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

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

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

**OFFICE OF PUBLIC UTILITY COUNSEL'S
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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**OFFICE OF PUBLIC UTILITY COUNSEL’S
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this reply to exceptions to the Proposal for Decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) in this proceeding on June 19, 2023.¹

I. OPUC’s Response to Entergy Texas, Inc.’s Exceptions

a. SB 1002 Does Not Allow Utilities to Recover Transportation Electrification Discounted Rates from Their Other Electric Service Customers.

Citing to SB 1002, to be codified as Public Utility Regulatory Act (“PURA”) § 42.0101 and effective as of September 1, 2023, Entergy Texas, Inc. (“ETI”) argues that “[t]he Legislature recently found that ‘electric utilities . . . and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging,’ and that ‘competitively neutral electricity tariffs’ are a necessary part of fostering the development of the EV charging market.”²

OPUC does not disagree. Of note, PURA § 42.0103(m) will require the Commission to ensure rates charged by a utility for electric vehicle (“EV”) charging services are “reasonable” and

¹ Proposal for Decision (Jun. 19, 2023).

² Entergy Texas, Inc.’s Exceptions to the Proposal for Decision at 2 (Jul. 12, 2023). (ETI Exceptions).

that “competition is not impaired.”³ Furthermore, SB1002 does not direct utilities to provide discounted rates for Transportation Electrification (“TE”) customers nor does it permit utilities to recover those discounts from their other electric service customers. If the Legislature had intended the utility’s other customers to subsidize TE customers, then it would have included specific language to that effect. For example, in the 78th Regular Session, the Texas Legislature passed, and Governor Perry signed SB 652 – The Military Preparedness Act. This legislation specifically directed utilities that offer service where customer choice is not available to discount charges for electric service provided to military bases. It also authorized utilities to assess a surcharge to all of their retail customers in Texas to recover the discount.⁴ Therefore, the Legislature is fully capable of directing utilities to provide discounts and authorizing utilities to recover the under-recovered costs from other customers. Nonetheless, the Legislature did not take such action relative to encouraging the expansion of electric vehicle charging services. In the absence of similar express language in SB 1002, to be codified as Public Utility Regulatory Act (“PURA”) § 42.0101, ETI’s position that its intended Rider programs advance state policy is misguided.

b. Under-Recovered Demand Revenues that Result from the Application of the Billing Demand Cap in the TECDA-1 Rider Should Not be Borne by Other Customers.

ETI argues, “the TECDA-1 Rider is a temporary and self-adjusting measure that would reduce electric bill uncertainty for non-residential Rate Schedule General Service (‘GS’) customers installing separately metered charging equipment [W]ithout the temporary relief provided by the TECDA-1 Rider, it may be prohibitively expensive for an EV charger site host to operate during the early phase of EV market growth, which may deter capital investment in EV chargers

³ Act of May 19, 2023, 88th Leg., R.S., ch. 42 (SB 1002), to be codified as Public Utility Regulatory Act (“PURA”) § 42.0103(m), 2023.

⁴ See PURA § 36.354 Discounted Rates for Military Bases.

with separate electric service.”⁵ ETI further asserts that “no costs will be shifted under the TECDA-1 Rider. Rate Schedule GS customers will continue to pay the Commission-approved, tariffed rate based on their applicable customer profile and consumption characteristics, without regard to the addition of new EV charging customers taking service under the TECDA-1 Rider.”⁶

While OPUC does not oppose ETI’s proposed TECDA-1 Rider, OPUC does recommend that pursuant to PURA § 36.007(d) any under-recovered demand revenues that result from the application of the billing demand cap in the TECDA-1 Rider should not be borne by other customers.⁷

c. The TECDA-1 Rider is a Discount Rate that is Not 'Self-Correcting' Over Time, therefore ETI is Prohibited from Recovering the Unrecovered Costs of Serving These Customers from ETI’s Other Customers.

ETI argues that “the TECDA-1 Rider [w]ill [r]emove [b]arriers to [e]ntry and [s]hould be [a]pproved,” and that the PFD recommends rejecting the TECDA-1 Rider solely under an ill-founded “concern” that the rider will somehow result in “cost shifting.”⁸ ETI also claims that proposed TECDA-1 Rider would temporarily reduce Billing Demand (kW) for lower utilized EV chargers and that the bills for these customers would automatically adjust back to standard Rate Schedule GS rates when the charging station utilization increases above the specified fifteen percent monthly load factor floor, or five years, whichever is first.⁹

ETI’s entire argument clearly demonstrates that the TECDA-1 Rider is a discount rate. This discussion fails to highlight any aspect of TECDA-1 Rider’s customers or their loads that would

⁵ ETI Exceptions at 6-7.

⁶ *Id.*

⁷ Direct Testimony of Evan D. Evans (“Evans Direct”) at 11:6 – 7.

⁸ ETI Exceptions at 12 – 14.

⁹ *Id.*

directly reduce ETI's costs and support the reduced demand charges. Therefore, it *is* a discount rate, and ETI is prohibited from recovering the unrecovered costs of serving these customers from its other customers. As PURA §36.007(d) clearly articulates, “Notwithstanding any other provision of this title, 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.”¹⁰

d. PURA § 36.007(d) Prohibits ETI from Recovering any Portion of its Allocable Costs of Serving Customers Paying any Discounted Rates from its Other Customers.

ETI argues that “the TECDA-1 Rider is no different than ETI’s Commission-approved Riders that implement special billing provisions to address the unique nature or circumstances of certain customers, such as the Special Minimum Charge Rider that offers a potential reduction to an eligible customer’s Billing Load in calculating the monthly bill.”¹¹ ETI also makes reference to the Rider for Institutions of Higher Learning, which reduces participating customers’ monthly bill by 20 percent, net of the fuel adjustment portion.¹²

However, while PURA § 36.351 requires utilities to discount charges to certain institutions of higher education, it also strictly prohibits utilities from recovering those unrecovered costs from any other customers.¹³ Furthermore, if ETI has been recovering any portion of ETI’s allocable costs of serving customers paying any discounted rates in the Rider program from its other

¹⁰ See PURA § 36.007(d).

¹¹ ETI Exceptions at 14 – 15.

¹² *Id.* at 15.

¹³ PURA § 36.351(f).

customers, then ETI has been in violation of PURA § 36.007(d). Accordingly, the Commission should take steps to ensure that ETI is not in violation of PURA.

e. PURA Sec. 36.007(d) Does Not Allow the Recovery of Discounts if the Utility Can Justify the Discount Through Expected Incremental Revenues or Through Rate Impact Measure Test Results.

ETI argues that “the addition of incremental, separately metered customers taking service under the TECDA-1 Rider will produce incremental revenues that will ultimately reduce rates for all customers. ETI’s Ratepayer Impact Measure (“RIM”) test results demonstrate that the TECDA-1 Rider results in net benefits to ETI’s customers.”¹⁴ However, PURA § 36.007(d) does not allow a utility to justify the recovery of any allocable costs not recovered due to any showing of expected incremental revenues or RIM test results.¹⁵

II. OPUC’s Response to Americans for Affordable Clean Energy’s Exceptions

Americans for Affordable Clean Energy (“AACE”) makes similar arguments to those presented by ETI concerning the potential for additional revenues, erroneously arguing that the Rider is “self-correcting.”¹⁶ AACE also suggests that “the TECDA Rider should be approved to the extent that it could offer demand relief, something that would benefit site hosts”¹⁷ and that “[a] limitation on such demand charges, which business customers of ETI have expressed creates a barrier for investment in EV charging stations, would encourage investments in EV charging stations by private businesses resulting in the proliferation of EVs in Texas.”¹⁸

¹⁴ ETI Exceptions at 15 – 17.

¹⁵ PURA § 36.007(d).

¹⁶ Americans for Affordable Clean Energy’s Exceptions to the Proposal for Decision at 9 (Jul. 12, 2023).

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 9.

As stated previously, the potential for additional revenues or the results of RIM tests are not considered in PURA § 36.007(d) and the TECDA-1 Rider is not “self-correcting.”¹⁹ The rider simply provides a demand charge discount to customers by capping their billing demand in any month in which their load factor falls below 15%. However, the TECDA-1 Rider does not recover the discount in those months in which the customer’s load factor is above 15%.²⁰ AACE’s discussion concerning costs have nothing to do with ETI’s costs, but rather the potential cost of operations for EV charging stations.

III. OPUC’s Response to ChargePoint, Inc.’s Exceptions

ChargePoint, Inc. (“ChargePoint”) argues that “the TECDA-1 Rider will not inappropriately shift costs between participating and non-participating customers because the record demonstrates that the TECDA-1 Rider will effectively mitigate demand charges for EV charging site hosts, encourage EV charger deployment, increase EV adoption, and benefit all customers.”²¹ Similar to AACE’s contentions, ChargePoint’s arguments concerning costs have nothing to do with ETI’s costs, but rather the potential cost of operations for EV charging stations and economic concerns of those EV charging stations. Demand-based electric rates are not designed to recover costs solely from those non-residential customers that have consistently high load factors, but from all customers in the rate classes. ChargePoint did not provide any evidence that ETI’s expected TE customers will have operations different from other new customers that are establishing businesses. Once more, the potential for additional revenues or the results of RIM tests are not considered in PURA § 36.007(d).

¹⁹ See *Supra* at 5.

²⁰ Cross-Rebuttal Testimony of Evan D. Evans (“Evans Cross-Rebuttal”) at 16:13 – 20.

²¹ ChargePoint’s Exceptions to the Proposal for Decision at 3-6 (ChargePoint’s Exceptions).

Additionally, ChargePoint argues that “the TECDA-1 Rider would not provide inappropriate cross-subsidies to EV charging customers. As noted in the ChargePoint witness Wilson’s cross-rebuttal testimony, data from other states supports this point.”²² The data referenced by ChargePoint is taken from ChargePoint witness Justin D. Wilson’s cross rebuttal testimony.²³ OPUC and the other parties did not have the opportunity to rebut Mr. Wilson’s rebuttal testimony or to conduct cross-examination of Mr. Wilson. The information presented by ChargePoint pertains to other states, and there is no evidence that the tariffs applicable in the other states are comparable to ETI’s tariffs in Texas or that the TE customers will have usage characteristics, including their impacts on ETI’s system peaks, similar to those in other states. ETI’s rates should be based on ETI’s costs and the known or reasonably expected operating conditions on ETI’s customers.

IV. Clarification to OPUC’s Exceptions to the Proposal for Decision

OPUC also seeks to clarify that insofar as its Exceptions to the Proposal for Decision asserts that “rate case expenses relative to the TECI-1 and TECDA Riders should be separated out and not allocated to Residential Service or other customer classes for which these riders are not applicable,”²⁴ OPUC refers only to the trailing rate case expenses relating to the TECI-1 and TECDA Riders that are outside of the parties’ negotiated rate case expense settlement amount which it supports.

²² ChargePoint’s Exceptions at 6 – 7.

²³ See Cross-Rebuttal Testimony of Justin Wilson on Behalf of ChargePoint, Inc. (Nov. 16, 2022).

²⁴ OPUC’s Exceptions to the Proposal for Decision at 3 (Jul. 12, 2023).

V. CONCLUSION

For the reasons stated herein, OPUC respectfully requests that the Commission approve the PFD with the modifications requested by OPUC and that OPUC be granted any other relief to which it may be entitled.

July 19, 2023

Respectfully submitted,

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**ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 19th day of July, 2023 by facsimile, electronic mail, and/or first class, U.S. Mail.



Renee Wiersema