE's invitation to discard the substantial evidence the parties have provided in the record of this proceeding and waste the resources the parties and the Commission have invested in creating a robust record. As just discussed, ETI's offer to establish an effective date of September 1, 2023 for the TECI-1 Rider provides an efficient means for the Commission to simplify this proceeding by deeming Issue No. 68 moot as of the effective date of the rider. Further, the record of this proceeding is more than sufficient for the Commission to determine that the TECI-1 Rider fits within the narrow circumstances under which utility ownership of EV chargers is permitted outside of ERCOT under SB 1002. For these reasons, the Commission should reject AACE's request to dismiss Issue Nos. 68 and 69 and, instead, deem Issue No. 68 moot and approve the TECI-1 Rider because it is consistent with SB 1002.

C. The Commission should reject Staff's and OPUC's exceptions.

Staff takes exception to the PFD's recommended approval of the TECI-1 Rider, essentially arguing that the Commission cannot determine whether the TECI-1 Rider charges protect nonparticipants because the TECI-1 Rider charges are determined on a case-by-case basis based on each customer's unique need for EV charging infrastructure.⁸ Though the Commission cannot examine the precise charges that will apply to participating customers before those charges are known, the Commission can examine the methodology ETI has proposed for determining those charges. Accordingly, the PFD found that the methodology ETI has proposed is substantially similar to the methodology used in ETI's Commission-approved Additional Facilities Charge

⁷ AACE Exceptions at 3.

⁸ Staff Exceptions at 2.

(AFC) Rider.⁹ Staff's Exceptions do not explain why the Commission-approved methodology for ensuring each participating customer pays for the costs they cause under the AFC Rider is insufficient to provide the same protections to nonparticipants in the context of the TECI-1 Rider. The PFD correctly found that the costs of make-ready infrastructure and any EV chargers that ETI installs for a customer through the TECI-1 Rider "are recovered directly from the customer and will not be shifted to non-participating customers" and that any risk on non-participant impacts is outweighed by the benefits of the rider.¹⁰

Similarly, OPUC's Exceptions do not explain why OPUC believes the risk of customer default under the TECI-1 Rider is so high as to warrant additional protections that do not apply to the AFC Rider.¹¹ The PFD correctly found that ETI, like any utility, already bears the risk of defaulting customers.

As discussed above, the TECI-1 Rider meets the criteria of SB 1002 and accordingly should be approved with an effective date of September 1, 2023. The Commission should reject the exceptions of Staff and OPUC.

II. Conclusion

As stated in ChargePoint's Exceptions, ChargePoint recommends that the Commission modify the PFD to approve the TECDA-1 with ChargePoint's recommended improvements to the rider. For the reasons stated above, ChargePoint recommends that the Commission approve the TECI-1 Rider and reject the exceptions filed by AACE, Staff, and OPUC.

⁹ PFD at 32.

¹⁰ PFD at 31 and 32.

¹¹ OPUC Exceptions at 2.

Respectfully submitted on July 19, 2023,

/s/ Scott F. Dunbar

Scott F. Dunbar
Colorado Bar No. 44521
Keyes & Fox LLP
1580 Lincoln St., Suite 1105
Denver, CO 80203
949-525-6016
sdunbar@keyesfox.com

Lucas A. Fykes
Ohio Bar No. 98471
Keyes & Fox LLP
1580 Lincoln St., Suite 1105
Denver, CO 80203
614-285-8565
lfykes@keyesfox.com

Counsel to ChargePoint, Inc.

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record on July 19, 2023:

/s/ Alicia Zaloga