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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING INITIAL BRIEF**

Courtney K. Hjältman
Chief Executive & Public Counsel
State Bar No. 24070294

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Justin Swearingen
Senior Assistant Public Counsel
State Bar No. 24096794
Chris Ekoh
Deputy Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)

**ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL**

April 18, 2024

TABLE OF CONTENTS

I.	INTRODUCTION	1
III.	DISCUSSION	2
	A. EV Smart Rewards Pilot Program	2
	1. Introduction/Program Description	2
	2. Compliance of the proposed program with PURA/PUCT Rules.....	2
	3. Costs and Cost Recovery	3
	B. Whole House EV Pilot Incentive Credit Rider	6
	1. Introduction/Program description	6
	3. Costs and Cost Recovery	7
	C. PowerConnect Pilot Program.....	7
	1. Introduction/Program description	7
	3. Costs and Cost Recovery	7
	D. TakeCharge TX Pilot Program	8
	1. Introduction/Program description	8
	3. Costs and Cost Recovery	8
	E. Appropriate treatment of Rate Case Expenses.....	10
IV.	CONCLUSION.....	11

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APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF ITS ELECTRIC VEHICLE-READY PILOT PROGRAMS AND TARIFFS	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**OFFICE OF PUBLIC UTILITY COUNSEL'S
POST-HEARING INITIAL BRIEF**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this post-hearing initial brief and shows the following:¹

I. INTRODUCTION

On January 31, 2023, El Paso Electric Company (“EPE” or the “Company”) filed its Application for Approval of its Texas Electric Vehicle-Ready Pilot Programs and Tariffs.² The Office of Public Utility Counsel (“OPUC”) filed its Motion to Intervene on March 20, 2023,³ and its intervention was granted March 23, 2023.⁴ Thereafter, OPUC participated in the hearing on the merits, held April 2, 2024. Per State Office of Administrative Hearings (“SOAH”) Order No. 7, the deadline to file Initial Briefs is April 18, 2024.⁵ Therefore, this pleading is timely filed.

¹ The fact that OPUC does not address an issue should not be interpreted as agreement with any particular position on the issue. All page number references are to the native page numbers unless indicated otherwise.

² Application of El Paso Electric Company for Approval of Its Electric Vehicle-Ready Pilot Programs and Tariffs (Jan. 31, 2023). (Application).

³ OPUC’s Motion to Intervene (Mar. 20, 2023).

⁴ Order No. 3 Granting Interventions (Mar. 23, 2023).

⁵ SOAH Order No. 7, Memorializing Post-Hearing Deadlines (Apr. 3, 2024).

III. DISCUSSION

A. EV Smart Rewards Pilot Program

1. Introduction/Program Description

The EV Smart Rewards Pilot Program is designed to incentivize residential customers to enroll and participate in EPE's utility-managed electric vehicle ("EV") charging program.⁶ The program would permit EPE to remotely manage the charging of its participating customers' electric vehicles.⁷ It is limited to 880 customers and will terminate after two years if it is not extended in a future proceeding.⁸

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

The Public Utility Regulatory Act ("PURA") § 36.003 requires all rates to be just and reasonable.⁹ OPUC agrees with Staff ("Staff") of the Public Utility Commission ("Commission" or "PUCT") that the proposed EV Smart Rewards Pilot Program's rates are unreasonably preferential, prejudicial, and discriminatory.¹⁰ The incentives EPE is proposing consist of an initial incentive payment of \$125 and an annual incentive payment of \$50 to be sent to participants, in addition to other incentive payments up to \$5 a month available only to participating customers.¹¹ These incentive payments are not based upon any estimated cost savings, but instead are based upon the range of incentives offered by other utilities.¹² Staff witness Mr. Adrian Narvaez

⁶ Direct Testimony of Angelina Rodriguez at 48:21-27 (Jan. 31, 2023). (Rodriguez Direct).

⁷ *Id.*

⁸ *Id.*

⁹ PURA § 36.003.

¹⁰ Direct Testimony of Adrian Narvaez at 6 (Feb. 7, 2024). (Narvaez Direct).

¹¹ Rodriguez Direct at 14.

¹² Direct Testimony of Evan D. Evans at 11:4 – 6 (Feb. 20, 2024). (Evans Direct).

correctly opined that these 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 charging.”¹³ As such, the EV Smart Rewards Pilot Program fails to comport with PURA and PUCT rules.

3. Costs and Cost Recovery

OPUC contends that adequate protections must be imposed to protect against costs associated with this program being borne by EPE’s non-participating customers. It is vital to ensure that non-participating customers are not required to subsidize the costs related to customers participating in this proposed program. This is particularly important because the incentives proposed under the EV Smart Rewards Pilot Program are not cost based.¹⁴ While EPE is not seeking cost recovery in this proceeding for the EV Smart Rewards Pilot Program, there are still costs being incurred for the development, marketing, regulatory approval, and implementation of the program that the Company states it may seek recovery for in a future proceeding.¹⁵ In order to protect non-participants from being required to subsidize costs associated with the EV Smart Rewards Pilot Program, the Commission should require the revised tariff to terminate at the earlier of two years or the effective date of new base rates, whichever occurs first, unless the Commission approves extending the program in EPE’s next base rate case or other future proceeding.¹⁶

OPUC has further concerns with the development of the incentives offered by EPE in the EV Smart Rewards Pilot Program. Rather than perform any analysis of the value of shifting load

¹³ Narvaez Direct at 10.

¹⁴ Evans Direct at 12:3 - 15.

¹⁵ Application at 6.

¹⁶ Evans Direct at 13:1 - 5.

off-peak, or any analysis of its current EV customers to develop the incentive amounts for the EV Smart Rewards program,¹⁷ EPE's proposed enrollment incentive for participating in low carbon or other demand response events was only based on a recommendation from its selected vendor.¹⁸ In addition the initial enrollment and annual participation incentives are based solely upon median incentives from a survey of other utilities' programs developed by the Smart Electric Power Alliance ("SEPA").¹⁹ This is clearly revealed in the following exchange taken from the cross-examination of EPE witness Ms. Angelina Rodriguez at the hearing:

A: Yeah, so we used SEPA Managed Charging Incentive Guide to look at different managed charging programs that other utilities have. That guide analyzed 40 different programs that are similar in nature. And we looked at the average incentive levels that other utilities offer in the U.S., and the paper actually provides you with the median incentive level for all of these programs that they've analyzed, and our incentives are in line with those median or average incentives offered by other utilities for similar programs.²⁰

Q: Okay. So were any other processes or tests conducted to develop your incentives other than just using the average of the SEPA design guides and the utilities contained in Table 1?²¹

A: Well, we looked at the white paper that you described that is listed in the RFI 2.5, and we looked at other utility programs and that was the analysis that was done to develop our program...²²

Q: ...did EPE look at the value of shifting load off peak?²³

A: No, we have not conducted that analysis because we haven't tested the program yet...²⁴

¹⁷ Tr. at 64:22-25 (Rodriguez Cross) (Apr. 2, 2024).

¹⁸ Rodriguez Direct at 15:7-10.

¹⁹ Rodriguez Direct at 14:19 -15:7; *See also* Tr. at 64:1 – 21 (Rodriguez Cross) (Apr. 2, 2024).

²⁰ Tr. at 64:1 – 11 (Rodriguez Cross) (Apr. 2, 2024).

²¹ Tr. at 64:12 – 15 (Rodriguez Cross) (Apr. 2, 2024).

²² Tr. at 64:16 – 21 (Rodriguez Cross) (Apr. 2, 2024).

²³ Tr. at 64:22 (Rodriguez Cross) (Apr. 2, 2024).

²⁴ Tr. at 64:24-25 (Rodriguez Cross) (Apr. 2, 2024).

Furthermore, Ms. Rodriguez confirmed that EPE has not performed any analysis to determine the value of shifting load off peak,²⁵ nor has EPE compared its costs to serve its customers to the costs or rates the utilities in the survey used to develop the incentives for its EV Smart Rewards Pilot Program.²⁶

Q: Okay. Well, then would it also be accurate to say that EPE hasn't chosen to compare the calculated costs to serve its residential customer, residential rates or pricing structures to the cost rates or pricing structures for the utilities included in the SEPA design guides or the utilities on Table 1?²⁷

A: We have not.²⁸

EPE agrees that the utilities in the SEPA report, which the Company relied on in setting its proposed EV Smart Rewards Pilot Program incentives, offered a broad range of incentive design structures and levels of incentives,²⁹ yet not only did EPE intentionally choose not to conduct analysis of its own customers to determine if the proposed incentives were acceptable or reasonable, EPE made no attempt to understand whether the approved structures and levels of incentives for the utilities included in the SEPA survey were based on the rates for those utilities, the characteristics of their customers, or the EV market in their service areas, as Ms. Rodriguez made apparent.³⁰

Q Do you agree that this report reveals that utilities offered a broad range of incentive design structures and levels of incentives?³¹

²⁵ Tr. at 64:22 – 65:4 (Rodriguez Cross) (Apr. 2, 2024).

²⁶ Tr. at 65:5 – 11 (Rodriguez Cross) (Apr. 2, 2024).

²⁷ Tr. at 65:5-10 (Rodriguez Cross) (Apr. 2, 2024).

²⁸ Tr. at 65:11 (Rodriguez Cross) (Apr. 2, 2024).

²⁹ Tr. at 67:6 – 9 (Rodriguez Cross) (Apr. 2, 2024).

³⁰ Tr. at 69:8-14 (Rodriguez Cross) (Apr. 2, 2024).

³¹ Tr. at 67:6-7 (Rodriguez Cross) (Apr. 2, 2024).

A Yes, I agree.³²

Q: Would it be reasonable to assume the approved structures and levels of incentives for those utilities were designed based on the rates for those utilities, the characteristics of their customers or the market of EVs in their service area?³³

A: I'm not sure how the utilities have designed their programs.³⁴

As the SEPA report explains, “It is important to note that all of the programs assessed reached their enrollment goals, regardless of the type and size of incentives offered to their participants.”³⁵ Consequently, the ability of programs to reach participation goals are not dependent on the size and type of incentives offered. Therefore, the Commission should reject EPE’s proposed EV Smart Rewards Pilot Program tariff, direct EPE to develop cost-based incentives, and require that EPE submit another filing requesting approval for the program and tariff.³⁶ It is vital for the Commission to ensure that participants bear all costs associated with the EV Smart Rewards Pilot Program, including a proportionate share of all indirect and overhead costs attributable to operating this program.

B. Whole House EV Pilot Incentive Credit Rider

1. Introduction/Program Description

The proposed Whole House EV Pilot Incentive Credit Rider is a permanent program, with associated tariff, designed to encourage residential customers who own EVs to charge their EVs during the off-peak hours between midnight and 8:00 a.m.³⁷

³² Tr. at 67:8-9 (Rodriguez Cross) (Apr. 2, 2024).

³³ Tr. at 69:8-12 (Rodriguez Cross) (Apr. 2, 2024).

³⁴ Tr. at 69:13-14 (Rodriguez Cross) (Apr. 2, 2024).

³⁵ Rodriguez Rebuttal, Exhibit AR-R-1, at page 2.

³⁶ Evans Direct at 12:16 – 13:1.

³⁷ Direct Testimony of Mamel Carrasco at 83 (Jan. 31, 2023). (Carrasco Direct).

3. Costs and Cost Recovery

EPE should be required to establish service under the Whole House EV Pilot Incentive Credit Rider as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.³⁸ This is the cleanest means to ensure that customers under the Whole House EV Pilot Incentive Credit Rider bear all direct costs associated with providing this service and bear an appropriate share of all indirect and overhead costs attributable to providing this service.³⁹

C. PowerConnect Pilot Program

1. Introduction/Description

The proposed PowerConnect Pilot Program tariff is a temporary program and tariff designed to help reduce or offset the utility-side infrastructure costs for non-residential customers who install Level 2 EV charging stations or Direct Current Fast Charging ("DCFC") stations on their premises.⁴⁰

3. Costs and Cost Recovery

Once more, OPUC is concerned the costs associated with this program will be borne by EPE's non-participating customers. This will undoubtedly be the result if the costs of improvements to EPE's distribution system in excess of those covered by EPE's Line Extension Policy are included in EPE's base rates and recovered from all EPE's Texas retail customers that take service at distribution voltages.⁴¹ Attachment EDE-2 to the Direct Testimony of OPUC

³⁸ Evans Direct at 14:15 – 22.

³⁹ *Ibid.*

⁴⁰ Evans Direct at 15.

⁴¹ Evans Direct at 16.

witness Mr. Evan Evans⁴² contains an analysis of the amount of net investment in distribution lines allocated to the classes to which the proposed PowerConnect Pilot Program tariff would apply and the associated base rate revenues for those classes from EPE's most recent base rate case, Docket No. 52195.⁴³ Mr. Evans testimony clearly shows that base rate revenues will not support the proposed additional investment provided at no charge pursuant to the proposed credits from the PowerConnect Pilot Program tariff.⁴⁴ Notably, Attachment EDE-2 has not been challenged or refuted by EPE. In light of this, the Commission should reject EPE's proposed PowerConnect Pilot Program tariff because the credits associated with the program are not cost-justified.⁴⁵

D. TakeCharge TX Pilot Program

1. Introduction/Program Description

The TakeCharge TX Pilot Program is designed to be a voluntary program for non-residential customers to choose the desired EV charging infrastructure and equipment that will be purchased, installed, and operated by the Company.⁴⁶ Under this proposed program, participating customers will be responsible for the full costs of equipment and services provided through a monthly fixed fee added to their bill during the term of the pilot program agreement.⁴⁷

3. Costs and Cost Recovery

OPUC's chief concern with the TakeCharge TX Pilot Program is that EPE's non-participating customers will be forced to bear a considerable amount of the costs directly incurred

⁴² Evans Direct at 17 and Attachment EDE-2 to Evans Direct (EDE-2)

⁴³ *Application of El Paso Electric Company to Change Rates*, Docket No. 52195 (Sept. 15, 2022).

⁴⁴ Evans Direct at 17:9 – 21 and EDE-2.

⁴⁵ Evans Direct at 18:1 – 10.

⁴⁶ Rodriguez Direct at 3.

⁴⁷ *Id.*

to operate this program. During the hearing, EPE witness Mr. George Novella, Director of Economic and Rate Research, expressed EPE's unwillingness to commit that it will protect non-participants from bearing the unrecovered costs of TakeCharge TX Pilot Program's facilities investment related to under-recovered costs and customers who default.⁴⁸

Q Well, let me ask you this question: Is the Company willing to commit that to the extent there are underrecovered costs from this program if that -- if it happens, it will not seek to recover them from other customers?⁴⁹

A I think it's worthy of discussion, and I would imagine we'll have that in this -- in a prudence filing in a future rate case like we talked about earlier, but it's something that we're definitely willing to talk about and entertain.⁵⁰

Q But the Company -- but the Company is not willing to commit now that it will not seek to recover these costs from other customers. Correct?⁵¹

A No, I don't believe it is. This is something that we need to give some more thought to, but as I said, I think it's reasonable to leave it within the -- the participating customers only.⁵²

Therefore, OPUC recommends the Commission require EPE to establish service under TakeCharge TX Pilot Program rider as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.⁵³ This is the cleanest means to ensure that customers under TakeCharge TX Pilot Program rider bear all direct costs associated with providing this service and bear an appropriate share of all indirect and overhead costs attributable to providing this service.⁵⁴ In the

⁴⁸ Tr. at 35:6 – 22. (Novela Cross). (Apr. 2, 2024).

⁴⁹ Tr. at 35:6– 10. (Novela Cross). (Apr. 2, 2024).

⁵⁰ Tr. at 35:11 – 15. (Novela Cross). (Apr. 2, 2024).

⁵¹ Tr. at 35:16 – 18. (Novela Cross). (Apr. 2, 2024).

⁵² Tr. at 35:18 – 22. (Novela Cross). (Apr. 2, 2024).

⁵³ Evans Direct at 20:7 -14.

⁵⁴ *Ibid.*

alternative, if the Commission determines that EPE's proposed TakeCharge TX Pilot Program could not function effectively under the limited flexibility of a tariffed rate, the Commission should state that non-participants will not bear any of the direct costs and that participants must bear a reasonable allocation of indirect and overhead costs incurred to develop, offer, market and administer this program.⁵⁵

E. Appropriate Treatment of Rate Case Expenses

Participants in EPE's proposed programs should bear the full cost of the rate case expenses related to the Company's filing for approval of these proposed, voluntary programs. EPE has made no commitment to protect non-participants from bearing the rate case expenses related to the Company's filing for approval of these proposed, voluntary programs as shown during the cross examination of EPE witness, Mr. Carrasco:⁵⁶

Q I just have one question. How are the rate case expenses for this proceeding going to be distributed during -- I assume they will be included in the next base rate case for review?⁵⁷

A That is the typical process that we follow for rate case expenses.⁵⁸

Q Okay. And how will the nonparticipating customers in these tariffs in these programs be protected from paying for the rate case expenses for this docket, or will it all be included? Is it your intention -- or EPE's intention to include it all in the rate base for everybody?⁵⁹

A We haven't determined that because -- yeah, I really cannot answer. I just -- I'm not real sure.⁶⁰

⁵⁵ Evans Direct at 20:15 – 19.

⁵⁶ Tr. at 93:23 – 94:11. (Carrasco Cross) (Apr. 2, 2024).

⁵⁷ Tr. at 93:23-94:1. (Carrasco Cross) (Apr. 2, 2024).

⁵⁸ Tr. at 94:2-3. (Carrasco Cross) (Apr. 2, 2024).

⁵⁹ Tr. at 94:4-9. (Carrasco Cross) (Apr. 2, 2024).

⁶⁰ Tr. at 94:10-11. (Carrasco Cross) (Apr. 2, 2024).

IV. CONCLUSION

For the reasons stated herein and discussed in the Direct Testimony and Cross-Rebuttal Testimony of OPUC witness Mr. Evan D. Evans, OPUC recommends the following with regard to the Commission's assessment of EPE's EV-ready pilot programs:

- The Commission should reject EPE's proposed EV Smart Rewards Pilot Program tariff, direct EPE to develop cost-based incentives, and require EPE to submit another filing requesting approval for the program and tariff;⁶¹
- In order to protect non-participants from being required to subsidize costs associated with the EV Smart Rewards Pilot Program, the Commission should require the revised tariff to terminate at the earlier of two years or the effective date of new base rates, whichever occurs first, unless the Commission approves extending the program in EPE's next base rate case or other future proceeding;⁶²
- EPE should be required to establish service under Whole House EV Pilot Incentive Credit Rider as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.⁶³
- The Commission should require EPE to establish service under TakeCharge TX Pilot Program as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.⁶⁴

⁶¹ Evans Direct at 12:16 – 13:1.

⁶² Evans Direct at 13:1 – 5.

⁶³ Evans Direct at 14:15 -22.

⁶⁴ Evans Direct at 20:7 -14.

- The Commission should reject EPE's proposed PowerConnect Pilot Program tariff because the credits are not cost-justified⁶⁵ and are therefore inconsistent with the statute and rule requiring that all rates to be just and reasonable; are unreasonably preferential, prejudicial, and discriminatory.⁶⁶ Attachment EDE-2 to the Direct Testimony of Evan D. Evans clearly shows that base rate revenues will not support the proposed additional investment provided at no charge pursuant to the proposed credits from the PowerConnect Pilot Program tariff.⁶⁷
- EPE should be required to establish the TakeCharge TX Pilot Program rider as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.⁶⁸
- If the Commission determines that EPE's proposed TakeCharge TX Pilot Program could not function effectively under the limited flexibility of a tariffed rate, the Commission should ensure that non-participants will not bear any of the direct costs and that participants must bear a reasonable allocation of indirect and overhead costs incurred to develop, offer, market and administer this program.⁶⁹
- Participants in the proposed programs should bear the cost of the rate case expenses related to the Company's filing for approval of these proposed, voluntary programs.

⁶⁵ Evans Direct at 18:1-10.

⁶⁶ PURA § 36.003

⁶⁷ Evans Direct at 17:9 – 21 and EDE-2.

⁶⁸ Evans Direct at 20:7 -14.

⁶⁹ Evans Direct at 20:15 – 19.

OPUC respectfully requests that the SOAH administrative law judges adopt and incorporate OPUC's recommendations into the Proposal for Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

Date: April 18, 2024

Respectfully submitted,

Courtney K. Hjältman
Chief Executive & Public Counsel
State Bar No. 24070294

Renee Wiersema

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Justin Swearingen
Senior Assistant Public Counsel
State Bar No. 24096794
Chris Ekoh
Deputy Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
renee.wiersema@opuc.texas.gov (Service)
justin.swearingen@opuc.texas.gov (Service)
chris.ekoh@opuc.texas.gov (Service)
opuc_eservice@opuc.texas.gov (Service)

**ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL**

CERTIFICATE OF SERVICE
SOAH DOCKET NO. 473-24-04312
PUC DOCKET NO. 54614

I hereby certify that on the 18th day of April 2024, a true and correct copy of the foregoing document was served on all parties of record in this proceeding.

Renee Wiersema

Renee L. Wiersema