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**SOAH DOCKET NO. 473-24-04312
PUC DOCKET NO. 54614**

STATEMENT OF INTENT AND	§	BEFORE THE STATE OFFICE
APPLICATION OF EL PASO	§	
ELECTRIC COMPANY FOR	§	OF
APPROVAL OF TEXAS ELECTRIC	§	
VEHICLE-READY PILOT PROGRAMS	§	ADMINISTRATIVE HEARINGS
AND TARIFFS	§	

COMMISSION STAFF'S INITIAL BRIEF

Dated: April 18, 2024

Respectfully submitted,

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COMMISSION STAFF’S INITIAL BRIEF

I. INTRODUCTION

The applicant, El Paso Electric Company (EPE), filed a statement of intent and application with the Public Utility Commission of Texas (Commission), seeking approval of its proposed Texas electric vehicle (EV)-ready pilot programs and tariffs, which include the (1) EV Smart Rewards Pilot Program, (2) Whole House EV (WHEV) Pilot Incentive Credit Rider, (3) the PowerConnect Pilot Program, and (4) the Take Charge TX (TCTX) Pilot Program. For the reasons detailed below, the Commission should deny EPE’s application and reject each EV-ready pilot program and tariff.

A. Description of Application

EPE proposes 4 different pilot programs in its application. The WHEV Pilot Incentive Credit Rider provides unmetered EV service to residential customers and provides credits for energy usage from midnight to 8 AM.¹ The credits would apply to all electric usage during the specified time frame, not just EV-related usage.² EPE’s proposed credits for this program are based on incremental capacity costs based on EPE’s calculations in their last rate case.³

The EV Smart Rewards pilot program provides for utility-managed EV charging to residential customers.⁴ This program includes a one-time enrollment incentive payment of \$125

¹ Direct Testimony of Adrian Narvaez, Staff Exhibit No. 2 at 7:9-11.

² *Id.* at 7:11-12.

³ *Id.* at 7:12-14.

⁴ *Id.* at 7:15-16.

and annual incentive payments of \$50 to customers that enroll, while participation is limited to 880 residential customers.⁵

The PowerConnect pilot program would provide a rebate for a portion of EPE's costs for distribution system updates and improvements in order to provide EV charging.⁶ The customer will procure its own charging equipment and electrical contractor, while EPE will provide utility-side installations as a rebate.⁷ This program is open to non-residential customers.⁸

Finally, the TCTX pilot program provides non-residential customers the opportunity to choose the EV infrastructure to be purchased, owned, and operated in part, or in full, by the Company.⁹ The tariff includes a monthly fixed fee for the recovery of the EV infrastructure and equipment costs recovered over the time period selected by the customers, and a variable fee for the recovery of O&M expenses in effect for the 10-year customer agreement term.¹⁰

B. Procedural History

On January 31, 2023, EPE Filed an application for approval of its proposed EV-pilot programs and tariffs. On March 3, 2023, the Commission administrative law judge (ALJ) found the application sufficient for further review on the merits. On April 3, 2023, the Commission filed an Order of Referral and Preliminary Order to transfer the proceeding to the State Office of Administrative Hearings (SOAH) and identify the issues that must be addressed. On April 2, 2024 a hearing on the merits was convened and concluded by SOAH. SOAH Order No. 7, filed on April 2, 2024, established a deadline of April, 18, 2024 for parties to file initial briefs. Therefore, this pleading is filed timely.

⁵ *Id.* at 7:16-18.

⁶ *Id.* at 8:1-2.

⁷ *Id.* at 8:2-4.

⁸ *Id.* at 8:4-5.

⁹ *Id.* at 8:6-8.

¹⁰ *Id.* at 8:8-11.

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter under PURA¹¹ §§ 14.001, 31.002(6), and 36.101 through 36.111. SOAH has jurisdiction over this proceeding under Tex. Gov't Code § 2003.049 and PURA § 14.053.

III. DISCUSSION

A. EV Smart Rewards Pilot Program

1. Introduction/Program Description

As stated above in Section I(A), the EV Smart Rewards pilot program provides for utility-managed EV charging to residential customers.¹² This program includes a one-time enrollment incentive payment of \$125 and annual incentive payments of \$50 to customers that enroll, while participation is limited to 880 residential customers.¹³

2. Compliance of the proposed program with PURA/PUCT Rules

As stated in the testimony of Adrian Narvaez, Staff's witness, none of EPE's proposals in this proceeding are necessary for EPE to provide adequate and reasonable electric utility service to its customers, whether they own EVs, EV charging stations, or neither.¹⁴ Additionally, none of these proposals are necessary for EPE to maintain its financial integrity.¹⁵ EPE's existing rates and tariffs are fully adequate to provide reasonable and adequate electric service to its customers.¹⁶

Furthermore, based on Mr. Narvaez's review, each of EPE's proposals do not comply with the requirements of PURA § 36.003, PURA § 36.006, and 16 Texas Administrative Code (TAC) §§ 25.1 and 25.234. Furthermore, Staff takes the position in this brief that EPE's proposals both do not meet the requirements set under PURA Chapter 42 and are not consistent or supported by the Legislature's findings detailed in PURA Chapter 42. Because of some overlap of Staff's

¹¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

¹² Staff Exhibit No. 2 at 7:15-16.

¹³ *Id.* at 7:16-18.

¹⁴ *Id.* at 8:14-16.

¹⁵ *Id.* at 8:16-17.

¹⁶ *Id.* at 8:17-19.

position on each of EPE's proposed EV-ready pilot programs and tariffs, Staff addresses the compliance of each program with PURA and Commission rules in this section and will provide additional information in the relevant sections below, as necessary. Regarding the basis of Mr. Narvaez's review, PURA § 36.003, relating to Just and Reasonable Rates, states in part:

- (a) The regulatory authority shall ensure that each rate an electric utility or two or more electric utilities jointly make, demand, or receive is just and reasonable.
- (b) A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer.
- (c) An electric utility may not:
 - (1) grant an unreasonable preference or advantage concerning rates to a person in a classification;¹⁷

PURA § 36.006, relating to Burden of Proof, states in part:

In a proceeding involving a proposed rate change, the electric utility has the burden of proving that:

- (1) the rate change is just and reasonable, if the utility proposes the change;¹⁸

16 TAC §25.1, relating to Purpose and Scope of Rules, states:

Mission of the Public Utility Commission of Texas (commission). The mission of the commission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the commission shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.¹⁹

Additionally, under 16 Texas Administrative Code (TAC) § 25.234(a), relating to Rate Design, rates "shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost."²⁰

Based on these provisions, Mr. Narvaez recommends the following with respect to EPE's EV-ready programs and tariffs:

¹⁷ *Id.* at 5:19-27.

¹⁸ *Id.* at 6:1-4.

¹⁹ *Id.* at 6:5-11.

²⁰ 16 TAC § 25.234(a).

- EPE's proposed WHEV Pilot Incentive Credit Rider is unreasonably preferential and discriminatory, is inequitable and grants an unreasonable preference concerning rates to certain persons in a classification, and should be rejected as it is not just and reasonable;
- EPE's proposed EV Smart Rewards pilot program is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable;
- EPE's proposed PowerConnect pilot program is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable;
- EPE's TCTX pilot program should be rejected as filed, because it is impossible to verify if the TCTX pilot program would result in rates that are unreasonably preferential and discriminatory; and
- Any adjustments to EPE's current EV rate structure be contingent on establishing a separate rate class for EV customers.²¹

Separately, in contrast with the supplemental testimony of Angelina Rodriguez, EPE's witness, addressing the impacts of Chapter 42 of PURA on EPE's proposed EV-ready pilot programs and tariffs,²² the programs either conflict with the requirements of Chapter 42 or are not consistent with the Legislature's findings detailed in Chapter 42. Specifically, Ms. Rodriguez generally argues that each program is consistent with Chapter 42,²³ but then specifically, with regard to the EV Smart Rewards pilot program and the WHEV Pilot Incentive Credit Rider, acknowledges that Chapter 42 does not have any impacts on these programs.²⁴ And furthermore, as discussed in more detail below, the intent of Chapter 42 of PURA is to encourage competitive private sector investment in the deployment of *public* EV charging stations, while the EV Smart Rewards pilot program and the WHEV Pilot Incentive Credit Rider are residential programs that are not related to the deployment of *public* EV charging stations.²⁵ As such, the EV Smart Rewards pilot program and the WHEV Pilot Incentive Credit Rider are not consistent with Chapter 42 of PURA.

²¹ Staff Exhibit No. 2 at 6:19-7:6.

²² Supplemental Testimony of Angelina Rodriguez, EPE Exhibit No. 6 at bates page 3:17-18.

²³ *Id.* at bates page 5:6-7.

²⁴ *Id.* at bates page 5:12-15 and bates page 6:30-7:2.

²⁵ PURA § 42.0101(a)-(b).

Costs and Cost Recovery

With regards to EPE's EV Smart Rewards Program, the incentive payments represent special treatment for those who choose to enroll in this program as they would receive what amounts to subsidies for electric consumption in order to encourage utility-managed EV charging.²⁶ This is preferential treatment to those who enroll that disadvantages other customers. Furthermore, EPE does not clarify how it plans to recover the cost of this program and which customers will ultimately be responsible for paying these costs.²⁷ And of more concern, EPE refused to commit to recovering program costs entirely from customers participating in the program.²⁸

3. Discussion of any other preliminary order issues

Staff's overall position is that none of EPE's proposed EV programs should be approved as filed. And because of the general nature of Staff's position on each of EPE's proposed EV-ready pilot programs and tariffs, Staff addresses each program in this section and will provide additional information in the relevant sections below, as necessary. As demonstrated in the discussion of EPE's proposed EV programs, one of the main issues that arises with rate proposals aimed at facilitating EV adoption or incentivizing certain consumption patterns is that such proposals usually entail various forms of preferential treatment that are not applicable to other customers within the same class, or subsidies that are applied to EV customers at the expense of non-EV customers.²⁹ This is because EV charging requires investment in equipment and infrastructure that is unique to EV customers.³⁰ These costs are not shared by other customers within the same class and do not provide benefits to EPE's distribution system as a whole, rather such subsidization of potentially large loads might in the long run reduce the resilience and reliability of the EPE system.³¹ Therefore, any proposed discounts or incentives designed for EV customers will always be preferential as they will only ever be open to EV customers, despite the fact that other customers

²⁶ Staff Exhibit No. 2 at 10:7-10.

²⁷ *Id.* at 11:9-11.

²⁸ *Id.* at 11:11-12.

²⁹ *Id.* at 12:2013:1.

³⁰ *Id.* at 13:1-3.

³¹ *Id.* at 13:3-6.

may have similar usage characteristics.³² Likewise, any proposal aimed at reducing the costs for EV customers below the cost of service, or changing energy consumption patterns through incentive payments only available to EV customers will always result in the discriminatory policy of subsidizing EV customers by shifting cost to other customers.³³ Unless the Company commits to recovering the funds needed to pay for the credit or incentive payments provided to EV customers from EV customers themselves, the cost of these subsidies will primarily come from non-EV customers.³⁴ Even such a commitment or directive to only recover the associated costs from participating customers would present significant complications.³⁵

Intervenors, Staff, SOAH, and the Commission only have a limited time window in which to review, opine, and decide on issues presented in major electric rate proceedings.³⁶ In recent years, many incremental cost recovery riders have been approved or expanded, including the Distribution Cost Recovery Factor,³⁷ the Generation Cost Recovery Rider,³⁸ and the resiliency-related rider.³⁹ In addition to the existing Transmission Cost Recovery Factor,⁴⁰ as well as certain utility-specific nonstandard programs, such as EPE's community solar program,⁴¹ these riders and programs require increasing amounts of time and effort to review and reconcile in the context of a rate case in order to ensure compliance with PURA and Commission rules.⁴² Approving yet more programs which will perpetually require additional review and reconciliation in every future rate proceeding, especially when they are unnecessary, itself runs the risk of unreasonably burdening the Commission and the court in their duties to serve the public interest.⁴³ Within this proceeding,

³² *Id.* at 13:8-10.

³³ *Id.* at 13:11-14.

³⁴ *Id.* at 13:14-17.

³⁵ *Id.* at 13:17-18.

³⁶ *Id.* at 13:18-20.

³⁷ 16 TAC § 25.243.

³⁸ 16 TAC § 25.248.

³⁹ 16 TAC § 25.62(f).

⁴⁰ 16 TAC § 25.239.

⁴¹ *Application of El Paso Electric Company for a Voluntary Community Solar Pilot Program*, Docket No. 44800, Final Order (Sept. 1, 2016).

⁴² Staff Exhibit No. 2 at 14:4-6.

⁴³ *Id.* at 14:6-9.

EPE has not agreed to extend any statutory deadlines of any future EPE rate cases to allow Staff and intervenors additional time to review these additional programs.⁴⁴

Additionally, there are already alternative methods with which implementation of EV-specific rates could work under the rules. While there is no fundamental need for EV-specific rates or tariffs, if EV-specific policy is to be embedded in rates, it would be much more reasonable for EPE to establish a separate EV rate class, similar to the manner in which lighting rates are treated.⁴⁵ This approach is consistent with well-established ratemaking practice, is more transparent for all stakeholders, and would more reasonably facilitate compliance with PURA and Commission rules.⁴⁶ More specifically, this approach would be entirely consistent with setting rates in the normal manner authorized under PURA Chapter 36, as PURA § 42.0103(m) requires.

Establishing a separate rate class for EV customers would allow EPE the possibility of providing rate structures suitable for EV customers while conforming with PURA and Commission Rules' requirement that rates be based on cost.⁴⁷ The cost of EV infrastructure and equipment, as well all other costs that EV customers cause the Company to incur, would be exclusively assigned or allocated to, and recovered from, EV customers.⁴⁸ This is the same treatment applied to Street and Outdoor lighting customers by all regulated utilities in Texas.⁴⁹ Street and Outdoor lighting service requires investment in equipment and infrastructure that is unique to the provision of lighting service, similar to EV charging service.⁵⁰ This is one of the main reasons for why Lighting Service is treated as a separate class even within ERCOT, where customers are usually classified based on the voltage at which they connect to the utility's system.⁵¹ Furthermore, lighting classes include various rates and rate structures for the numerous different

⁴⁴ Tr. at 45:10-20 (Novela Cross).

⁴⁵ Staff Exhibit No. 2 at 14:12-14.

⁴⁶ *Id.* at 14:14-17.

⁴⁷ *Id.* at 14:17-19.

⁴⁸ *Id.* at 14:20-15:2.

⁴⁹ *See Compliance Filing for Final Order in Docket No. 53601 (Application of Oncor Delivery Company LLC for Authority to Change Rates)* Docket No. 54817, Compliance Tariff for Final Order in Docket No. 53601 at Rate Schedule 6.1.1.1.8 Lighting Service (Apr. 21, 2023).

⁵⁰ Staff Exhibit No. 2 at 15:3-5.

⁵¹ *Id.* at 15:5-8.

types of standard equipment options that lighting customers can employ.⁵² An EV rate class can also provide various rate structures based on different EV equipment such that rate options can be available for all residential and non-residential EV customers in a non-discriminatory manner.⁵³

And to the extent there may be a concern about such a rate class not going into effect until after EPE's next rate case, within this proceeding EPE has indicated that it intends to file a rate case later this year.⁵⁴ Furthermore, if EPE were to be concerned about the time it may take to get a final Commission order in its next rate case, the Commission has approved a new rate class with demand charges outside of a base rate case in Docket No. 43955,⁵⁵ as well as new LED lighting base rates outside of a base rate case in Docket Nos. 42742, 50786, and 54241.⁵⁶

B. Whole House EV Pilot Incentive Credit Rider

1. Introduction/Program Description

As stated above in Section I(A), the WHEV Pilot Incentive Credit Rider provides unmetered EV service to residential customers.⁵⁷ The program provides credits for energy usage from midnight to 8 AM.⁵⁸ The credits would apply to all usage during the specified time frame, not just EV-related usage.⁵⁹ EPE's proposed credits for this program are based on incremental capacity costs based on EPE's calculations in their last rate case.⁶⁰

⁵² *Application of El Paso Electric Company to Change Rates*, Docket No. 52195, Clean Copy of Tariff at Schedule No. 08 Government Street Lighting Service Rate and Schedule No. 28 Area Lighting Service Rate (Sep. 28, 2022).

⁵³ Staff Exhibit No. 2 at 15:10-12.

⁵⁴ Tr. at 29:7-16 (Novela Cross).

⁵⁵ *Application of Sharyland Utilities, L.P. for Approval of Rate For Wholesale Transmission at Distribution Level Voltage*, Docket No. 43955, Order (May 6, 2015).

⁵⁶ *Application of Centerpoint Energy Houston Electric, LLC to Amend Rate Schedule 6.1.1.1.6 Lighting Services in its Tariff for Retail Delivery Service*, Docket No. 42742, Order (Nov. 14, 2014); *Petition of Southwestern Electric Power Company to Implement Rate Schedules Municipal Street and Parkway Lighting and Area Lighting-Light Emitting Diode*, Tariff Control No. 50786, Notice of Approval (Sept. 11, 2020); *Petition Of AEP Texas Inc. to add Lighting Options to Municipal Street Lighting Service Tariff*, Tariff Control No. 54241, Notice of Approval (Feb. 24, 2023).

⁵⁷ Staff Exhibit No. 2 at 7:9-10.

⁵⁸ *Id.* at 7:10-11.

⁵⁹ *Id.* at 7:11-12.

⁶⁰ *Id.* at 7:12-14.

2. Compliance of the proposed program with PURA/PUCT Rules

Staff reiterates its position as explained in Section II(A)(2) of this brief. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

3. Costs and Cost Recovery

While meters are necessary in order to assure proper cost recovery and to avoid unreasonable cross-subsidizations, EPE has not shown why providing unmetered EV service is necessary in order to provide adequate electric service.⁶¹ The WHEV program amounts to preferential treatment for customers enrolled in this program as they will be the only residential customers avoiding the costs associated with EV meters.⁶² Further, the program would also unreasonably subsidize non-EV energy consumption since customers enrolled in this program will receive credits for all energy usage in the early hours of the morning, including all non-EV-related usage.⁶³ This means that non-EV related energy consumption will be subsidized for this subset of customers at the expense of other customers.⁶⁴ Mr. Carrasco attempts argue that Mr. Narvaez did not produce any analysis to substantiate this testimony regarding how the WHEV program would unreasonably subsidize non-EV consumption and stated that EPE is not seeking to shift the cost of the pilot program incentives by increasing the rate currently applicable to whole house energy consumption.⁶⁵ Contrary to Mr. Carrasco's suggestion, no analysis on this issue is needed – by failing to separately meter the EV energy usage under this program, it is logically impossible for EPE to disaggregate the EV energy consumption from non-EV energy consumption behind a customer's meter. That EPE is not providing a clear proposal in this proceeding as regards how the cost of the incentives will be recovered does not support the implication in Mr. Carrasco's testimony that rates applicable to whole house energy consumption will not be increased to make up for the cost of the incentives in some future rate proceeding. Furthermore, it is EPE that has the burden of proof in this case and the record does not demonstrate the EPE can guarantee that

⁶¹ *Id.* at 9:2-4.

⁶² *Id.* at 9:4-6.

⁶³ *Id.* at 9:6-9.

⁶⁴ *Id.* at 9:9-11.

⁶⁵ Rebuttal Testimony of Manuel Carrasco, EPE Exhibit No. 10 at bates page 4:7-12.

customers who receive the WHEV Credit Incentive will not benefit from the rider on consumption that is separate from charging an EV.

Ultimately, this subsidization of non-EV energy consumption provides a benefit that is outside the scope of the program and is blatantly and unreasonably discriminatory and preferential, as any benefits associated with off-peak energy usage should accrue to all customers with such usage patterns, and not just the EV-owning customers in this program.⁶⁶ This discriminatory program is also completely unnecessary, as EPE has time-of-use options available to customers, which can provide incentives to customers to shift energy usage into off-peak times in a fair and non-discriminatory manner.⁶⁷

EPE has also not shown why modifications to its rate design applicable to all customers, such as mandatory demand charges or adjustments to the time-of-use rate design, would not better serve the goal of encouraging a shift of electric consumption from on-peak periods to off-peak periods.⁶⁸ EPE has not provided and justification to single-out certain EV customers for special treatment in this regard, when a broader rate design approach would provide more benefits in a non-discriminatory manner.⁶⁹

4. Discussion of any other preliminary order issues

Staff reiterates its position as explained in Section II(A)(4) of this brief. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

C. PowerConnect Pilot Program

1. Introduction/Program Description

As stated above in Section I(A), the PowerConnect pilot program provides a rebate for a portion of EPE's costs for distribution system updates and improvements in order to provide EV charging.⁷⁰ The customer will procure its own charging equipment and electrical contractor, while

⁶⁶ *Id.* at 9:11-13.

⁶⁷ *Application of El Paso Electric Company to Change Rates*, Docket No. 52195, Clean Copy of Tariff at Schedule No. 01 Residential Service Rate (Sep. 28, 2022).

⁶⁸ Staff Exhibit 2 at 9:17-20.

⁶⁹ *Id.* at 9:20-10:2.

⁷⁰ *Id.* at 8:1-2.

EPE will provide utility-side installations at a rebate.⁷¹ This program is open to non-residential customers.⁷²

2. Compliance of the proposed program with PURA/PUCT Rules

In addition to Staff's position outlined in Section II(A)(2), Staff notes that Ms. Rodriguez states that the PowerConnect pilot program is supported by PURA § 42.0103(d), which states that PURA § 42.0103 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.⁷³ However, PURA § 42.0103(d) does not explicitly and outright *allow* utilities to subsidize the cost of make-ready infrastructure. Moreover, Ms. Rodriguez fails to consider that both PURA § 36.003 and 16 TAC § 25.234(a) require that rates may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer. As discussed in the following section, the PowerConnect Pilot Program could violate PURA § 36.003 as EPE refuses to commit to recovering costs entirely from customers participating in this program. Furthermore, EPE has not shown that the affected distribution system upgrades and improvements fall within the category of make-ready infrastructure. The terms used by EPE could encompass costs beyond the narrower category of make-ready infrastructure. Once again, EPE has failed to meet its burden of proof.

3. Costs and Cost Recovery

The PowerConnect Program subsidizes non-residential EV customers through rebates that would reduce or offset the cost of improvements to EPE's distribution system needed in order to provide EV service to customers enrolled in this program.⁷⁴ This program directly violates the requirement under 16 TAC § 25.234(a) that rates be based on cost since participating customers as the participating customers would not be required to pay for the costs that they are causing the

⁷¹ *Id.* at 8:2-4

⁷² *Id.* at 8:4-5.

⁷³ EPE Exhibit No. 6 at bates page 5:19-6:1; *see also* PURA § 42.0103(d).

⁷⁴ Staff Exhibit No. 2 at 10:11-13.

Company to incur.⁷⁵ The PowerConnect program is particularly egregious as it will provide subsidies to participants in addition to subsidies that are already being provided by the state and federal governments. In her direct testimony, Angelina Rodriguez states:

The goal of this program is to be complementary to other available federal programs created through the Infrastructure Investment and Jobs Act, such as the NEVI program for installation of charging stations by Texas DOT and the Clean School Bus program administered by EPA.⁷⁶

Adding subsidies on top of existing subsidies can create highly distortionary incentives and cause unintended consequences.⁷⁷ In this instance, such ‘pancaking’ of subsidies could lead to significant and unsustainable over-investment in EV-related infrastructure and costs.⁷⁸ This over-investment is very likely to eventually harm the broader body of ratepayers, either through higher rates, or through reduced reliability as highly subsidized EV-infrastructure investment costs displace needed resiliency-related investment.⁷⁹

EPE does not clarify how it plans to recover program costs of the PowerConnect program and which customers will ultimately be responsible for paying these costs.⁸⁰ Of more concern, EPE refused to commit to recovering program costs entirely from customers participating in this program.⁸¹

4. Discussion of any other preliminary order issues

Staff reiterates its position as explained in Section II(A)(4) of this brief. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

⁷⁵ *Id.* at 10:13-16.

⁷⁶ Direct Testimony of Angelina Rodriguez, EPE Exhibit No. 4 at bates page 18:18-21.

⁷⁷ Staff Exhibit No. 2 at 11:3-4.

⁷⁸ *Id.* at 11:4-5.

⁷⁹ *Id.* at 11:6-8.

⁸⁰ *Id.* at 11:9-11.

⁸¹ Novela Cross).

D. Take Charge TX Pilot Program

1. Introduction/Program Description

As stated above in Section I(A), the TCTX pilot program provides non-residential customers the opportunity to choose the EV infrastructure to be purchased, owned, and operated in part, or in full, by the Company.⁸² The tariff includes a monthly fixed fee for the recovery of the EV infrastructure and equipment costs recovered over the time period selected by the customers, and a variable fee for the recovery of O&M expenses in effect for the 10-year customer agreement term.⁸³

2. Compliance of the proposed program with PURA/PUCT Rules

In addition to Staff's position outlined in Section II(A)(2), Staff notes that Ms. Rodriguez states that the TCTX pilot program is supported by PURA § 42.0103(o), which states that PURA § 42.0103 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 EV charging station on the person's property if certain conditions are met,⁸⁴ relevantly including that the utility does not provide EV charging service using the public EV charging station and that the person solely determines physical access to and use of the public EV charging station and prices for the EV charging service.⁸⁵

In making these legal opinions about the impacts of Chapter 42 of PURA on EPE's EV-ready pilot programs and tariffs, Ms. Rodriguez does not consider the findings made by the Legislature that provide an indicate the intent behind Chapter 42. Specifically, under Chapter 42, the Legislature found that it is necessary to encourage "competitive" private sector investment in public EV charging stations.⁸⁶ Correspondingly, the Legislature also found that it is necessary to develop and implement "competitively neutral" tariffs for "public" EV charging stations that are "based on cost causation principles" and ensure "transparency in pricing" that would help foster

⁸² Staff Exhibit No. 2 at 8:6-8.

⁸³ *Id.* at 8:8-11.

⁸⁴ EPE Exhibit No. 6 at bates page 6:5-16; *see also* PURA § 42.0103(o).

⁸⁵ PURA § 42.0103(o)(1)(A) and (2)(B)-(C).

⁸⁶ PURA § 42.0101(a) and (d)(1) and (3).

the competitive private sector investment in public EV charging stations.⁸⁷ Further, pursuant to those findings, PURA § 42.0103(m) requires that EV charging service rates must be reasonable and ensure that competition is not impaired.⁸⁸

Based on the supplemental testimony of Manuel Carrasco, EPE's witness, Section 6.4 of Schedule No. TCTX for the TCTX pilot program states that the EV charging stations may be made available to the general public or select users in the customer's sole discretion.⁸⁹ As evidence that EPE anticipates having customers that will not use EV charging stations to provide EV charging services to the public, Ms. Rodriguez's direct testimony indicates customers who participate in the program will have the sole discretion on whether to make their charging stations available to the general public or only specific users such as the customer's employees or tenants.⁹⁰ Notably, such customers may include fleet managers, government agencies, school districts, military customers, and multi-unit dwelling managers and developers, as noted by the list of eligible non-residential customers.⁹¹ And for these specific types of customers, Ms. Rodriguez, in discussing eligible customers for the PowerConnect pilot program, states that such customers will be able to install EV charging stations for their fleets, employees, tenants, customer, or the public.⁹² Accordingly, EPE anticipates having customers for the TCTX pilot program that will not be providing EV charging services to the public.

The Legislature, however, crafted Chapter 42 of PURA with the intention of encouraging investment in *public* EV charging stations.⁹³ And under PURA § 42.0102(7), a public EV charging station is defined as a charging station that is accessible for commercial use by the public.⁹⁴ Further, it specifically excludes vehicle charging equipment that is located on the premises of a customer and used by the customer or the customer's tenants, affiliates, or guests and not used commercially for EV charging service.⁹⁵ As such, customers, such as those referenced above,

⁸⁷ PURA § 42.0101(d)(2).

⁸⁸ PURA § 42.0103(m).

⁸⁹ Supplemental Testimony of Manuel Carrasco, EPE Exhibit No. 7 at bates page 13.

⁹⁰ EPE Exhibit No. 4 at bates page 23:8-10.

⁹¹ *Id.* at bates page 21:11-14.

⁹² *Id.* at bates page 19:20-23.

⁹³ PURA § 42.0101(a)-(d).

⁹⁴ PURA § 42.0102(7).

⁹⁵ PURA § 42.0102(7)(B).

would not be using the TCTX pilot program to install *public* EV charging stations, because the EV charging stations would not be accessible for commercial use by the public. In turn, to the extent that EPE offers the pilot programs to such customers, the underlying agreements would not adhere to the requirements of PURA § 42.0103(o). Importantly, PURA § 42.0103(o) only applies to agreements in which the electric utility will own or operate a *public* EV charging station on the customer's property, such that the customers must make the EV charging stations commercially available to the public.

While the TCTX pilot program in such circumstances violates PURA § 42.0103(o), it may be something that the Legislature otherwise contemplated in Chapter 42. Specifically, while PURA § 42.0102(4) defines EV charging service as sales made from a public EV charging station to the public,⁹⁶ PURA § 42.0103(e) states that an electric utility may provide EV charging service directly to a customer, but only if certain requirements are met.⁹⁷ Therefore, it can be interpreted that PURA § 42.0103(e) would enable EPE to provide EV charging services directly to certain customers that do not intend to make the EV charging stations commercially available to the general public. However, for such customers, EPE has not demonstrated compliance with PURA § 42.0103(e)-(m).

In contrast, if the Legislature intended for PURA § 42.0103(e) to require an electric utility to make the EV charging station available to the public in addition to providing EV charging service directly to the host customer, then, to the extent that EPE may seek to offer the TCTX pilot program pursuant to PURA § 42.0103(e) to customers who do not intend to provide EV charging services, the Commission should deny such a request. Specifically, in such a scenario it would not be appropriate for an electric utility in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure. Instead, such ownership should be left to competitive providers, based on the underlying principles of PURA and the Commission's rules regarding regulation of electric public utilities. Specifically, PURA § 11.002, relating to Purpose and Findings, importantly states in part that:

(b) Public utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise

⁹⁶ PURA § 42.0102(4).

⁹⁷ PURA § 42.0103(e).

society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.⁹⁸

(c) Significant changes have occurred in the telecommunications and electric power industries since the Public Utility Regulatory Act was originally adopted. Changes in technology and market structure have increased the need for minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace where competition is permitted by law....⁹⁹

Further, as previously discussed, 16 TAC § 25.1, relating to Purpose and Scope of Rule, importantly states in part that:

(a) **Mission of the Public Utility Commission of Texas (commission).** The mission of the commission is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the commission shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.¹⁰⁰

In the case of the TCTX pilot program and this scenario in which a participating customer will not be providing EV charging services, despite the requirements of Chapter 42 of PURA, the program would authorize EPE to own all or portions of transportation electrification and charging infrastructure on a non-residential customer's property for the customer's use, which in Staff's view would allow EPE to inappropriately provide a competitive service under this scenario that is not authorized by Chapter 42 of PURA.

Even if EPE does not make the TCTX pilot program available to such customers, the program still does not comply with the requirements of Chapter 42 of PURA in terms ensuring that EV-related tariffs provide transparent prices that are based on cost causation principles and that service under the tariff will be offered on a nondiscriminatory basis.¹⁰¹ Notably, because the program relies on non-standard pricing tailored to individual customers for both the monthly level charge, as well as the fixed O&M charge,¹⁰² it lacks the transparency required by PURA §

⁹⁸ PURA § 11.002(b).

⁹⁹ PURA § 11.002(c).

¹⁰⁰ 16 TAC § 25.1(a).

¹⁰¹ PURA § 42.0101(d)(2) and (p)(1).

¹⁰² Staff Exhibit No. 2 at 11:20-12:1.

42.0101(d)(2). One issue with the lack of transparency is that customers would need to negotiate various terms and prices, which may be burdensome for some customers and ultimately discourage adoption of EV charging stations by such customers.

Furthermore, while customer-specific pricing may be appropriate in certain uncommon situations associated with proper utility service, it raises serious concerns regarding the ability of the Commission and intervenors to scrutinize the details of EV infrastructure costs and TCTX rider revenues.¹⁰³ EPE's rates must be examined to ensure they are just, reasonable, non-discriminatory, non-preferential, and based on cost.¹⁰⁴ Fully evaluating EPE's costs and revenues associated with Schedule No. TCTX would be incredibly difficult, due to the customer-specific nature of each and every EV infrastructure installation, and the potential for there to be numerous such installations.¹⁰⁵ This difficulty would significantly interfere with the ability of the Commission and stakeholders to determine whether any undue cross-subsidization, or other form of discriminatory or preferential treatment, was occurring under the application of Schedule TCTX.¹⁰⁶ Similarly, in the event of a formal dispute between a customer and EPE that arises under Schedule No. TCTX, the non-tariffed and customer-specific nature of the costs and charges has the potential to significantly burden the Commission and the court.¹⁰⁷ Altogether, the lack of transparency in pricing in the TCTX pilot program does not comply with the Legislature's intent for EV-related tariffs to provide transparency and prevents the Commission from determining whether the TCTX pilot program is based on cost causation principles.

3. Costs and Cost Recovery

As discussed above, the lack of transparency in the customer-specific pricing in the TCTX pilot program prevents the Commission from determining whether the TCTX pilot program is based on cost causation principles. In addition, in the event that a participating customer stops making payments under the TCTX pilot program and EPE is ultimately unable to recover its investment from the participating customer, George Novela, EPE's witness, stated that EPE would

¹⁰³ *Id.* at 12:1-4.

¹⁰⁴ *Id.* at 4-5.

¹⁰⁵ *Id.* at 6-8.

¹⁰⁶ *Id.* at 12:8-11.

¹⁰⁷ *Id.* at 12:11-14.

treat it as a bad debt expense.¹⁰⁸ While recovering bad debt expense from the broader body of ratepayers may be appropriate as regards the costs of electric utility service that EPE is required to provide under its certificate of convenience and necessity, such an approach is questionable at best when it comes to optional services such as those offered under the TCTX pilot program. Further, it would be reasonable for the Commission to prohibit EPE from recovering any bad debt expense associated with its TCTX pilot program from any of its customers, as these costs are not necessary for the functioning of the EPE system in the provision of standard utility service. And although Mr. Novela indicates that it would be reasonable to only seek recovery of the bad debt expense from the participating customers, he indicated that EPE is not willing to commit to that in this proceeding.¹⁰⁹

4. Discussion of any other preliminary order issues

Staff reiterates its position as explained in Section II(A)(4) of this brief. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

E. Appropriate treatment of Rate Case Expenses

Staff does not have any further comments to this section. Staff, however, reserves the right to address this issue in the reply brief, if necessary.

IV. CONCLUSION

Based on the foregoing discussion, Staff recommends EPE's application should be rejected. If the Commission desires to establish or facilitate EV-specific treatments in EPE's rates and tariffs, EPE should be allowed to request the establishment of an EV-charging rate class in a future proceeding. For these reasons and the other reasons stated in this brief and in the direct testimony of Mr. Narvaez, Staff respectfully recommends that the SOAH ALJs reject EPE's application.

¹⁰⁸ Tr. at 34:2-35:22 (Novela Cross).

¹⁰⁹ Tr. at 35:16-19 (Novela Cross).

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 18, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Anthony Kanalas
Anthony Kanalas