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| <b>APPLICATION OF ENTERGY</b>       | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>TEXAS, INC. FOR AUTHORITY TO</b> | <b>§</b> |                                  |
| <b>CHANGE RATES</b>                 | <b>§</b> | <b>OF TEXAS</b>                  |

**ENTERGY TEXAS, INC.’S REPLY TO  
EXCEPTIONS TO THE PROPOSAL FOR DECISION AND  
RESPONSE TO AACE’S MOTION TO DISMISS**

Entergy Texas, Inc. (“ETI” or the “Company”) respectfully provides the following Reply to the Exceptions to the Proposal for Decision (“PFD”) filed by the Staff of the Public Utility Commission (“Staff”), the Office of Public Utility Counsel (“OPUC”), and Americans for Affordable Clean Energy (“AACE”) (collectively, “Opponents”), and Response to AACE’s Motion to Dismiss.

**I. Introduction**

This Commission wisely determined—on two separate occasions—that now is the time, and this case is the appropriate forum, to decide (1) whether vertically integrated utilities should be permitted to own vehicle-charging facilities or other transportation electrification (“TE”) and charging infrastructure, and (2) whether ETI’s specific TE and electric vehicle (“EV”) charging-related riders should be approved.<sup>1</sup> The Legislature’s passage of SB 1002 only serves to confirm that decision. The Legislature found that “encouraging investment in the deployment of public electric vehicle charging stations is essential to foster the *rapid* installation and widespread use of public electric vehicle charging stations,” and that “electric utilities . . . and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.”<sup>2</sup>

Staff and AACE ask the Commission to defer these issues to a future rulemaking, or a redundant future tariff filing. But delay would only hinder the development of the EV market, and

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<sup>1</sup> See Preliminary Order at 15 (Aug. 4, 2022); Order on Appeal of SOAH Order No. 4 at 1-2 (Oct. 20, 2022).

<sup>2</sup> Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. ch. 53 (“SB 1002”) (to be codified as Public Utility Regulatory Act (“PURA”) ch. 42) at PURA § 42.0101(b)-(c) (emphasis added).

runs counter to the state policy of encouraging the “rapid installation and widespread use” of EV charging equipment.<sup>3</sup> As discussed in ETI’s Exceptions, there is no legal or policy barrier to approving the TECI-1 Rider now. The TECI-1 Rider is consistent with current law and state policy, and complies with the applicable provisions of SB 1002. As shown below, Staff’s, OPUC’s, and AACE’s arguments to the contrary misconstrue both the TECI-1 Rider and the new legislation. The TECI-1 and TECDA-1<sup>4</sup> Riders should be approved now, and if the Commission so chooses, given an effective date of September 1, 2023.

## **II. The TECI-1 Rider Should Be Approved**

### **A. ETI will not be providing public charging service through the TECI-1 Rider.**

It is important to be very clear about what ETI is and is not proposing under its TECI-1 Rider. ETI *is not* proposing to provide public charging. ETI *is* proposing to provide host customers an option to have their electric utility install, own, and maintain the equipment the customer could use to provide EV charging to their employees, tenants, students, visitors, etc., or even to the public (or any other use they may elect). As explained below, much of the opposition to approving ETI’s proposed TECI-1 Rider now is based on a misunderstanding or mischaracterization of the facts and by conflating provisions of SB 1002 that address an electric utility providing public EV charging with what the TECI-1 Rider actually contemplates.

The TECI-1 Rider gives host customers complete discretion regarding whether to use EV chargers themselves for their own use, or to provide public charging service whether or not that involves the customer receiving compensation for use of the EV chargers. As ETI’s Exceptions and the record make clear, if the customer chooses to provide public charging service, they will determine access to the facilities, determine branding,<sup>5</sup> set retail pricing, collect and retain any

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<sup>3</sup> *Id.*

<sup>4</sup> ETI excepts to the PFD’s recommendation to deny the TECDA-1 Rider in its Exceptions to the PFD and takes no issue with some parties’ proposals to expand the terms of that rider. The riders are sometimes referred to as “TECI” and “TECDA” (for instance, in the tariffs themselves) and sometimes as “TECI-1” and “TECDA-1” (for instance, in the testimony of ETI witness Samantha Hill). For consistency with the PFD, here and in ETI’s Exceptions to the PFD, the Company uses TECI-1 and TECDA-1.

<sup>5</sup> ETI’s application included the form of proposed Customer Agreement as Exhibit SFH-3 to the Direct Testimony of Samantha F. Hill (ETI Ex. 40), which predates SB 1002. In order to ensure compliance with the new legislation, ETI will make the following edits to Section 7 of the Customer Agreement, and file the revised Customer

charging revenues, and it will be done in their name.<sup>6</sup> Staff's and AACE's exceptions inappropriately rely on provisions of SB 1002 that pertain to utility-provided public charging services.<sup>7</sup> For instance, Staff cites new PURA section 42.0103(n), which governs cost recovery by a utility that has been "authorized to construct and operate a public electric vehicle charging station . . . ."<sup>8</sup> AACE goes further and argues TECI-1 "is not authorized by SB 1002" because it does not comply with new PURA section 42.0103(f), which requires "an electric utility seeking to provide electric vehicle charging service directly to a customer" to file a proposal with the Commission, post notice, and allow competitive providers to step and provide comparable service.<sup>9</sup> **These provisions are inapplicable to the TECI-1 Rider.** As illustrated through the examples below, SB 1002 specifically authorizes the TECI-1 Rider's host customer solution, through the provisions found in new PURA section 42.0103(o) and the carve-out contained in section 42.0102(7)(B). In neither example (nor any other under the TECI-1 Rider) will ETI be providing public charging service:

| <b>Scenario 1:</b> A fueling station ("Customer") wants to install an EV charger for public use. The Customer requests that ETI install, own, and maintain all needed infrastructure ( <i>i.e.</i> , "turn-key"), complying with SB 1002 Sec. 42.0103(o).   |  |
|---|--|
| <b>ETI TECI-1 Rider</b>   | <b>Customer Operates Public Charger</b>  |
| <ul style="list-style-type: none"> <li>• Executes TECI Agreement and Electric Service Agreement with Customer (<i>SB 1002 Sec. 42.0103(o)</i>)</li> <li>• Customer agrees to pay a monthly charge under the TECI-1 Rider allowing ETI to recover its investment, return, and various operations and maintenance ("O&amp;M") expenses (<i>SB 1002 Sec. 42.0103(o)(3)</i>)</li> </ul> | <ul style="list-style-type: none"> <li>• Customer determines physical access to and use of the charger (<i>SB 1002 Sec. 42.0103(o)(2)(A)</i>)</li> <li>• Customer provides the charging service to EV drivers using the charger (<i>SB 1002 Sec. 42.0103(o)(1)(A)</i>)</li> <li>• Customer receives compensation and determines price per kWh for use of the charger (<i>SB 1002 Sec. 42.0103(o)(2)(B)</i>)</li> </ul> |

Agreement with the final tariffs approved in this proceeding: "Customer may not use Company's name, service mark, design, or any Company intellectual property ~~without Company's prior written consent~~ . . . Customer agrees that it will not place Company's logo, trademark, service mark, or advertising device ~~without Company's prior written consent~~ . . . ~~With Customer's prior written consent, Company may use Customer's logo, trademark, or service mark in promotional materials, websites, or maps.~~" See SB 1002, to be codified as PURA § 42.0103(o)(1)(b).

<sup>6</sup> ETI's Exceptions to the PFD at 4-6, 11-12 (Jul. 12, 2023) (ETI's Exceptions); ETI Ex. 40 at 8-13; ETI Ex. 53 at 9-10, 26.

<sup>7</sup> See Staff's Exceptions to the PFD at 3-4 (Jul. 12, 2023) (Staff's Exceptions); AACE's Exceptions to PFD at 6 (Jul. 12, 2023) (AACE's Exceptions).

<sup>8</sup> Staff's Exceptions at 3-4.

<sup>9</sup> AACE's Exceptions at 6; SB 1002, to be codified as PURA § 42.0103(f).

| <ul style="list-style-type: none"> <li>• Customer chooses the specific charger from ETI-approved list of original equipment manufacturers (“OEMs”)</li> <li>• Customer brands EV charger with logo, ETI does not brand the equipment (<i>SB 1002 Sec. 42.0103(o)(1)(B)</i>)</li> </ul>  | <ul style="list-style-type: none"> <li>• ETI <b><i>is not</i></b> providing EV charging service directly to the public or otherwise (<i>SB 1002 Sec. 42.0103(q)</i> (“A public electric vehicle charging station operated under an agreement under Subsection (o) is not subject to the requirements of Subsections (f)-(1).”))</li> </ul>   |
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| <p><b>Scenario 2:</b> A community college (“College”) wants to install several EV chargers to be used by students, faculty, visitors, and the school’s van fleet. The College requests that ETI install, own, and maintain all needed infrastructure (<i>i.e.</i>, “turn-key”) complying with SB 1002 Secs. 42.0102(7)(B) and 42.0103(o).</p>   |  |
| ETI TECI-1 Rider  | College Operates Public/Fleet Charger  |
| <ul style="list-style-type: none"> <li>• Executes TECI Agreement and Electric Service Agreement with College (<i>SB 1002 Sec. 42.0103(o)</i>)</li> <li>• College agrees to pay a monthly charge under the TECI-1 Rider allowing ETI to recover its investment, return, and various O&amp;M expenses (<i>SB 1002 Sec. 42.0103(o)(3)</i>)</li> <li>• College chooses the specific EV charger from ETI-approved list of OEMs</li> <li>• College brands EV charger with school mascot logo, ETI does not brand the equipment (<i>SB1002 Sec. 42.0103(o)(1)(B)</i>)</li> </ul> | <ul style="list-style-type: none"> <li>• College chooses to provide free EV charging service to students, faculty, visitors, and the van fleet (<i>SB 1002 Sec. 42.0102(7)(B)</i>)</li> <li>• ETI <b><i>is not</i></b> providing EV charging service directly to students, faculty, visitors, the van fleet, or otherwise (<i>under SB 1002 Sec. 42.0102(7)(B), Sec. 42.0103(f) does not apply</i>)</li> </ul> |

Opponents’ failure to recognize that the TECI-1 Rider already complies with SB 1002 is surprising, as it is obvious from the record that ETI’s proposal does *not* involve utility-provided public charging. Under SB 1002, “[e]lectric vehicle charging service” (*i.e.*, “public charging”) means “sales made from a public electric vehicle charging station to the public.”<sup>10</sup> Under ETI’s TECI-1 Rider, the Company will not transact with the public at all, will not set any pricing, will not collect or retain the revenues, and will not brand the charger. Rather, ETI will merely install, own, and maintain (and only to the extent desired by the customer) the equipment on behalf of the host customer, who may or may not elect to provide public charging. The proposed TECI-1 Customer Agreement makes this crystal clear: customer charging stations under the TECI-1 Rider “may be made available to the general public or select users (“User(s)”) ***in the Customer’s sole***

<sup>10</sup> SB 1002, to be codified as PURA § 42.0102(4).

*discretion . . . Customer, in its sole discretion*, will determine the applicable fees for any and all Users and the method of payment to Customer for such usage . . . *Company will not collect any fee from User(s).*”<sup>11</sup> Opponents’ attempt to conflate ETI’s proposal with public charging cannot provide any basis for rejecting the TECI-1 Rider and should be ignored.

**B. The TECI-1 Rider will not impose any costs on non-participating customers.**

Staff, OPUC, and AACE argue that the TECI-1 Rider will somehow result in non-participating customers footing the bill for unreimbursed costs, in contravention of SB 1002. That is not the case. Here again, Opponents mischaracterize the rider and misconstrue the legislation. Staff for instance, argues that the rider’s customer-tailored cost input somehow precludes appropriate Commission review, and imposes a “risk to other customers if costs and revenues associated with the rider do not match up.”<sup>12</sup> AACE expresses a similar concern. As explained below, under ETI’s proposal, there can be no mismatch of revenues to the detriment of non-participants.

SB 1002 addresses these issues directly, by permitting customers to enter into agreements with electric utilities to provide EV charging facilities if the customer:

pays for all electric utility-related costs under a tariff approved by the commission that provides for full recovery of the costs of the public electric vehicle charging station from the person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service.<sup>13</sup>

These arrangements are customer-specific under the legislation and, as such, will necessarily be tailored to specific customer needs, because the cost and associated O&M expenses will differ from one host customer to the next. A one size fits all approach, which Staff seems to prefer, would hinder the “widespread use” of EV charging stations that SB 1002 seeks to engender.<sup>14</sup> Customer-tailored approaches to electric infrastructure cost recovery are nothing new, and do not harm other customers. For example, the Commission-approved Additional Facilities Charge

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<sup>11</sup> ETI Ex. 40 at Exhibit SFH-3 Sec. 6.4 (emphasis added).

<sup>12</sup> Staff’s Exceptions at 2.

<sup>13</sup> SB 1002, to be codified as PURA § 42.0103(o)(3).

<sup>14</sup> SB 1002, to be codified as PURA § 42.0101(b).

(“AFC”) Rider operates in the same manner as the TECI-1 Rider by applying a Commission-approved percentage rate to a customer-specific cost input. Further, the TECI-1 Rider will benefit other customers by producing incremental revenues that will offset ETI’s total cost of service.<sup>15</sup>

Regarding cost recovery, the TECI-1 Rider is, in essence, a combination of two existing, Commission-approved cost recovery mechanisms, ETI’s AFC Rider, Option B and the Company’s Electric Extension Policy, refined to be applicable to TE infrastructure development. Participating TECI-1 customers will similarly pay all up-front infrastructure costs, as well as ongoing incremental O&M costs associated with the TE infrastructure, through a combination of two revenue streams. First, the participating host customer will pay incremental revenues associated with the electricity used to source the charging station through the tariffed rate applicable to their customer service rate class (*e.g.*, Schedule GS). Second, the participating host customer will pay incremental revenues under their TECI-1 Rider rates sufficient to recover the remainder of the upfront capital and ongoing O&M costs associated with the facilities chosen. Between these two revenue streams, both of which the participating host customer will be ***contractually obligated to pay***, no costs can be shifted to the detriment of non-participating customers. In fact, it is expected that incremental revenues will at times exceed the cost of TECI-1-related investments and O&M and reduce the cost of service borne by non-participants.

The incremental revenues projected to be paid under the participant’s standard rate tariff will be calculated in the same manner they already are under ETI’s Commission-approved Electric Extension Policy. Non-participants are not at risk that projected incremental revenues fall short because they are contractually backstopped by a minimum bill requirement sufficient to ensure the projected level of incremental revenues are received by ETI. Thus, Staff expresses a concern regarding a potential cost-revenue mismatch (alluded to in the PFD) that, ***mechanically, cannot occur*** under ETI’s proposal and does not support rejection.<sup>16</sup> As the record demonstrates, in establishing the level of incremental revenues to be guaranteed through the participant’s standard rate tariff, it is reasonable and appropriate to apply the same four to one investment to revenue ratio to TECI-1 customers that is applied to all other customers.<sup>17</sup> And, again, to ensure the four

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<sup>15</sup> ETI Ex. 53 at 22.

<sup>16</sup> Staff’s Exceptions at 2; PFD at 31-32.

<sup>17</sup> ETI Ex. 53 at 21-22.

to one ratio is met, the TECI-1 Rider customer will have a minimum bill requirement.<sup>18</sup> Moreover, the revenue generated after the first four years through the expected 10-year life of the TE infrastructure and equipment will offset the costs of ETI's investment and ultimately benefit all ETI customers.<sup>19</sup> Thus, the only potential mismatch in revenues would be one that benefits non-participants. Applying the same revenue credit mechanism to TECI-1 customers as is applied to ETI's other customers is reasonable, familiar to the Commission, a long-standing normal utility practice, and consistent with the Legislature's desire to encourage the rapid installation and widespread use of EV chargers.<sup>20</sup>

OPUC's sole argument against the TECI-1 Rider is that it could impose costs on non-participating customers in the event of customer default. But the potential for default is an inherent part of ETI's business and is no basis to bar utilities from meeting their customers' evolving needs. There is no evidence that prospective TECI-1 Rider customers, which already take service under standard rate tariffs, present an excessive or even a different risk of default. Moreover, the rider, the associated Customer Agreement, and ETI's tariffs and business practices contain numerous safeguards against the potential imposition of costs of default on other customers. Such practices include: (1) imposing certain eligibility requirements to participate in the TECI-1 Rider; (2) including certain terms and conditions in the Customer Agreement between the participating customer and ETI to address potential default; (3) ETI's right to remove and salvage the equipment it owns; (4) imposing a lump-sum payment in the event of termination by the participating customer before the end of the initial term; (5) ETI's ability to retain financial security from participating customers, if applicable; and (6) the collection process.<sup>21</sup> OPUC's two-sentence opposition based on potential default risk should be disregarded.<sup>22</sup>

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<sup>18</sup> *Id.* at 22.

<sup>19</sup> *Id.*

<sup>20</sup> SB 1002, to be codified as PURA § 42.0101(b).

<sup>21</sup> ETI Ex. 53 at 16-19.

<sup>22</sup> OPUC's Exceptions to the PFD at 2 (Jul. 12, 2023).



### **C. ETI's Rate Case Expenses have been stipulated.**

Perhaps as an oversight, OPUC argues that TECI-1 and TECDA-1 related rate case expenses should be segregated and not charged to the Residential class.<sup>23</sup> However, this matter is subject to and governed by the Unopposed Stipulation between the parties. OPUC has already agreed that “ETI is authorized to recover \$4,805,630.19 of RCE, comprised of amounts incurred in this proceeding through December 31, 2022, and in Docket No. 49916 . . .” of the \$6,186,235 total requested by ETI, which is a reduction of over \$1.38 million.<sup>24</sup> Because OPUC has settled the issue, it must “support or not oppose this Stipulation before the Commission and . . . take reasonable steps to support expeditious entry of orders consistent with the Stipulation.”<sup>25</sup> Even if the issue were not settled, OPUC has failed to identify the amount of rate case expenses that it wishes were segregated or whether any amount has already been removed as part of the \$1.38 million reduction, and the record is closed. In addition, the parties stipulated, “ETI RCE incurred after December 31, 2022, will be deferred in a regulatory asset, and ETI may seek recovery of those amounts in a future proceeding.”<sup>26</sup> Thus, to the extent OPUC is arguing only about rate case expenses incurred after December 31, 2022, those expenses have not yet been presented for recovery and are not at issue in this case. ETI respectfully requests that the parties’ Stipulation be approved and enforced in its entirety, and that the Commission reject OPUC’s vague and improper request.

### **III. Conclusion**

Through SB 1002, which was just passed and signed by Governor Abbott, the Legislature found that EV charging facilities should be rapidly installed and widely used, and that electric utilities have a role to play in customer-directed applications. ETI’s proposed TECI-1 Rider fully complies with the letter and spirit of the new legislation. The Commission should approve the TECI-1 Rider, the TECDA-1 Rider, modify the PFD’s proposed findings of fact, conclusions of law, and ordering paragraphs in the manner described in ETI’s Exceptions, and deny AACE’s motion to dismiss.

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<sup>23</sup> *Id.* at 3.

<sup>24</sup> Unopposed Stipulation at 6; ETI Ex. 86 at 3.

<sup>25</sup> Unopposed Stipulation at at 7.

<sup>26</sup> *Id.* at 6.

Respectfully submitted,



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**ATTORNEYS FOR ENTERGY TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Entergy Texas, Inc.'s Reply to Exceptions to the Proposal for Decision and Response to AACE's Motion to Dismiss was served by electronic delivery on all parties of record in this proceeding on July 19, 2023.

A handwritten signature in black ink, appearing to be "MAG", is written over a horizontal line.