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DOCKET NO. 54614

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| APPLICATION OF EL PASO | § | |
| ELECTRIC COMPANY FOR | § | PUBLIC UTILITY COMMISSION |
| APPROVAL OF ITS TEXAS | § | |
| ELECTRIC VEHICLE-READY PILOT | § | OF TEXAS |
| PROGRAMS AND TARIFFS | § | |

**APPLICATION AMENDMENT AND RESPONSE OF EL PASO ELECTRIC COMPANY
TO ORDER REQUESTING UPDATE**

El Paso Electric Company (EPE or the Company) files this Application Amendment and response to the Commission's Order Requesting Update and would respectfully show as follows:

On August 24, 2023, in its Order Requesting Update, the Commission explained that, after the parties filed lists of issues to be addressed in this docket, the governor signed Senate Bill 1002 (SB 1002), which addresses the operation of public electric vehicle charging stations and went into effect on September 1, 2023. The order further provided: "In light of SB 1002, El Paso Electric Company must file a statement in this docket by September 23, 2023 regarding whether it intends to amend its application; withdraw or refile its application; or proceed with its application as filed."

Concurrent with the filing of this pleading, EPE is filing supplemental testimony to address SB 1002 and recent industry developments. EPE proposes to proceed with its application as amended by the testimony and this pleading.

The Company's four proposed Texas EV-Ready Pilot Programs are consistent with SB 1002. The proposed programs do not propose that the Company would provide electric vehicle charging service as defined under PURA § 42.0102(4), which would also involve the review process and requirements prescribed under PURA § 42.0103(e) through (n) for utilities like EPE that operate solely outside of ERCOT (see PURA § 42.0103(a)). Rather, the proposed pilot programs provide supportive programs consistent with or expressly allowed under SB 1002. In particular, the proposed Take Charge TX Pilot Program is the type of charging-support program expressly permitted under PURA § 42.0103(o). The proposed PowerConnect Pilot Program is the type of make-ready infrastructure support program expressly permitted under PURA § 42.0103(d). The proposed EV Smart Rewards Pilot Program is a managed-charging program not expressly addressed in SB 1002 but otherwise consistent with and permissible under PURA. The proposed Whole House EV Pilot Incentive Credit Rider is a time-of-use rate program for EV owners that is

similarly not expressly addressed by SB 1002 but is otherwise consistent with and permissible under PURA.

EPE hereby amends its application with the modifications presented in the supplemental testimony being filed concurrently with this response. The supplemental testimony makes minor modifications to the language of the Company's proposed Take Charge TX Pilot Program to better align with SB 1002 by clarifying that public charging stations under the program will not be branded or marketed by EPE, and will not include EPE's name, logo, or any other distinguishing marks. The supplemental testimony also makes minor modifications to the language of the Company's proposed PowerConnect Pilot Program tariff in light of industry developments in recognition of the increasingly widespread adoption of the North American Charging Standard (NACS) in the charging industry.

With these amendments, EPE proposes to proceed forward with its application as amended. The Company accordingly requests that the Commission set a procedural schedule or refer the docket to SOAH for further processing as it deems appropriate.

Respectfully submitted,

Rosanna Al-Hakeem
State Bar No. 24097285
El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960
P: (915) 521-4664
E: rosanna.alhakeem@epelectric.com

Everett Britt
State Bar No. 24001789
Duggins Wren Mann and Romero, LLP
P.O. Box 1149
Austin, Texas 78767
P: (512) 744-9300
F: (512) 744-9399
E: ebritt@dwmrlaw.com

/s/Rosanna Al-Hakeem
**ATTORNEYS FOR EL PASO ELECTRIC
COMPANY**

DOCKET NO. 54614

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|--------------------------------|---|---------------------------|
| APPLICATION OF EL PASO | § | |
| ELECTRIC COMPANY FOR APPROVAL | § | PUBLIC UTILITY COMMISSION |
| OF ITS TEXAS ELECTRIC VEHICLE- | § | OF TEXAS |
| READY PILOT PROGRAMS AND | § | |
| TARIFFS | § | |
| | § | |

SUPPLEMENTAL TESTIMONY

OF

ANGELINA RODRIGUEZ

FOR

EL PASO ELECTRIC COMPANY

September 22, 2023

TABLE OF CONTENTS

| SUBJECT | PAGE |
|---|------|
| I. INTRODUCTION AND QUALIFICATIONS | 1 |
| II. PURPOSE OF SUPPLEMENTAL TESTIMONY | 1 |
| III. SUMMARY OF TEXAS EV-READY PILOT PROGRAMS | 1 |
| IV. SUMMARY OF SENATE BILL 1002..... | 2 |
| V. EV INDUSTRY IMPACTS..... | 5 |
| VI. SUMMARY AND CONCLUSION | 6 |

EXHIBITS

Exhibit AR-1S-Texas Senate Bill 1002

Exhibit AR-2S-Updated PowerConnect Pilot Program Tariff

1 **I. INTRODUCTION AND QUALIFICATIONS**

2 Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Angelina Rodriguez. My business address is 100 N. Stanton Street, El Paso,
4 Texas 79901.

5
6 Q2. HOW ARE YOU EMPLOYED?

7 A. I am employed by El Paso Electric Company ("EPE" or the "Company") as the Supervisor
8 of Electrification.

9
10 Q3. ARE YOU THE SAME ANGELINA RODRIGUEZ THAT PREVIOUSLY PROVIDED
11 TESTIMONY IN THIS PROCEEDING?

12 A. Yes.
13

14 **II. PURPOSE OF SUPPLEMENTAL TESTIMONY**

15 Q4. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN THIS
16 PROCEEDING?

17 A. The purpose of my supplemental testimony is to address the impact of Senate Bill 1002 on
18 EPE's proposed Texas Electric Vehicle ("EV")-Ready Pilot Programs. In doing so, I
19 demonstrate that EPE's proposals are consistent with SB 1002. I also identify a proposed
20 change to a customer agreement in EPE's proposed tariff for the Take Charge TX Pilot
21 Program to better align that agreement with new branding requirements. That proposed
22 change is supported by the supplemental testimony of EPE witness Manual Carrasco.
23 Additionally, I address changes in charging connector standards in the EV charging
24 industry which have occurred since the filing of EPE's application, and support a proposed
25 change to EPE's PowerConnect Pilot Program tariff in light of those changes.
26

27 **III. SUMMARY OF TEXAS EV-READY PILOT PROGRAMS**

28 Q5. PLEASE SUMMARIZE EPE'S EV-READY PILOT PROGRAMS

29 A. EPE's Texas EV-Ready Pilot Programs include the following proposed portfolio of
30 programs and rate options. Each program is voluntary and available to eligible customers
31 as specified in the relevant tariffs:

- 1 • *EV Smart Rewards Pilot Program* is a managed EV charging program that provides
2 incentives to residential customers for enrolling and participating in EPE’s utility-
3 managed EV charging program. The program is designed to enable EPE to evaluate
4 customers’ acceptance of utility-managed EV charging and the efficiency of such
5 programs to optimize the use of existing infrastructure and minimize the required
6 investment in additional infrastructure.
- 7 • *PowerConnect Pilot Program* is a rebate program for non-residential customers
8 who are installing EV charging infrastructure on their premises that will help reduce
9 the upfront cost of upgrades or improvements to EPE’s distribution system, up to
10 the utility meter, that are needed to support service to the EV charging
11 infrastructure.
- 12 • *Take Charge TX Pilot Program* is a program for non-residential customers where
13 the customer can choose the desired EV infrastructure and equipment that could be
14 purchased, installed, and operated by EPE, in whole or part, including a fully
15 turnkey solution, to mitigate the challenge of managing EV charging station
16 installation and maintenance for the customer. Customers will be responsible for
17 the full cost of the equipment and services provided through a monthly fixed fee
18 added to their bill during the term of the pilot program agreement.
- 19 • *WHEV Pilot Incentive Credit Rider* is a program that will help residential customers
20 save money on their electric bill if they shift EV charging to the overnight/ early
21 morning hours of midnight to 8 am.

22 23 **IV. SUMMARY OF SENATE BILL 1002**

24 Q6. PLEASE PROVIDE AN OVERVIEW OF SENATE BILL 1002.

25 A. S.B. 1002 amends the Public Utility Regulatory Act (“PURA”) to address public charging
26 of electric vehicles. The bill sets certain limitations that utilities in ERCOT and non-
27 ERCOT areas must follow in order to be authorized to provide an “electric vehicle charging
28 service,” defined as sales made from an electric vehicle charging station to the public. This
29 bill applies to “public electric vehicle charging stations,” defined generally as any public
30 level two or direct-current fast charging (“DCFC”) station that delivers electricity from a
31 source outside an electric vehicle into an electric vehicle. Further, the bill makes clear that

1 utilities may offer certain types of charging-support programs as discussed in greater detail
2 below. Please see Exhibit AR-1S for a copy of S.B. 1002.

3
4 Q7. ARE THE TEXAS EV READY PILOT PROGRAMS PROPOSED BY EPE
5 CONSISTENT WITH S.B. 1002?

6 A. Yes. As detailed below, the programs proposed by EPE in this docket are consistent with
7 S.B. 1002. EPE is only proposing minor changes to its proposed Take Charge TX Pilot
8 Program tariff for clarification with regard to charging station branding.
9

10 Q8. HOW DOES S.B. 1002 IMPACT THE PROPOSED EV SMART REWARDS PILOT
11 PROGRAM?

12 A. S.B. 1002 does not have any impact on this program. The proposed EV Smart Rewards
13 Pilot Program is a residential managed EV charging program that does not involve utility
14 ownership or operation of public electric vehicle charging stations. This type of program
15 is not addressed by S.B. 1002.
16

17 Q9. HOW DOES S.B. 1002 IMPACT THE PROPOSED POWERCONNECT PILOT
18 PROGRAM?

19 A. S.B. 1002 expressly allows programs such as the proposed PowerConnect pilot program.
20 This is a make-ready infrastructure rebate program which does not include (1) utility
21 ownership of public electric vehicle charging stations or any other charging equipment on
22 the customer-side of the meter or (2) utility provision of an EV public charging service as
23 defined in the S.B. 1002. Under the proposed program, customers will procure their own
24 charging equipment and hire their preferred electrical contractor or EV charging
25 installation company. The intent of this program is to help reduce or offset utility-side
26 infrastructure costs for eligible commercial customers who are installing EV charging
27 equipment, which meets the definition of “make-ready infrastructure” defined in S.B.1002.
28 S.B.1002 specifically allows for utilities to offer make-ready infrastructure programs and
29 recover the costs of such initiatives, as specified in PURA § 42.0103(d) as added by the
30 bill: “This section does not prohibit an electric utility from subsidizing the costs of make-
31 ready infrastructure through rates or charges for services provided by the electric utility's

1 regulated services.”

2
3 Q10. HOW DOES S.B. 1002 IMPACT THE PROPOSED TAKE CHARGE TX PILOT
4 PROGRAM?

5 A. S.B. 1002 adds PURA § 42.0103(o), which allows programs such as the proposed Take
6 Charge TX Pilot Program. Under the proposed Take Charge TX Pilot Program, EPE may
7 own the charging equipment on customer-side of the meter, at the request of the customer,
8 but EPE would not be providing electric vehicle charging service as defined by S.B. 1002.
9 Participating commercial customers will determine the physical access to and use of the
10 charging station(s) necessary to carry out responsibilities associated with the operation of
11 such charging station(s). Participating commercial customers will also set up the prices for
12 the EV charging services and will pay for all electric utility related costs, under the
13 proposed Take Charge Pilot Program tariff, to provide for full recovery of the public EV
14 charging station costs from participating customer. This program proposal, as defined by
15 this criterion, is consistent with and meets the requirements of PURA § 42.0103(o) as
16 added by S.B. 1002.

17
18 Q11. IS EPE IS PROPOSING ANY CHANGES TO ITS PROPOSED TAKE CHARGE TX
19 PILOT PROGRAM TO ENSURE FULL COMPLIANCE WITH S.B. 1002
20 PROVISIONS?

21 A. Yes. To better align with PURA § 42.0103(o)(1)(B) as added by S.B. 1002, and as
22 presented in the supplemental testimony of Company witness Manuel Carrasco, EPE is
23 amending the customer agreement in its proposed tariff for the Take Charge TX Pilot
24 Program to clarify that public charging stations under the Take Charge TX Pilot Program
25 will not be branded or marketed by EPE, and will not include EPE’s name, logo, or any
26 other distinguishing marks.

27
28 Q12. HOW DOES S.B. 1002 IMPACT THE PROPOSED WHEV PILOT INCENTIVE
29 CREDIT RIDER?

30 A. The WHEV Pilot Incentive Credit Rider is not impacted by S.B. 1002 because it is a credit
31 rider for residential EV-owner customers that provides an incentive for the eligible

1 customers to charge their EVs during super off-peak hours and does not involve utility
2 ownership or operation of public electric vehicle charging stations.

3 4 **V. EV INDUSTRY IMPACTS**

5 Q13. HAVE THERE BEEN GENERAL EV INDUSTRY CHANGES THAT IMPACT THE
6 PROPOSED PROGRAMS?

7 A. Yes. In November 2022, Tesla announced that it was opening the Tesla DCFC connector
8 for use by anybody and renamed it the North American Charging Standard (“NACS”).
9 Since that announcement, various auto manufacturers have adopted the use of the NACS
10 connector, including but not limited to GM¹, Volvo Cars², Ford³, and Rivian⁴. This means
11 that more EV makes and models will be able to charge at Tesla Superchargers, which
12 currently dominate the U.S. market.⁵ Many states have also decided to allow NACS
13 connectors for their National Electric Infrastructure Formula Program (“NEVI”), including
14 Texas. The Society of Automotive Engineers (“SAE”) also announced its plan to
15 standardize the NACS connector, which will allow any supplier or manufacture to use,
16 manufacture, or deploy the NACS connector on EVs.

17
18 Q14. WHAT IMPACT DOES THE BROAD ADOPTION OF THE NACS HAVE ON EPE’S
19 PROPOSED PROGRAMS?

20 A. The adoption of NACS by various auto manufacturers impacts the proposed PowerConnect
21 program. In EPE’s original application, EPE proposed to limit the PowerConnect program
22 to charging connectors like J1772 for Level 2, and SAE Combo and CHAdeMO for DCFC.
23 In the light of recent EV industry developments, where the NACS connector is becoming
24 a standard for other vehicle makes and models, it is imperative for EPE to expand the
25 program and allow NACS projects to qualify for this program.

26
27 Q15. HOW DOES EPE PROPOSE TO MODIFY ITS PROPOSED PROGRAMS TO

¹ <https://news.gm.com/newsroom.detail.html/Pages/news/us/en/2023/jun/0608-gm.html>

² <https://www.media.volvocars.com/global/en-gb/media/pressreleases/316416/electric-volvo-car-drivers-will-get-access-to-12000-tesla-superchargers-across-the-united-states-can>

³ <https://media.ford.com/content/fordmedia/ina/us/en/news/2023/05/25/ford-ev-customers-to-gain-access-to-12-000-tesla-superchargers--.html>

⁴ <https://rivian.com/support/article/Why-is-Rivian-adopting-the-North-American-Charging-Standard>

⁵ <https://www.tesla.com/supercharger>

1 INCLUDE NACS AS A QUALIFYING TECHNOLOGY?

2 A. EPE has amended its PowerConnect Pilot Program tariff, provided as Exhibit AR-2S-
3 Updated PowerConnect Pilot Program tariff, to expand the qualified Level 2 and DCFC
4 station project requirements and include the NACS charging connector.
5

6 **VI. SUMMARY AND CONCLUSION**

7 Q16. PLEASE SUMMARIZE YOUR TESTIMONY.

8 A. EPE's TX EV Ready Pilot Programs are consistent with S.B. 1002 because none of the
9 proposed programs include EPE providing EV charging service to public, as defined by
10 the bill. Furthermore, S.B. 1002 clarifies that utilities can offer make-ready infrastructure
11 programs such as the proposed PowerConnect Pilot Program and can offer charging-
12 support programs such as the Take Charge Texas Pilot Program. To better align with S.B.
13 1002 on the proposed Take Charge TX Pilot Program, EPE has amended its customer
14 agreement to clarify that public charging stations under this program will not be branded
15 or marketed by EPE. EPE is also proposing to expand connector qualification criteria in
16 the proposed PowerConnect Pilot Program to include the NACS in response to EV industry
17 changes. EPE's inclusion of the NACS to the PowerConnect Pilot Program will allow for
18 more projects to qualify for the program, allowing increased access to charging for EV
19 drivers.
20

21 Q17. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

22 A. Yes.

SCHEDULE NO. SB 1002Senate Bill 1002

S.B. No. 1002

AN ACT

relating to the operation of public electric vehicle charging stations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 42 to read as follows:

CHAPTER 42. PUBLIC CHARGING OF ELECTRIC VEHICLES

Sec. 42.0101. LEGISLATIVE FINDINGS. (a) The legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

(b) The legislature finds 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 on property whose owners or tenants desire to install public electric vehicle charging stations.

(c) The legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.

(d) The legislature finds that it is necessary to:

(1) implement competitively neutral policies to encourage competitive private sector investment in public electric vehicle charging station deployment;

(2) develop and implement competitively neutral

SCHEDULE NO. SB 1002**Senate Bill 1002**

electricity tariffs that are optimized for public electric vehicle charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs; and

(3) encourage competitive private investment, ownership, and operation of public electric vehicle charging stations, including equipment that allows for fast charging.

Sec. 42.0102. DEFINITIONS. In this chapter:

(1) "Direct-current fast charging station" means a charging system capable of delivering at least 50 kilowatts of direct-current electrical power to an electric vehicle's rechargeable battery at a voltage of 200 volts or greater.

(2) "Electric vehicle" means a vehicle that is propelled by one or more electric motors using energy stored in the form of a rechargeable battery.

(3) "Electric vehicle charging provider" means the owner or operator of a public electric vehicle charging station. The term does not include an electric utility or transmission and distribution utility.

(4) "Electric vehicle charging service" means sales made from a public electric vehicle charging station to the public.

(5) "Level two charging station" means a charging system capable of delivering at least 3 and not more than 19.2 kilowatts of alternating-current electrical power to an electric vehicle's rechargeable battery at a voltage of at least 208 volts on a circuit of at least 40 amperes.

(6) "Make-ready infrastructure" means the electrical infrastructure required to service a public electric vehicle charging station's electrical load on the electric utility's or transmission and distribution utility's side of the point of delivery. The term:

SCHEDULE NO. SB 1002Senate Bill 1002

(A) includes all site-specific electrical infrastructure required to accommodate engineering, physical, operational, or other constraints for the public electric vehicle charging station, regardless of whether the infrastructure is on the utility's or customer's side of the point of delivery; and

(B) does not include the public electric vehicle charging station or any utility infrastructure on the customer's side of the point of delivery, up to and including the meter.

(7) "Public electric vehicle charging station" means any level two charging station or direct-current fast charging station that delivers electricity from a source outside an electric vehicle into an electric vehicle, is separate and distinct from make-ready infrastructure, and is accessible for commercial use by the public, or similar vehicle charging equipment capable of delivering electricity into an electric vehicle faster than a level two charging station. The term does not include vehicle charging equipment that is:

(A) used by an electric utility, a transmission and distribution utility, or an affiliate to charge:

(i) an electric vehicle owned by the utility or affiliate; or

(ii) as an incident of employment, an electric vehicle owned by an employee of the utility or affiliate; or

(B) located on the premises of a customer of an electric utility, a transmission and distribution utility, or an affiliate and:

(i) used by the customer or the customer's tenants, affiliates, or guests; and

(ii) not used commercially for electric vehicle charging service.

SCHEDULE NO. SB 1002Senate Bill 1002

Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE OF ERCOT. (a) This section applies only to an electric utility that operates solely outside of ERCOT.

(b) An electric utility:

(1) may not provide electric vehicle charging service directly to a customer except as provided by this section;

(2) may be affiliated with an entity that provides electric vehicle charging service from a public electric vehicle charging station if the affiliate:

(A) is not subject to regulation by the commission; and

(B) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section 39.157(d); and

(3) consistent with the requirements of Subchapter B, Chapter 38, and Section 39.157(d)(3), shall offer the same nondiscriminatory rates, terms, and conditions offered to an affiliate described by Subdivision (2) to other electric vehicle charging providers in the utility's service area for the operation of public electric vehicle charging stations.

(c) An affiliate of an electric utility that provides electric vehicle charging service and is not subject to regulation by the commission is subject to the same tariffs of the electric utility that apply to any other entity receiving from the utility electric service that is used to provide electric vehicle charging service.

(d) This section does not prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the electric utility's regulated services.

SCHEDULE NO. SB 1002**Senate Bill 1002**

(e) An electric utility may provide electric vehicle charging service directly to a customer only if:

(1) the public electric vehicle charging station used to provide electric vehicle charging service is constructed in compliance with the requirements of this section; and

(2) the rates charged by the utility for electric vehicle charging service are set by the commission under Subsection (m) .

(f) An electric utility seeking to provide electric vehicle charging service directly to a customer shall:

(1) file with the commission a proposal identifying the specific location at which the utility seeks to provide electric vehicle charging service and a general description of the public electric vehicle charging station the utility proposes to construct at the location; and

(2) provide notice of the filing made under Subdivision (1):

(A) on the utility's Internet website; and

(B) to each dealer to which Chapter 2310, Occupations Code, applies who offers for retail sale motor fuel at a site that is located not more than 15 miles from the proposed location of the public electric vehicle charging station.

(g) A notice provided under Subsection (f)(2) must include:

(1) the date the electric utility filed a proposal to provide electric vehicle charging service under Subsection (f)(1); and

(2) the date by which a person may file a proposal to provide reasonably comparable electric vehicle charging service under Subsection (h) .

(h) The commission shall determine whether the provision of electric vehicle charging service under a proposal submitted under

SCHEDULE NO. SB 1002Senate Bill 1002

Subsection (f)(1) is in the public interest because the service is adequate for the needs of the area. Not later than the 90th day after the date the commission determines that the provision of the proposed electric vehicle charging service is in the public interest, a person other than the electric utility may notify the commission that:

(1) the person:

(A) intends to provide electric vehicle charging service that is adequate for the needs of the area in reasonable proximity to the proposed location of the public electric vehicle charging station and request the necessary make-ready infrastructure from the electric utility; and

(B) is firmly committed to placing into service equipment necessary to provide the electric vehicle charging service before the later of:

(i) 18 months after the date the person submits the notice to the commission; or

(ii) the date of completion of the installation of the necessary make-ready infrastructure to provide the electric vehicle charging service; and

(2) the person is capable of:

(A) acquiring the right to use the property at which the electric vehicle charging service will be provided; and

(B) financing the cost of the equipment described by Subdivision (1)(B).

(i) The commission shall issue a determination regarding each notice received under Subsection (h) of whether:

(1) the proposed electric vehicle charging service is adequate for the needs of the area; and

(2) the person has made the commitment and has the capabilities described by that subsection.

SCHEDULE NO. SB 1002**Senate Bill 1002**

(j) The commission by rule may establish a distance that constitutes reasonable proximity to a type of location for the purposes of Subsection (h). The commission may also issue an order establishing a distance other than one authorized by rule that constitutes reasonable proximity to a location for purposes of Subsection (h) for a specific electric utility. In establishing distances that constitute reasonable proximity to a location, the commission shall:

(1) consider population density and site access;

(2) establish the reasonable proximity between two locations on an interstate highway for the purposes of Subsection (h) as not more than 10 miles; and

(3) consider the Texas Department of Transportation's designation by category of nearby roads other than interstate highways when establishing the reasonable proximity between two locations at which electric vehicle charging service will be provided on roads other than interstate highways.

(k) An electric utility that files a proposal under Subsection (f) may proceed with construction of the public electric vehicle charging station and the provision of electric vehicle charging service unless the commission determines, based on the information submitted under Subsection (h), that:

(1) the electric vehicle charging service proposed under Subsection (h) in response to the utility's proposal is adequate for the needs of the area and that the person who submitted the notice under Subsection (h) has made the commitment and has the capabilities described by that subsection; or

(2) the electric vehicle charging service proposed under Subsection (f) by the utility unreasonably duplicates:

(A) electric vehicle charging service provided by another person; or

SCHEDULE NO. SB 1002**Senate Bill 1002**

(B) a facility under construction that another person will use to provide electric vehicle charging service.

(l) An electric utility authorized to proceed with the construction of a public electric vehicle charging station under Subsection (k) shall notify the commission that the utility intends to proceed with the construction and may construct and operate the proposed public electric vehicle charging station after the 120th day after the date the utility files the notice of intent under this subsection.

(m) On application by an electric utility, the commission shall set in a manner authorized under Chapter 36 the rates the utility may charge for electric vehicle charging service. The rates must be reasonable and ensure that competition is not impaired. The commission may set rates differently for different locations and times of day and for different types of electric vehicle charging service.

(n) The commission shall permit an electric utility authorized to construct and operate a public electric vehicle charging station under this section to recover, using the rate of return on investment established in the commission's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction, financing, operation, and maintenance of that public electric vehicle charging station.

(o) This section does not prohibit a person who is not an electric utility or an affiliate of an electric utility from entering into an agreement with an electric utility for the utility to own or operate a public electric vehicle charging station on the person's property if:

(1) the utility does not:

(A) provide electric vehicle charging service

SCHEDULE NO. SB 1002**Senate Bill 1002**

using the public electric vehicle charging station; or

(B) brand or market the public electric vehicle charging station as owned or operated by the utility, including by presenting the utility's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the public electric vehicle charging station;

(2) the person solely determines:

(A) physical access to and use of the public electric vehicle charging station necessary to carry out responsibilities associated with ownership and operation of the public electric vehicle charging station; and

(B) prices for the electric vehicle charging service; and

(3) the person 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.

(p) The commission shall:

(1) require each electric utility for which the commission has approved a tariff under Subsection (o) to offer service under the terms of the tariff to other persons seeking agreements in the utility's service area on a nondiscriminatory basis; and

(2) ensure that revenue collected by an electric utility under an agreement under Subsection (o) allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station from the person and not the utility's other customers.

(q) A public electric vehicle charging station operated

SCHEDULE NO. SB 1002**Senate Bill 1002**

under an agreement under Subsection (o) is not subject to the requirements of Subsections (f)-(l).

(r) Notwithstanding any other provision of this section, a municipality that is a customer of an electric utility may enter into an agreement with the utility under which:

(1) the utility owns and operates a public electric vehicle charging station and provides electric vehicle charging service on the municipality's property; and

(2) none of the costs of constructing, financing, operating, or maintaining the public electric vehicle charging station described by Subdivision (1) are recovered from the other customers of the utility.

Sec. 42.0104. PUBLIC CHARGING OF ELECTRIC VEHICLES INSIDE ERCOT. (a) A transmission and distribution utility:

(1) may not directly own, operate, or provide electric vehicle charging service from a public electric vehicle charging station;

(2) may not include costs of a public electric vehicle charging station for recovery through rates approved by the commission;

(3) may be affiliated with a competitive affiliate that provides electric vehicle charging service from a public electric vehicle charging station through a separate entity or third party only if:

(A) the affiliate:

(i) is not subject to regulation by the commission; and

(ii) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section 39.157(d); and

SCHEDULE NO. SB 1002**Senate Bill 1002**

(B) the alternative fuels data center map maintained by the United States Department of Energy does not show that a public electric vehicle charging station owned or operated by an electric vehicle charging provider and used to provide electric vehicle charging service is located less than 50 miles from the location where the affiliate proposes to provide electric vehicle charging service; and

(4) consistent with the requirements of Subchapter B, Chapter 38, and Section 39.157(d)(3), shall offer the same nondiscriminatory rates, terms, and conditions offered to the affiliate described by Subdivision (3) to other electric vehicle charging providers in the transmission and distribution utility's service area for the operation of public electric vehicle charging stations.

(b) An affiliate described by Subsection (a)(3) shall maintain for at least two years documentation of the alternative fuels data center map that is available on the date on which the installation of the public electric vehicle charging station begins.

(c) An affiliate of a transmission and distribution utility that provides, owns, operates, or maintains public electric vehicle charging stations and is not subject to regulation by the commission may not be subsidized by any rate or charge for any regulated services provided by the transmission and distribution utility.

(d) This section does not prohibit a transmission and distribution utility from constructing, owning, or operating make-ready infrastructure on the transmission and distribution utility's side of the point of delivery that is funded through rates or charges for services under the transmission and distribution utility's tariffs.

SCHEDULE NO. SB 1002**Senate Bill 1002**

(e) Notwithstanding Subsection (a), a transmission and distribution utility may own, operate, lease, install, or otherwise procure service from a public electric vehicle charging station on the utility's premises for the sole purpose of serving the utility's vehicles.

(f) The commission shall permit a transmission and distribution utility to recover, using the rate of return on investment established in the commission's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction or installation of make-ready infrastructure on the utility's side of the point of delivery.

SECTION 2. (a) Sections 42.0104(a)(3)(B) and 42.0104(b), Utilities Code, as added by this Act, apply only to electric vehicle charging service provided on or after January 1, 2026.

(b) Section 42.0104(c), Utilities Code, as added by this Act, applies only to a rate or charge imposed after January 1, 2024.

SECTION 3. This Act takes effect September 1, 2023.

SCHEDULE NO. SB 1002

Senate Bill 1002

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1002 passed the Senate on
April 12, 2023, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1002 passed the House on
May 3, 2023, by the following vote: Yeas 99, Nays 34, one present
not voting.

Chief Clerk of the House

Approved:

Date

Governor

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. PCPOWERCONNECT PILOT PROGRAMAPPLICABILITY

The PowerConnect ("Program") is available, on a voluntary basis, to Eligible Customers installing qualified Level 2 charging station/s, or DC Fast Charging ("DCFC") station/s, or both, on their premises for employees, tenants, fleet, customers and/or the public and require upgrades or improvements to the Company's electrical distribution system.

TERRITORY

Texas Service Area

TYPE OF SERVICE

The Program offers Eligible Customers a rebate for a portion of the Company's Estimated Extension Cost for distribution system upgrades or improvements necessary to provide electric vehicle charging capabilities. The Program does not cover the cost of EV charging equipment or Customer-side of the meter infrastructure upgrades or equipment installation.

DEFINITIONSEligible Customer

Any Permanent Customer, as defined in the Company's Line Extension Policy and Construction Charges ("Line Extension Policy"), with an active account in good standing and taking service under the Company's Schedule Nos. 02 (Small General Service), 24 (General Service), 25 (Large Power Service), 41 (City and County Service) and Non-Residential Customers taking service under Schedule No. EVC (Electric Vehicle Charging Rate).

Estimated Extension Cost

Currently defined in the Line Extension Policy as the Company's estimate of the Extension Cost calculated based on the current costs to install the same or similar type of Line Extension, as such terms are defined, determined, and applied in the Line Extension Policy.

Program Period

The two-year period that this rate schedule will remain in effect, beginning with the effective date the Commission approves for this rate schedule. The Program Period will terminate after two years, unless extended in a future proceeding.

POWERCONNECT REBATE AMOUNT

Section Number 1
Sheet Number 44.1
Page 1 of 3

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

SCHEDULE NO. PCPOWERCONNECT PILOT PROGRAM

(N)

Eligible Customers may request a rebate under this rate schedule that will be a credit applied to the Estimated Extension Cost. The availability of a rebate is dependent on the Program Period funding, which is \$3,095,950, unless revised in a future proceeding.

| Sites | Maximum Rebate Available Per Site |
|----------------------|-----------------------------------|
| Workplace | Up to \$20,000 |
| Public | Up to \$20,000 |
| Fleet | Up to \$100,000 |
| DC Fast Charging | Up to \$200,000 |
| Multi-Unit Dwellings | Up to \$20,000 |

TERMS AND CONDITIONS

Service supplied under this rate schedule is subject to the Company's Rules and Regulations on file with the Public Utility Commission of Texas and available for inspection at Company offices, and under the following terms and conditions:

1. No more than 20% of the Program funding will be available to one Eligible Customer. The rebates requested are processed on a first-come, first-serve basis until the Program Period funding is fully expended.
2. Eligible Customer will maintain an active account in good standing and all terms and conditions of the Eligible Customer's applicable retail rate schedule will continue to apply. The Eligible Customer will be billed for its monthly energy usage for EV charging under its applicable retail rate schedule.
3. Company retains the right to approve or deny Customer's application based upon project eligibility and program requirements.
4. If the Company's Estimated Extension Cost exceeds the Maximum Rebate Available Per Site, Eligible Customer will be responsible for covering the remainder of the costs as a Customer Contribution, as defined in the Line Extension Policy.
5. Program rebates cannot be applied to Eligible Customer's current or future account balances.
6. Program rebates are not refundable to the Eligible Customer.

Section Number 1
Sheet Number 44.1
Page 2 of 3

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. PCPOWERCONNECT PILOT PROGRAM

7. Company will not be responsible for the purchase, operation, and/ or maintenance of the EV charging stations or customer-side infrastructure upgrades or equipment installation.
8. The Program is only available to Eligible Customers that request a Line Extension for an EV charging infrastructure project with a project start date after the effective date of this rate schedule.
9. Qualified Level 2 charging station projects must meet the following requirements:
 - UL 2594 listed;
 - ENERGY STAR ® certified;
 - Networked charging capabilities; and
 - ~~Non-proprietary J1772 charging plug~~ Available charging plugs that are compatible with multiple vehicle makes and models (including but not limited to, J1772, and North American Charging Standard (NACS)).
10. Qualified DCFC station projects must meet the following requirements:
 - UL 2202, 2231-1, 2231-2, and 9741, or other applicable UL standard;
 - Networked charging capabilities; and
 - Available ~~non-proprietary~~ charging plugs that are compatible with multiple vehicle makes and models (including but not limited to, NACS, SAE Combo, and CHAdeMO).
11. For charging stations that do not meet qualification criteria specified above, customers will have the option to submit an application for Company's review.
12. Company reserves the right to verify the EV charging equipment is installed within a reasonable amount of time after the Completion Date, as such term is defined in the Line Extension Policy, to avoid reclaim of the rebate by the Company.

Section Number 1
Sheet Number 44.1
Page 3 of 3

Revision Number 0
Effective for bills issued on and after
July 1, 2023

DOCKET NO. 54614

| | | |
|--------------------------------|---|---------------------------|
| APPLICATION OF EL PASO | § | |
| ELECTRIC COMPANY FOR APPROVAL | § | PUBLIC UTILITY COMMISSION |
| OF ITS TEXAS ELECTRIC VEHICLE- | § | OF TEXAS |
| READY PILOT PROGRAMS AND | § | |
| TARIFFS | § | |

SUPPLEMENTAL TESTIMONY

OF

MANUEL CARRASCO

FOR

EL PASO ELECTRIC COMPANY

September 22, 2023

TABLE OF CONTENTS

| SUBJECT | PAGE |
|--|------|
| I. INTRODUCTION AND QUALIFICAITONS | 1 |
| II. PURPOSE OF SUPPLEMENTAL TESTIMONY..... | 1 |
| III. SCHEDULE NO. TCTX REVISIONS..... | 1 |
| IV. CONCLUSION..... | 3 |

EXHIBITS

Exhibit MC-1S - EPE's Revised Proposed Schedule No. TCTX

1 **I. INTRODUCTION AND QUALIFICAITONS**

2 Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Manuel Carrasco. My business address is 100 N. Stanton Street, El Paso,
4 Texas 79901.

5
6 Q2. HOW ARE YOU EMPLOYED?

7 A. I am employed by El Paso Electric Company ("EPE" or the "Company") as the Manager of
8 Rate Research.

9
10 Q3. ARE YOU THE SAME MANUEL CARRASCO THAT PREVIOUSLY PROVIDED
11 TESTIMONY IN THIS PROCEEDING?

12 A. Yes.
13

14 **II. PURPOSE OF SUPPLEMENTAL TESTIMONY**

15 Q4. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

16 A. The purpose of my supplemental testimony is to describe the revisions to EPE's proposed
17 Schedule No. TCTX – Take Charge TX Pilot Program to comply with Senate Bill 1002
18 ("S.B. 1002") provisions.¹ Please refer to the supplemental testimony of Angelina
19 Rodriguez for discussion of the impact of S.B. 1002 on EPE's proposed Texas EV-Ready
20 Pilot Programs.

21
22 **III. SCHEDULE NO. TCTX REVISIONS**

23 Q5. WHICH S.B. 1002 PROVISIONS MUST SCHEDULE NO. TCTX COMPLY WITH?

24 A. Sec. 42.0103(o)(1)(B) of S.B. 1002 forbids the branding or marketing of a public EV
25 charging station as owned or operated by a utility. The specific applicable language of that
26 provision reads:

14 Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE
27 15 OF ERCOT. (a) This section applies only to an electric utility
28 27 (o) This section does not prohibit a person who is not an

¹ EPE's proposed Schedule No. TCTX was attached as Exhibit MC-4 to the Direct Testimony of Manuel Carrasco previously filed in this proceeding.

1 electric utility or an affiliate of an electric utility from
2 entering into an agreement with an electric utility for the utility
3 to own or operate a public electric vehicle charging station on the
4 person's property if:

5 (1) the utility does not:

6 (B) brand or market the public electric vehicle
7 charging station as owned or operated by the utility, including by
8 presenting the utility's name, logo, or any other distinguishing
9 mark to indicate that the utility owns or operates the public
10 electric vehicle charging station;

11 Q6. WHAT ARE THE REVISIONS TO SCHEDULE NO. TCTX TO MAKE IT COMPLY
12 WITH S.B. 1002?

13 A. To fully comply with S.B. 1002, EPE has amended the customer agreement language in
14 Schedule No. TCTX. Specifically, the language in subpart 7.1 of the agreement is revised
15 as follows.

16 7.1 **Publicity.** Customer acknowledges that it may be required to post signage at
17 Company's request. ~~The foregoing notwithstanding, Customer may not use~~
18 ~~Company's name, service mark, design, or any Company's intellectual property~~
19 ~~without Company's prior written consent.~~ Neither party will make any public
20 announcement regarding this Agreement, or any project that may be developed under
21 this Agreement, without first obtaining the prior written consent of the other party. Any
22 proposed press releases or other promotional materials will need approval by both
23 the Company and Customer. No publication or promotional material may claim or
24 imply that Company endorses Customer's business, brand, products, environmental
25 attributes, or Customer generally. Customer may not use Company's name, service
26 mark, design, or any Company intellectual property on charging stations. Customer
27 agrees that it will not place Company's logo, trademark, service mark, or advertising
28 device on any portion of the Charging Station(s) or in the Facilities area ~~without~~
29 ~~Company's prior written consent.~~ Customer has the right to advise mapping services,
30 vehicle navigation system manufacturers, and/or smart phone application developers
31 of the existence of the Charging Station(s) at the Facilities area. To promote and
32 inform the public about the Charging Station(s), Customer may disclose to the public
information about the location of the Charging Station(s) and its status and may use
the business name (or project or shopping center name as designated by Customer)
and address of the Facilities area in promotional materials, websites, and maps. With
Customer's prior written consent, Company may use Customer's logo, trademark, or
service mark in promotional materials, websites, or maps.

1 Exhibit MC-1S provides EPE's revised proposed Schedule No. TCTX.
2

3 Q7. WHY HAS EPE DECIDED TO MAKE THIS REVISION TO ITS PROPOSED
4 SCHEDULE NO TCTX NOW?

5 A. EPE's application in this proceeding was filed prior to the Texas Legislature's passing of
6 S.B. 1002, which takes effect September 1, 2023.
7

8 Q8. IS IT EPE'S PROPOSAL TO REPLACE THE SCHEDULE NO. TCTX IN EXHIBIT
9 MC-4 TO YOUR DIRECT TESTIMONY WITH THAT IN EXHIBIT MC-1S TO THIS
10 TESTIMONY?

11 A. Yes. All references to Schedule No. TCTX in this proceeding should be to the version in
12 this supplemental testimony.
13

14 IV. CONCLUSION

15 Q9. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

16 A. Yes.
17

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAMAPPLICABILITY

This Take Charge TX Pilot Program is available to customers that qualify to take metered electric service under Schedule No. 02 Small General Service Rate, Schedule No. 24 General Service Rate, Schedule No. 25 Large Power Service Rate, Schedule No. 41 City and County Service Rate, and non-residential customers seeking to take service under Schedule No. EVC Electric Vehicle Charging.

TERRITORY

Texas Service Area

TYPE OF SERVICE

The Take Charge TX Pilot Program is a flexible, voluntary program for non-residential customers where the customer can choose the desired electric vehicle (EV) charging infrastructure and equipment that could be purchased, installed, and operated by the Company, in whole or part, including a fully turnkey solution, to mitigate the challenge of managing the EV charging station's installation and maintenance for the customer. Prior to installation of the infrastructure and equipment, all participants must execute the Take Charge TX Customer Agreement, which is incorporated herein.

MONTHLY RATES

| Selected Recovery Term (Years) | Monthly Charge |
|--------------------------------|----------------|
| 1 | 9.250% |
| 2 | 4.828% |
| 3 | 3.358% |
| 4 | 2.625% |
| 5 | 2.188% |
| 6 | 1.898% |
| 7 | 1.694% |
| 8 | 1.541% |
| 9 | 1.423% |
| 10 | 1.330% |

The Monthly Charge is calculated and assessed monthly, based on the customer-selected repayment term monthly charge percentage in the table above, on the Company's total installed cost of EV charging infrastructure and equipment at the Customer's location.

Section Number 1
Sheet Number 44.2
Page 1 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY**SCHEDULE NO. TCTX****TAKE CHARGE TX PILOT PROGRAM****MONTHLY MINIMUM CHARGE**

The monthly minimum charge consists of the Monthly Charge and the Operations and Maintenance fee associated with the EV charging equipment.

TERMS OF PAYMENT

The due date of the bill for utility service shall not be less than sixteen (16) days after issuance. A bill becomes delinquent if not received at the Company by the due date. If the due date falls on a holiday or weekend, the next Company business day shall apply.

TERMS AND CONDITIONS

Service supplied under this rate schedule is subject to the Company's Rules and Regulations on file with the Public Utility Commission of Texas and available for inspection at Company offices.

EPE will have the right to reject projects based on reliability concerns or unreasonable costs.

PRORATION ADJUSTMENTS

Charges for service supplied under this rate schedule are subject to proration adjustments.

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

Customers seeking to voluntarily sign up for the Take Charge TX Pilot Program must execute with the Company the following Take Charge TX Customer Agreement.

TAKE CHARGE TX CUSTOMER AGREEMENT

El Paso Electric (the "Company") and _____ (the "Customer"), enter into this Take Charge TX Agreement (the "Agreement") as of _____ (the "Effective Date"). Company and Customer may be referred to hereinafter individually as a "Party" or collectively as the "Parties", and each as a "Party").

RECITALS

WHEREAS Company currently provides electric service to Customer in accordance with the terms and conditions set forth in Company's Tariffs, including applicable rate schedules; and

WHEREAS Company has agreed to procure, install, operate, and maintain additional facilities for the purpose of charging electric vehicles (the "EVs") on Customer's premises as part of its EV pilot program under Schedule No. TCTX, Take Charge TX Pilot Program, all as more fully described below; and

WHEREAS Customer agrees to pay all charges for such additional facilities and related services contemplated in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein, the Parties agree as follows:

PART 1: DESCRIPTION OF CHARGING STATION INFRASTRUCTURE

1.1 Take Charge TX Facilities. The Take Charge TX facilities ("Facilities") may include one or all of the following: one or more EV charging stations ("Charging Stations") and associated equipment on customer and utility side of the meter as agreed upon by Customer and Company and described in Exhibit A attached hereto and incorporated herein. Customer's property is identified in Exhibit B, attached hereto and incorporated herein (the "Premises"). The Facilities may include the Charging Station(s) and all electrical equipment, hardware, software, and supporting equipment and structures installed by Company's designated vendor(s) and/ or service provider(s) (collectively, the "Contractors") such as electric distribution cabinets and equipment, breakers, side arm disconnect, electric service connection to the Charging Station(s) from the existing electric meter in the case of behind-the-meter installations, or from Company's distribution grid, in the case of in-front-of-meter installations, as more specifically discussed below. Unless included in Exhibit A, any existing electrical components that are to be utilized in the installation process

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

do not constitute the Facilities for the purposes of this Agreement. Any modifications, replacements, and/or additions to the equipment covered by this Agreement will need to be subject to a new agreement covering the installed costs of such infrastructure under Schedule No. TCTX.

1.2 Type of Installation. Exhibit A stipulates one of the following installation options based on the requested location of the Charging Station(s) on the Premises:

- (A) **Behind the Meter ("BTM") Installation.** Company may install the Facilities on an existing pad site where the Customer previously installed electric vehicle charging equipment (an "Existing Pad Site") or, alternatively, construct a new pad site. Notwithstanding whether there is an Existing Pad Site, BTM installation will require installation of the necessary electrical components, including but not limited to electric vehicle charging equipment, behind an existing electric meter, utilizing the existing electrical service panel, all in compliance with customer installation standards set forth in the Company's Tariff and any applicable rate schedule, rules, or regulations; or
- (B) **In Front of Meter ("IFOM") Installation.** Company to install new electrical components dedicated specifically to providing dedicated electric service to the Facilities, and a new service agreement added to Customer's account for billing that service.

PART 2: OWNERSHIP OF EQUIPMENT

- 2.1** Notwithstanding the type of installation, Company owns all Facilities installed by Company or its Contractors except for electrical components installed or paid for by the Customer.
- 2.2** Notwithstanding 4.3 of this agreement, title to all Facilities which Company owns under the terms of this Agreement shall remain in the Company, and Customer acknowledges and agrees that this Agreement confers no ownership rights or interest to Customer in the Facilities equipment owned by Company.

PART 3: CUSTOMER WARRANTIES AND REPRESENTATIONS

3.1 Customer represents and warrants that:

- (A) It is the sole owner of the Premises; or
- (B) There are multiple property owners of record of the Premises, and Customer has been designated as the exclusive agent of all such property owners with

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTX

TAKE CHARGE TX PILOT PROGRAM

(N)

authority to enter into this Agreement and to execute the ROW (as defined below) on behalf of all of them.

- 3.2 Customer executed the right-of way in Exhibit C, attached hereto and incorporated herein (the "ROW") granting Company the exclusive right to erect, locate, install, and operate the Facilities on the Premises. At Company's election, Company may record the ROW or a memorandum reflecting the ROW in the real property records of the county of record. As stated therein, Customer shall not permit any levy, lien, or other legal process to be attached to the Facilities and shall immediately notify Company if any of the foregoing shall occur.
- 3.3 Customer acknowledges that Company will make substantial expenditures to install the Facilities in reliance on the terms of this Agreement.
- 3.4 **Customer will provide the Company access to the Facilities for maintenance between the hours of 7:00 AM and 7:00 PM, seven days a week, or, in the case of an emergency, at any time upon receiving prior notification from the Company.**

PART 4: TERM; DISPOSAL OF THE FACILITIES EQUIPMENT; FEES; INCENTIVES

- 4.1 **Contract Period.** The initial term of the Customer Agreement will continue for the 10-year life of the Company's investment (the "Contract Term") regardless of the number of years that the customer will make payments under Schedule No. TCTX (the "Recovery Term").
- 4.2 **Recovery Term.** The Recovery Term will commence on the Effective Date and will continue for _____ years after the date that the Facilities are placed into service ("Commencement Date").
- 4.3 **Disposal of Facilities.** Upon expiration or earlier termination of the Agreement, Company shall have the right, at its sole option and discretion, to either remove or abandon in place such Facilities. In the event Company notifies Customer that it has elected to abandon in place such Facilities, title to such Facilities shall automatically vest in Customer, without further action on the part of Company, and Company shall have no further obligations or liabilities in connection therewith. Upon request by Customer and at Customer's expense, and subject to Customer paying any outstanding Fees and any amounts due pursuant to Sections 4 and 5, Company will provide a duly executed bill of sale with respect to the Facilities and/or a Release evidencing the surrender of the ROW.
- 4.4 **Fees.** Customer agrees to pay the following fees (the "Fees"):

Section Number 1
Sheet Number 44.2
Page 5 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

- (A) **Infrastructure Charge.** Pursuant to Schedule No. TCTX, Customer will pay a net monthly Infrastructure Charge payment of \$_____ for the Recovery Term to compensate Company for the cost of procurement, construction, and installation of the Facilities equipment. This charge will be paid on a monthly basis for the duration of the Recovery Term, starting from the Commencement Date.
- (B) **O&M Charge.** Customer will pay a monthly charge of \$_____ for the duration of the Contract Term to compensate Company for the annual cost of operating and maintaining the Facilities based on the type and level of service requested by Customer ("O&M Charge"). The O&M Charge does not include nor is it intended to reflect any increased electricity consumption associated with Customer's use of Facilities. Such increased electricity consumption will be billed in accordance with Company's applicable rate schedules and riders applied to Customer's current electric service for a BTM installation or new electric service for an IFOM installation.
- (C) **Monthly Billing.** The Infrastructure Charge and the O&M Charge are in addition to Company's standard charges for electric service under its Tariff. The Infrastructure Charge and the O&M Charge will be included together as a separate line item in Customer's monthly utility bill.
- 4.5 Available Incentives.** Certain incentives, tax credits, and/or rebates may be available for the Facilities (collectively, the "Incentives"), and Company may, in its sole discretion, claim those Incentives. Customer shall not claim any Incentives without Company's prior written approval.

PART 5: TERMINATION

- 5.1 Termination by Company for Breach.** Company may terminate this Agreement due to Customer's breach of this Agreement. Should Company terminate this Agreement before the end of the Contract Term pursuant to the provisions in this Section 5.1, then Customer shall pay Company a lump sum equal to the remaining unpaid Fees calculated through the end of the Contract Term. Customer will be liable for all court costs, attorneys' fees, and other costs associated with the collection of all amounts owed under the terms of this Agreement.
- 5.2 Termination by Customer.** Should Customer terminate this Agreement prior to the Commencement Date, Customer shall pay Company for all costs incurred by Company in preparing to install the Facilities equipment up to that point, including Contractor fees, non-refundable equipment costs, restocking fees, shipping costs, design, surveying and planning costs, and any applicable permit related costs. Should Customer terminate this Agreement after the Commencement Date, but prior to the

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

end of its Contract Term, then in addition to all other rights of recovery allowed herein or in accordance with applicable law, Customer shall pay Company a lump sum equal to the remaining unpaid Fees calculated through the end of the Contract Term. Customer will be liable for all court costs, attorney's fees, and other costs associated with the collection of all amounts owed under the terms of this Agreement.

- 5.3 Termination Due to Change in Law or Regulatory Action.** The Company may terminate this agreement and remove its Facilities from the Premises to the extent the Company ownership of the Facilities is determined to be inappropriate or impermissible by the applicable regulatory or governmental authorities.

PART 6: CONSTRUCTION AND OPERATION OF FACILITIES EQUIPMENT

- 6.1 Project Contingencies.** Installation of the Facilities equipment is conditioned on satisfaction of the following contingencies.

- (A) Execution and delivery of all necessary documentation to give effect to the ROW, as described in Section 3.2.
- (B) The remediation, to Company's sole satisfaction, of any hazardous materials, contamination, or other environmental conditions at the Premises that affect the Facilities. The cost of such remediation is not included in the Fees.
- (C) Company will provide a best estimate of the Infrastructure Charge prior to executing this Agreement; however, the Infrastructure Charge may change following detailed site assessments and confirmation of project design. Consequently, the Infrastructure Charge will not be fixed and final until execution of the Agreement.

- 6.2 Procurement and Installation.** If Customer elects to have Company procure and/or install Facilities, Company will provide labor, equipment, and materials necessary to install the Facilities that the Customer elected to have on the Premises. Company will obtain any necessary permits required to prepare the area and install and operate the Charging Station(s), as requested by the Customer and specified in this Agreement. With Customer's prior consent, Company may paint, place, erect, or project signs, marks, or advertising devices on or about the Area or elsewhere on the Premises, including signage on or around the Charging Station(s) designating the area "EV Charging Parking Only."

- 6.3 Monitor and Maintain.** During the Contract Term, Company will monitor and maintain the Facilities in accordance with Customer's selections indicated on Exhibit A. Customer will pay the amount designated in Section 4.3 above and any electric

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

usage charges that Customer is obligated to pay Company for Company's non-residential rates, riders, and agreements. Customer agrees to provide Company, its Contractors, and/ or service partners with access to the Facilities as reasonably required.

- 6.4 **Charging Station Use.** The Charging Station(s) may be made available to the general public or select users (the "Users"), in Customer's sole discretion. Users may be required to accept certain terms of use imposed by third-party product suppliers. 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. Customer is responsible for collection of all applicable sales tax associated with such usage. Company will not collect any fee from User(s).

6.5 **Duties of Care.**

- (A) **Charging Station Maintenance.** Company shall maintain Charging Station(s) in good working condition, ordinary wear and tear excepted, if elected by the Customer and specified in this Agreement. Company does not guarantee uninterrupted or continual operation of the Charging Station(s) and, in its sole discretion, may interrupt operation when necessary whether by suspending service and/or removing equipment that, in Company's sole discretion, poses a risk to the public or to operations, or to perform maintenance on the Facilities.
- (B) **Customer Obligations.** The Customer will not remove, mar, deface, obscure, or otherwise tamper with the Charging Station labels. Furthermore, Customer agrees, at its own expense and at all times during the Contract Term, to keep public areas, parking spaces, streets and sidewalks appurtenant to the Facilities Area reasonably free of debris and rubbish and in good repair and condition. Customer shall notify Company immediately if Customer becomes aware that the Facilities have become unsafe, damaged, or inoperable. Customer shall immediately report all claims and/or incidents associated with the Facilities to Company. If there are operational or maintenance issues with a Charging Station, Customer will not undertake any of repair to Company-owned Facilities; instead, Customer will promptly contact Company's representative identified in this Section so that Company can perform the necessary repairs. Customer will be responsible for repair and maintenance of existing electrical components installed or paid for by the Customers as well as any existing pad site. Customer shall not move (or remove) the Charging Station(s) from their installed location(s).

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

Company's Representative: _____

Name: _____

Address: _____

Email and Phone: _____

6.6 Software License and Internet Access. All Charging Station hardware and software are provided by third-party suppliers. Company will assist Customer with the deployment and provision of the software (or cloud-based software service) and any software management and support services. Customer will be required to enter into a direct license/service agreement with the third-party licensor (the "Software License"). Customer will be responsible for provisioning internet connectivity to the Facilities equipment, if required. Customer's use of the software and related services will be governed by the terms of the Software License in addition to the terms of this Agreement.

6.7 Charging Station Usage Data. Company shall have the right to view, copy, and analyze anonymized Charging Station usage data and usage reports for Company's own purposes and to perform tasks such as provisioning, configuration, troubleshooting, validating installation of the Charging Station(s), and energy management for the Contract Term of the Agreement. Customer hereby authorizes Company and its representatives to request and obtain such anonymized reports directly from the third-party provider(s) of Facilities support services. For the avoidance of doubt, Company shall have no liability or responsibility for data breaches or other misuse of Facilities usage data, including data relating to end-user transactions. Customer will contract directly with a third-party for data transfer and any claim related to breach of data security or misuse of data will be between Customer and the third-party, not Company.

PART 7: PUBLICITY

7.1 Publicity. Customer acknowledges that it may be required to post signage at Company's request. Neither party will make any public announcement regarding this Agreement, or any project that may be developed under this Agreement, without first obtaining the prior written consent of the other party. Any proposed press releases or other promotional materials will need approval by both the Company and Customer.

Section Number 1
Sheet Number 44.2
Page 9 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

No publication or promotional material may claim or imply that Company endorses Customer's business, brand, products, environmental attributes, or Customer generally. Customer may not use Company's name, service mark, design, or any Company intellectual property on charging stations. Customer agrees that it will not place Company's logo, trademark, service mark, or advertising device on any portion of the Charging Station(s) or in the Facilities area. Customer has the right to advise mapping services, vehicle navigation system manufacturers, and/or smart phone application developers of the existence of the Charging Station(s) at the Facilities area. To promote and inform the public about the Charging Station(s), Customer may disclose to the public information about the location of the Charging Station(s) and its status and may use the business name (or project or shopping center name as designated by Customer) and address of the Facilities area in promotional materials, websites, and maps. With Customer's prior written consent, Company may use Customer's logo, trademark, or service mark in promotional materials, websites, or maps.

PART 8: INSURANCE

8.1 Insurance Customer shall provide and maintain, at its own expense, insurance coverages in forms and amounts that Customer believes will adequately protect it but in no case less than:

- (A) Commercial General Liability Insurance, including Contractual Liability Coverage covering liability assumed under this Agreement, Products Liability Coverage, Completed Operations Coverage to remain in effect for three (3) years following the expiration or termination of this Agreement, Broad Form Property Liability Coverage, Personal Injury Coverage, and Explosion, Collapse and Underground Hazards Coverage, with a combined single limit of \$1,000,000 (one million dollars) per occurrence for Bodily Injury and Property Damage.
- (B) Excess or Umbrella Liability Coverage following the form of coverages required in Subsection 8.1(A) with limits of liability, when combined with such primary coverage limits, equal to \$2,000,000 (two million dollars) per occurrence.
- (C) Such other insurance as may be deemed necessary or desirable by the Company.

8.2 Customer's insurance policies required by Subsections 8.1 above, shall include Company and Company's affiliates as additional insureds with respect to Customer's performance under and liability arising from this Agreement. All of Customer's policies shall be endorsed to waive subrogation against Company and its affiliates for personal injury, including death, and property damage. All of Customer's policies of insurance shall be primary insurance and noncontributing with any other insurance

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

maintained by Company and its affiliates. Customer shall endeavor to provide Company notice of policy cancellation or material change in accordance with the policy provisions. Policies are to be written by insurers that carry A.M. Best Rating of AVII or better. Customer shall provide Company with Certificates of Insurance issued to Company and its affiliates evidencing coverage currently in effect upon execution of this Agreement and annually thereafter pursuant to the requirements of this Section 8.

- 8.3** The minimum insurance requirements set forth above shall not vary, limit, or waive Customer's legal or contractual responsibilities or liabilities to any party. It is agreed that Customer's insurance shall apply to Customer's indemnity and defense obligations under this Agreement. If it is judicially or statutorily determined that the insurance required hereunder exceeds the monetary limits permitted under applicable law, the parties agree that said insurance requirements shall automatically be amended to conform to the maximum monetary limits permitted under such law.
- 8.4** In the event that the indemnities provided for in this Agreement are judicially or statutorily determined to be invalid, impermissible, or exceed permissible amounts, such indemnities shall automatically be deemed to be amended to conform to applicable law; provided, however, that Company and its affiliates shall continue to be covered by such insurance policy(ies) as additional insureds to the extent of Customer's indemnification responsibilities set forth in this Agreement, with such insurance to be primary as to all other policies (including any deductibles or self-insurance retentions) of Company and its affiliates that may provide coverage. Customer and its insurer(s) waive all rights of subrogation and contribution against Company and its affiliates to the extent that liabilities are assumed by Customer.
- 8.5** **Casualty.** If all or any portion of the Facilities are damaged or destroyed by fire or other casualty which reasonably materially and adversely affects their operation, then Company may at its election either (i) repair or replace the affected Facilities, in which case Customer shall continue to pay the Fees set forth in this Agreement, or (ii) terminate this Agreement by giving at least twenty (20) days written notice.

PART 9: PRODUCT WARRANTIES; INDEMNIFICATION; LIMITATION OF LIABILITY

- 9.1** **Product Warranties.** All Charging Station hardware and software are provided by third-party suppliers. If applicable, Company will pass through to Customer the benefit of any and all warranties offered to customers by the product suppliers. Customer acknowledges and agrees that (i) Customer is solely responsible for selecting products that satisfy Customer's operational requirements; and (ii) Company does

Section Number 1
Sheet Number 44.2
Page 11 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

not provide any warranties with respect to defects in the materials or workmanship of the products supplied by such third-party suppliers.

- 9.2 Protection of Company's Property.** The Customer will properly protect the Company's property located on the Premises. In the event of any loss or damage to the Company's property caused by or arising out of carelessness, neglect, or misuse by Customer or other unauthorized parties, the cost of making good such loss or repairing such damage will be paid by the Customer.
- 9.3 Customer's Liability to Company and Indemnification.** Customer shall be responsible to the Company for any loss or damage to the Company's property; (a) resulting from abuse of the Facilities, or (b) caused by Customer, Customer's agents and assigns, Users, or any third-party within the control of the Customer. Customer shall indemnify, defend and hold Company harmless from any and all liabilities, claims, demands, administrative proceedings, orders, judgements, assessments, fines, penalties, costs and lawsuits, of whatever nature and expenses of any kind of nature (including reasonable attorneys' fees) that may be imposed on, incurred by, or asserted against the Company, its affiliates, and their contractors and each of their agents, officers, directors, shareholders, control persons, employees, agents, successors, assigns, and representatives (the "Indemnitees") or any of them by any third-party or parties (including, without limitation, or governmental entity), caused by, arising from, relating to or in connection with, in whole or in part, directly or indirectly: (i) the negligent, willful or intentional acts or omissions of Customer, its agents, contractors, subcontractors or employees or Users during the Contract Term of this Agreement and any agreed extensions thereof; (ii) misuse of the Facilities by any User; (iii) breach of any of the representations, warranties, covenants or the terms of this Agreement, except to the extent any of the liabilities are caused by the gross negligence of the Indemnitees; (iv) misuse of software or any breach of the terms of a software license by any person other than Company; or (iv) any unauthorized use, disclosure or loss of User information including personal information.
- 9.4 Limitation of Liability.** Except for Customer's indemnification obligations and obligation to pay the Fees, neither party shall be liable to the other party for any special, incidental, consequential, punitive, or indirect damages or loss of profit or business interruption damages whatsoever. IN ADDITION, UNDER NO CIRCUMSTANCES WILL COMPANY'S TOTAL AGGREGATE LIABILITY FOR DAMAGES ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER PURSUANT TO THIS AGREEMENT IN THE 24 MONTH PERIOD PRECEDING THE DATE ON WHICH THE LAST SUCH CLAIM FOR DAMAGES AROSE. For the purposes of the preceding sentence, the date on which a claim for damages arises shall be the date on which the statute of limitations period for such claims begins to run.

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM**PART 10: NOTICES**

- 10.1** Any notice given by either Party to the other pursuant to this Agreement, shall be in writing and be deemed validly given if delivered in person, delivered by private, prepaid courier, sent by facsimile with confirmation, sent by email to named contacts for the other Party with email confirmation of receipt, or deposited in the mail properly stamped with the required postage and addressed to the last-known office address of the respective addressee. Either Party hereto shall have the right to change any address or addressee it may have given to the other Party by giving such other Party due notice in writing of such a change. Until so changed, notices shall be given to the addressees at the addresses set forth below.

| | Customer: | Company: |
|----------|-----------|----------|
| Name: | _____ | _____ |
| Address: | _____ | _____ |
| | _____ | _____ |
| | _____ | _____ |
| ATTN: | _____ | _____ |

PART 11: MISCELLANEOUS

- 11.1 Relationship of the Parties; Force Majeure.** The Parties are independent contractors in performance of this Agreement. This Agreement: (i) creates no joint venture, partnership, fiduciary, or agency relationship for any purpose beyond that contemplated by the Agreement in conformance with the Schedule No. TCTX; (ii) confers no right or remedy on any person other than the Parties and their respective successors or permitted assigns; and (iii) creates no contractual relationship with, or cause of action for any third-party. Neither Party is responsible for delay or failure in performance (except with respect to the obligation to pay amounts otherwise due and owing) to the extent the delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, pandemic (other than the Covid 19 pandemic except to the extent that there are material adverse changes to the trajectory of the Covid 19 pandemic), change in the law, act or omission of carriers, or other similar cause beyond the Party's control.

Section Number 1
Sheet Number 44.2
Page 13 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY

(N)

SCHEDULE NO. TCTXTAKE CHARGE TX PILOT PROGRAM

- 11.2 **Governing Law.** Texas law governs all matters, including torts, relating to this Agreement, without regard to choice of law principles. The Parties will resolve a claim or dispute under this Agreement in a state or federal court sitting in El Paso County, Texas. Each Party consents to exclusive jurisdiction and venue in these courts. This Agreement and its exhibits comprise the Parties' final and exclusive expression of their rights and obligations regarding the Facilities equipment and supersede any prior oral or written representation, promise, or agreement. Captions are for convenience only and do not affect interpretation; "include" means "include but are not limited to"; "or" means "either or both"; and defined terms are singular or plural as context requires. Provisions that logically should apply beyond Agreement expiration or termination will survive expiration or termination.
- 11.3 **Modification; Waiver; Assignment; Severability.** No amendment or modification of this Agreement is effective unless made in a writing signed by both Parties. Each Party agrees to execute documents or perform acts reasonably necessary to perform each provision of this Agreement. Failure of a Party to insist on strict performance of any provision does not waive the right to require future performance; a waiver in one instance is not a waiver regarding a later obligation or breach. This Agreement binds and benefits the Parties and their respective heirs, successors, assigns, including successor Premises owners. If there is an assignment or change in control of all, or substantially all, of a Party's operations or assets, the Party must provide prompt written notice and the Parties will cooperate to ensure that the Agreement binds the successor. If a court rules a provision unenforceable to any extent, the rest of that provision and all others remain effective; the Parties will negotiate in good faith to replace the provision. If a court finds a provision unreasonably broad in time or scope, the Parties desire that the court reduce it to the maximum allowable parameter, instead of holding it totally unenforceable.
- 11.4 **Capitalized Terms.** Any capitalized term not specifically defined herein has the meaning ascribed to it in the Rules and Regulations of the Company's Tariff.
- 11.5 **Counterparts.** Each Party agrees to all terms and conditions of this Agreement, as of the Effective Date. This Agreement may be executed in any number of counterparts. The Parties may exchange counterparts by facsimile transmission or as a scanned image (e.g., .pdf, or .tiff file extension) as an attachment to email; a facsimile or scanned signature is an original signature for all purposes.

(Signatures commence on next page.)

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTX

TAKE CHARGE TX PILOT PROGRAM

EL PASO ELECTRIC

By: _____

Name: _____

Title: _____

CUSTOMER

By: _____

Name: _____

Title: _____

EL PASO ELECTRIC COMPANY
SCHEDULE NO. TCTX
TAKE CHARGE TX PILOT PROGRAM

Exhibit A
FACILITIES EQUIPMENT, SOFTWARE, AND MAINTENANCE OPTIONS

Section Number 1
Sheet Number 44.2
Page 16 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY
SCHEDULE NO. TCTX
TAKE CHARGE TX PILOT PROGRAM

Exhibit B
THE PREMISES

Section Number 1
Sheet Number 44.2
Page 17 of 20

Revision Number 0
Effective for bills issued on and after
July 1, 2023

EL PASO ELECTRIC COMPANY
SCHEDULE NO. TCTX
TAKE CHARGE TX PILOT PROGRAM

EXHIBIT C

RIGHT-OF-WAY

EL PASO ELECTRIC COMPANY

_____, a _____, hereinafter called Grantor, whether one or more, for and in consideration paid by EL PASO ELECTRIC COMPANY the receipt and sufficiency of which is hereby acknowledged, has granted, sold and conveyed, and by these presents does grant, sell and convey unto the said EL PASO ELECTRIC COMPANY, a corporation duly organized and existing under the laws of the State of Texas, hereinafter called Grantee, for a term of _____ years from the Effective Date (as defined below) the EXCLUSIVE RIGHT, PRIVILEGE, AND RIGHT-OF-WAY to enter upon and to install, maintain, operate, inspect, patrol, repair, and remove electric vehicle charging station(s) and all associated equipment, including but not limited to a electric vehicle charging stations, concrete pads, electrical interconnection facilities, and any bollards or fencing deemed necessary by Grantee, said Take Charge TX Infrastructure to be erected simultaneously or at different future times, with the right to replace structures or fixtures composed of one type of material or materials with structures or fixtures of any other type of material or materials at any time and from time to time without further payment, upon, over, under and across that parcel of land owned by Grantor, said easement being _____ FEET BY _____ FEET (the "Easement Area") as depicted on the attached Attachment A, incorporated herein.

Grantor agrees that it shall not erect, locate, or permit the erection or placement of any building, structures, overhangs, trees, shrubs, or object of any type outside of said Easement Area, whether on a temporary or permanent basis, that will interfere with Grantee's access, operations, or the rights granted to Grantee hereunder or that violate any clearance, safety or operational requirements, guidelines or specifications as set forth in the National Electrical Safety Code, applicable operating guidelines associated with the Take Charge TX Infrastructure, and all other applicable laws, regulations, building codes, zoning ordinances, or other ordinances or requirements. Grantor shall not change the elevation of the land within the Easement Area where such elevation change causes a violation in any clearance, safety, or operational requirements set forth in the National Electrical Safety Code Requirements, applicable operating guidelines associated with the Take Charge TX Infrastructure, or any other applicable laws, regulations, building codes, zoning ordinances, or other ordinances or requirements, or limits ingress/egress to, from and along the land covered by the Easement Area. Grantee shall have ingress and egress at any time to, from and along the land covered by the Easement Area or Grantor's adjoining land.

Section Number _____ 1 _____
Sheet Number _____ 44.2 _____
Page _____ 18 of 20 _____

Revision Number _____ 0 _____
Effective for bills issued on and after _____
July 1, 2023 _____

EL PASO ELECTRIC COMPANY

SCHEDULE NO. TCTX

TAKE CHARGE TX PILOT PROGRAM

Grantor hereby covenants with and represents and warrants to said Grantee that Grantor has good and marketable title to said land, and has the unqualified right to grant the privileges herein contained.

Grantor shall not permit any levy, lien or other legal process to be attached to the Take Charge TX Infrastructure. Title to all Take Charge TX Infrastructure which Grantee owns under the terms of this Right-of-Way shall remain in the Grantee, and Grantor acknowledges and agrees that this Right-of-Way confers no ownership rights or interest to Grantor in the Take Charge TX Infrastructure owned by Grantee. Upon expiration or earlier termination of this Right-of-Way, Grantee shall have the right, at its sole option and discretion, to abandon in place all such Take Charge TX Infrastructure. In the event Grantee notifies Grantor that it has elected to abandon in place such Take Charge TX Infrastructure, title to such Take Charge TX Infrastructure shall automatically vest in Grantor, without further action on the part of Grantee, and Grantee shall have no further obligations or liabilities in connection therewith.

All the Agreements and stipulations herein contained, and all of the obligations herein assumed, shall inure to the benefit of and be binding upon the heirs, successors and assigns of the respective parties thereto.

This Right of Way is effective as of the ____ day of _____, 20__ (the "Effective Date").

EL PASO ELECTRIC

By: _____

Name: _____

Title: _____

CUSTOMER

By: _____

Name: _____

Title: _____

EL PASO ELECTRIC COMPANY
SCHEDULE NO. TCTX
TAKE CHARGE TX PILOT PROGRAM

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On _____, 2023, _____ known to me (or proved to me on the basis of satisfactory evidence) to be the individual whose name is subscribed to the within instrument, personally appeared before me and acknowledged to me that he executed the same on behalf of said limited liability company.

Name:
Notary Public

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On _____, 2023, _____ known to me (or proved to me on the basis of satisfactory evidence) to be the individual whose name is subscribed to the within instrument, personally appeared before me and acknowledged to me that he executed the same on behalf of said limited liability company.

Name:
Notary Public

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by electronic mail, on all parties of record in this proceeding on September 22, 2023.

/s/ Rosanna Al-Hakeem
Rosanna Al-Hakeem