PUBLIC UTILITY COMMISSION OF TEXAS

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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

COMMISSION STAFF'S REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION

The Staff (Staff) of the Public Utility Commission of Texas (Commission) has reviewed the exceptions to the Proposal for Decision (PFD) filed by Entergy Texas, Inc. (ETI), ChargePoint, Inc. (ChargePoint), Americans for Affordable Clean Energy (AACE), and the Office of Public Utility Counsel (OPUC). Staff remains grateful for the reasoned consideration of the Administrative Law Judge (ALJ) for the State Office of Administrative Hearings (SOAH). Aside from the exceptions raised in Staff's exceptions to the PFD, filed on July 12, 2023, Staff remains supportive of the PFD's deference to the Commission on the issue concerning the appropriateness of any vertically integrated electric utility owning transportation and electrification (TE) and charging infrastructure as considered in the current proceeding, in light of the recently passed Senate Bill (SB) 1002.[1]

In turn, Staff continues to recommend that the regulatory framework and policy be developed through a rulemaking. However, in the event the Commission determines to decide these electric vehicle (EV) related issues presented in the PFD, Staff respectfully requests that the Commission issue an order in this proceeding consistent with Staff's exceptions to the PFD and replies to exceptions to the PFD and modify the PFD's conclusion regarding approval of ETI's proposed Transportation Electrification and Charging Infrastructure (TECI-1) Rider and uphold the PFD's denial of ETI's proposed Transportation Electrification and Charging Demand TECDA-1 (Rider).

[1] Proposal for Decision at 16-17 (Jun. 19, 2023) (PFD).

II. REPLIES TO EXCEPTIONS

In response to Preliminary Order No. 69, whether ETI should be allowed to own TE and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application, the PFD concluded that the TECDA-1 Rider should be denied as it is unreasonably preferential, prejudicial, or discriminatory.[2] Further, this conclusion was based on the argument that there are potential cost-shifting concerns inherent in the TECDA-1 Rider[3] ETI, ChargePoint, and AACE each relevantly filed exceptions to the PFD's denial of the TECDA-1 Rider, arguing that such cost-shifting concerns do not merit denial of the rider[4] or that no cost-shifting concerns exist.[5] Regarding the latter, ChargePoint argues that the TECDA-1 Rider would not provide inappropriate cross-subsidies to EV charging customers or result in under-recovered revenues.[6] To support this argument, ChargePoint only states that EV charging customers do not impose the same costs on the system as other commercial and industrial customers and thus under traditional demand-based rates are typically allocated costs in excess of the actual cost to serve.[7] However, such facts should not equate to a finding that there will not be under-recovered revenues, especially in consideration of ChargePoint's own statement that one of the primary reasons for the Commission to approve TECDA-1 Rider is that the incremental revenues generated by the rider will cover the under-recovered revenues that ETI would have recovered from the same customers if the rider were not in place.[8]

Regarding ETI's and AACE's exceptions that the cost-shifting concerns do not merit denial of the rider, both refer to the net benefits that non-participating customers would experience as a result of the rider.[9] Even with the speculative net benefits, the Commission cannot ignore the fact that some costs are shifted to non-participating customers that otherwise would not have borne

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[2] PFD at 36-37 and Conclusion of Law No. 9b.

[3] *Id.* at 36-37.

[4] Entergy Texas, Inc.'s Exceptions to the Proposal for Decision at 12-17 (Jul. 12, 2023) (ETI's Exceptions) and Americans for Affordable Clean Energy's (AACE) Exceptions to Proposal for Decision at 8-10 (Jul. 12, 2023) (AACE's Exceptions).

[5] ChargePoint, Inc.'s Exceptions to the Proposal for Decision at 6-7 (Jul. 12, 2023) (ChargePoint's Exceptions).

[6] *Id.*

[7] *Id.*

[8] *Id.* at 5-6.

[9] ETI's Exceptions at 15-17 and AACE's Exceptions at 9-10.

those costs resulting in discriminatory treatment of such customers and preferential treatment being given to participating customers who would also experience reduced rates as part of the purported net benefits to all of ETI's customers.[10] Importantly, even ETI acknowledges that cost-shifting will occur as identical non-participating customers may potentially pay more than participating customers,[11] so it is not an ill-founded "concern" as ETI alleged.[12] Additionally, Staff argued that reliance on non-cost-based rates promotes inefficiencies that could cause higher rates for all customers,[13] to rebut ETI's assertions that all customers will experience reduced rates. Staff also argued that ETI's attempts to distinguish EV charging customers from traditional electric customer should not be given weight.[14] Combined with ETI's acknowledgement that cost-shifting concerns exist and Staff's and OPUC's arguments thereto, the PFD was correct to find that such concerns result in the TECDA-1 Rider being unreasonably preferential, prejudicial, or discriminatory. Therefore, ETI mischaracterizes the PFD's analysis by stating that the PFD misapplied the standard by presuming the rider is unreasonably preferential, prejudicial, or discriminatory unless the utility proves otherwise.[15] Conversely, the PFD only states that ETI failed to sufficiently counter the cost-shifting concerns.[16]

AACE also argues that because the TECDA-1 Rider is temporary, the amount of participating customers will decrease over time and ensure that any potential impact on non-participating customers would be minimal.[17] However, AACE disregards its own statement that high demand charges could persist beyond the five years proposed by ETI,[18] such that the cost-shifting would correspondingly persist as long. In addition, Staff counters that there would be an increase in the amount of customers taking service under ETI's TECDA-1 Rider as the EV

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[10] Commission Staff's Initial Brief on Issues 68 and 69 at 11-12 (Jan. 13, 2023) (Staff's Initial Brief).

[11] *Id.*

[12] ETI's Exceptions at 12.

[13] Staff's Initial Brief at 12.

[14] *Id.* at 11.

[15] ETI's Exceptions at 15.

[16] PFD at 37.

[17] AACE's Exceptions at 10.

[18] *Id.* at 9-10.

charging market proliferates in ETI's service territory, such that the amount of discriminatory cost-shifting to non-participating customers would also increase.[19]

And although not addressed by the PFD, Staff reiterates that the TECDA-1 Rider is otherwise unduly preferential and discriminatory based on Commission precedent in Docket No. 22344.[20] Specifically, the Commission relevantly did not include billing demand adjustments for select customer groups when setting the rate design for demand-metered classes such as the General Service rate class.[21] Additionally, the Commission also determined the following:

> Many of the parties propose that demand-metered classes should be billed based on the non-coincident peak (NCP) demand.
>
> . . .
>
> With respect to a facilities/delivery charge, the Commission finds that the NCP billing determinant should be used for non-IDR metered customers.
>
> . . .
>
> The distribution facilities/delivery charge for IDR metered customers shall be billed on the NCP billing determinant.[22]

In direct contravention of this precedent, ETI's proposed TECDA-1 Rider includes a demand adjustment and would result in participating customers being billed for facility/distribution charges based on monthly kWh energy usage and not NCP demand.[23] Furthermore, Staff recommends that this precedent should guide the Commission and control over ETI's references to other riders that have been approved by the Commission that ETI asserts are no different than the TECDA-1 Rider.[24]

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[19] Staff's Initial Brief at 11.

[20] *Id.* at 12 (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 232344, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).

[21] *Id.* (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22344, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).

[22] *Id.* (citing to *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Docket No. 22344, Order No. 40: Interim Order Establishing Generic Customer Classification And Rate Design at 1 and 5-7 (Nov. 22, 2000)).

[23] *Id.* at 12.

[24] ETI's Exceptions at 14-15.

Lastly, in response to OPUC's exceptions regarding rate-case expenses, Staff notes that the issue has been settled by the parties, including OPUC, and thus appropriately was not addressed by the PFD.[25] However, to the extent that OPUC's exceptions relate to issues proceeding in other contexts, Staff is not opposed to such a precedent being set.

III. CONCLUSION

Aside from the exceptions raised in Staff's exceptions to the PFD's approval of the TECI-1 Rider, as well as Staff's recommendation for a rulemaking in light of SB 1002, Staff supports the PFD's denial of the TECDA-1 Rider and respectfully requests that the Commission consider Staff's replies to the exceptions to the PFD on this rider.

Dated: July 19, 2023

Respectfully submitted,

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[25] OPUC'S Exceptions to the Proposal for Decision at 3 (Jul. 12, 2023).

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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 19, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles