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Public Utility Commission of Texas

TO: Interim Chair Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Grace Lager
Commission Advising

RE: *Statement of Intent and Application of El Paso Electric Company for Approval of Texas Electric Vehicle-Ready Pilot Programs and Tariffs*, Docket No. 54614,
Draft Preliminary Order, November 2, 2023 Open Meeting, Item No. XX.

DATE: October 23, 2023

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the November 2, 2023 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the November 2, 2023 open meeting.

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DOCKET NO. 54614

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

DRAFT PRELIMINARY ORDER

El Paso Electric Company filed an application for approval of electric vehicle pilot programs and corresponding changes to its tariff. This preliminary order identifies the issues that must be addressed in this proceeding.

El Paso Electric requests that the Commission approve four new electric vehicle readiness programs. These include the (1) EV Smart Rewards Pilot Program, (2) Whole House EV Pilot Incentive Credit Rider, (3) the PowerConnect Pilot Program, and (4) the Take Charge TX Pilot Program.¹

Two of the proposed pilot programs are for residential customers. The EV Smart Rewards Pilot Program provides incentives to residential customers who enroll in a utility-managed electric-vehicle charging program.² The Whole House EV Pilot Incentive Credit Rider encourages residential customers who own electric vehicles to charge their electric vehicles during the overnight and early morning hours by providing an incentive credit on electricity usage from midnight to 8:00 am.

Two more pilot programs are intended for use by non-residential customers. The PowerConnect Pilot Program provides non-residential customers who are installing electric-vehicle charging infrastructure on their premises with a rebate credit to reduce the customer's upfront cost for utility distribution-system improvements that are needed to support the electric-vehicle charging infrastructure. The Take Charge TX Pilot Program, provides non-residential customers with the opportunity to request that El Paso Electric arrange, in whole or part, for the

¹ Statement of Intent and Application at 4–5 (Jan. 31, 2023).

² *Id.* at 4.

purchase, installation, and maintenance of electric vehicles charging infrastructure selected by the customer for electric charging on the customer's premises.

El Paso Electric filed its application January 31, 2023. In Order No. 2, filed on March 3, 2023, the administrative law judge (ALJ) found the application administratively complete and proposed notice sufficient. In addition, the ALJ suspended the operation of the tariff beyond the March 7, 2023 effective date to August 4, 2023. The City of El Paso requested that the proceeding be referred to the State Office of Administrative Hearings (SOAH) on March 16, 2023.

In Order No. 3, filed on March 23, 2023, the ALJ granted the interventions of the City of El Paso, ChargePoint Inc., and the Office of Public Utility Counsel (OPUC). On April 3, 2023, Commission Staff filed a request for referral to SOAH for a hearing on the merits. El Paso Electric was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by April 18, 2023. El Paso Electric and Commission Staff each timely filed a list of issues.

After the parties filed lists of issues, the legislature passed Senate Bill 1002,³ which amends PURA⁴ and addresses the operation of public electric vehicle charging stations. On August 24, 2023, the Commission ordered El Paso Electric, in light of S.B. 1002, to file a statement regarding whether it intended to amend its application; withdraw or refile its application; or proceed with its application as filed. On September 12, 2023, in Order No. 5, the ALJ granted ChargePoint's motion to withdraw its intervention.

On September 22, 2023, El Paso Electric Company amended its application and filed supplemental testimony.

El Paso Electric was directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by October 12, 2023.

³ Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (codified at Tex. Util. Code ch. 42).

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

Commission Staff timely filed a list of issues. El Paso Electric filed a list of issues on October 13, 2023.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Has El Paso Electric provided sufficient notice of this application to all affected customers under 16 TAC § 22.51?
2. Do the proposed rates comply with the requirements of Chapter 42 of PURA?

EV Smart Rewards Pilot Program

3. Do the proposed rates for the EV Smart Rewards Pilot Program comply with the requirements of PURA § 36.003?
 - a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?
4. What are the estimated costs of the pilot program?
5. Is El Paso Electric proposing to recover these costs in this proceeding?
6. What impacts will there be on current customers who subscribe to the pilot program if El Paso Electric's application is granted?
7. What impacts will there be on Texas customers who have not subscribed to the pilot program if El Paso Electric's application is granted?
8. What, if any, conditions should be placed on approval to ensure that Texas customers who have not subscribed to the pilot program are not unreasonably affected by approval of El Paso Electric's application?

⁵ Tex. Gov't Code § 2003.049(e).

Whole House EV Pilot Incentive Credit Rider

9. Do the proposed rates for the Whole House EV Pilot Incentive Credit Rider comply with the requirements of PURA § 36.003?
 - a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?
10. Are the proposed credits discounted rates under PURA § 36.007?
11. What are the estimated costs of the pilot program?
12. Is El Paso Electric proposing to recover these costs in this proceeding?
13. What impacts will there be on current customers who subscribe to the pilot program if El Paso Electric's application is granted?
14. What impacts will there be on Texas customers who have not subscribed to the pilot program if El Paso Electric's application is granted?
15. What, if any, conditions should be placed on approval to ensure that Texas customers who have not subscribed to the pilot program are not unreasonably affected by approval of El Paso Electric's application?

PowerConnect Pilot Program

16. Is El Paso Electric proposing to subsidize the costs of make-ready infrastructure through rates or charges for services provided by the electric utility's regulated services as permitted under PURA § 42.0103(d)?
17. Do the distribution system upgrades or improvements referenced in the PowerConnect Pilot Program tariff qualify as make-ready infrastructure as defined in PURA § 42.0102(6)?
18. Will El Paso Electric provide electric vehicle charging service to the public as defined in PURA § 42.0102(4)?
19. Under the pilot program, will El Paso Electric own or operate any public electric vehicle charging stations as defined in PURA § 42.0102(7)?

20. Will customers participating in the pilot program own the electric vehicle charging stations or other equipment on the customer side of the meter?
21. What are the estimated costs of the pilot program?
22. Is El Paso Electric proposing to recover these costs in this proceeding?
23. Do the proposed rates comply with the requirements of PURA § 36.003?
 - a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?
24. Are the proposed rebates discounted rates under PURA § 36.007?
25. What impacts will there be on current customers who subscribe to the pilot program if El Paso Electric's application is granted?
26. What impacts will there be on Texas customers who have not subscribed to the pilot program if El Paso Electric's application is granted?
27. What, if any, conditions should be placed on approval to ensure that Texas customers who have not subscribed to the pilot program are not unreasonably affected by approval of El Paso Electric's application?

Take Charge TX Pilot Program

28. Does the Take Charge TX Pilot Program comply with the requirements of PURA § 42.0103(o) regarding site hosting agreements?
 - a. Will a person who is not an electric utility or an affiliate be able to enter an agreement with El Paso Electric to own or operate a public electric vehicle charging station on the person's property?
 - b. Will El Paso Electric *not* be providing electric vehicle charging service to the public?
 - c. Will El Paso Electric *not* 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?

- d. Will the person solely determine the 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 prices for the electric vehicle charging service?
 - e. Will the person pay for all electric utility-related costs under the proposed tariff, and will the tariff provide 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?
29. Will El Paso Electric offer service under the terms of the tariff to other persons seeking agreements in the El Paso Electric's service area on a nondiscriminatory basis under PURA § 42.0103(p)(1)?
30. Will the revenue collected by El Paso Electric under each agreement with a participating person allow 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 under PURA § 42.0103(p)(2)?
31. Do the proposed rates comply with the requirements of PURA § 36.003?
- a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?
32. Do El Paso Electric's proposed programs and the corresponding tariffs comply with all other applicable requirements of PURA and Commission rules?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER