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APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF ITS TEXAS ELECTRIC VEHICLE -READY PILOT PROGRAMS AND TARIFFS	§ § § § §	STATE OFFICE OF ADMINISTRATIVE HEARING
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EV.ENERGY CORP'S REPLY BRIEF

Pursuant to SOAH Order Nos. 7 and 8, EV.ENERGY CORP (ev.energy) respectfully files its Reply Brief. As stated in ev.energy's Initial Brief, ev.energy recommends and requests that the Commission approve El Paso Electric Company's (EPE) EV Smart Rewards Pilot Program.¹ Rather than file its own Proposed Findings of Fact and Conclusions of Law, ev.energy respectfully states that it supports the Proposed Findings of Fact and Conclusions of Law filed by EPE.

I. Introduction

A. Description of Application

B. Procedural history

II. Jurisdiction and Notice

III. Discussion

A. EV Smart Rewards Pilot Program

1. Introduction/Program description

EPE's Initial Brief explains the purpose, goals, and value of the EV Smart Rewards Pilot. Despite a fulsome record on these issues, the initial briefs filed by Staff of the Public Utility

¹ While ev.energy supports all EPE's Texas Electric EV-Ready Pilot Programs at issue in this proceeding, ev.energy's interests are limited to the EV Smart Rewards Pilot. As a result, this Reply Brief does not address EPE's other proposed programs.

Commission of Texas – Rate Regulation Division (Staff), the Office of Public Utility Counsel (OPUC), and the City of El Paso (the City) fail to engage at all with the actual workings of the EV Smart Rewards Pilot, instead focusing solely on the fact that the Pilot will provide incentives to participating customers. The Commission should reject this myopic approach and instead focus on the unrebutted evidence in this case that the EV Smart Rewards Pilot can be expected to provide benefits to all customers through effective management of customers’ EV charging load. The EV Smart Rewards Pilot is consistent with the legislature’s explicit encouragement of load management programs and incentives² and represents a proactive first step in EPE learning how to integrate the significant amount of new EV charging load that it expects in its service territory. The Commission should approve the EV Smart Rewards Pilot.

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

Staff first argues that none of EPE’s proposed programs in this proceeding “are necessary for EPE to provide adequate and reasonable electric utility service to its customers” or “necessary for EPE to maintain its financial integrity.”³ The implication of this assertion is that Staff apparently believes that EPE should not take any proactive steps to prepare for the continued growth of EVs and the major new load that they will bring to EPE. EPE witness Novela provided unrebutted analysis demonstrating that residential EV charging load will contribute approximately 5 MW to EPE’s peak demand by the end of 2025.⁴ The EV charging load that contributes to peak demand will only grow if EV charging is left unmanaged.

The purpose of the EV Smart Rewards Pilot is to provide EPE with the tools and expertise to manage residential EV charging load to ensure that it does not contribute to system peaks and

² PURA § 36.204.

³ Staff Initial Brief at 5.

⁴ Novela Direct at p. 10, ll. 13-15 and p. 11, ll. 15-17 (noting that EPE’s forecast assumed non-managed charging profiles through 2026).

that the other numerous benefits of EV charging can be realized. If EPE fails to manage EV charging load, it will be forced to meet a growing peak demand through expensive investments in new generation, grid, and distribution upgrades. Under traditional cost-of-service principles, all customers would pay for the costs of these new investments triggered by unmanaged EV charging load. Failing to effectively manage EV charging load is likely to be much more expensive for EPE's customers than the cost of an active managed charging program. Given the highly flexible nature of EV charging load, failing to manage EV charging would be a major missed opportunity for EPE to achieve the benefits that managed charging can realize and to ensure that EV load growth does not exacerbate grid and distribution constraints necessitating costly infrastructure upgrades.

Staff recommends that “any adjustments to EPE’s current EV rate structure be contingent on establishing a separate rate class for EV customers.”⁵ Staff provides very little detail on how a separate EV rate class would work, but nonetheless the Commission should reject this problematic suggestion. First, a separate EV rate class would presumably require all customers with EVs to have separate meters, which would be costly, unnecessary, and discriminatory against customers with EVs. Second, the charging profiles of residential EV charging, commercial low-voltage (Level 2) charging, and commercial high-voltage (DC fast) charging are all very different from one another. Different use cases within these categories also have very different charging profiles; for example, the charging profile of Level 2 chargers used for fleets is different from the charging profile of Level 2 chargers used at workplaces or residences. The fact that these vastly different load profiles all result in the charging of an EV is insufficient justification for a separate rate class for EVs.

⁵ Staff Initial Brief at 7.

Additionally, Staff's suggestion generally does not align with normal ratemaking practice. Staff is seemingly pre-judging that EV charging load should be separated into a distinct rate class. However, a new rate class is normally developed once a utility has collected load data demonstrating that a distinct set of customers has a unique set of costs associated with them (*e.g.*, distinct load profiles). Once this is established it may be determined that a new rate class should be developed. However, Staff has not provided any data or evidence to this effect to support its proposal to develop separate EV rate classes, nor does Staff provide justification for bifurcating an individual customer's load into two separate rate classes (*i.e.*, placing a residential customer's EV charging load on a separate rate class from the rest of their household load). Further, Staff does not address the pitfalls of this approach, which would seemingly introduce additional barriers to EV adoption by requiring customers to pay for a second meter and would cause additional rate complexity, leading to customer confusion.

Finally, and perhaps most importantly, when managed effectively EVs have the potential to provide massive benefits to *all* customers in the form of downward pressure on rates by increasing the utility's energy sales without contributing to peak demand, among other benefits described in ev.energy's witness Mr. Ballew's initial testimony.⁶ If EV chargers were in a separate rate class, under traditional cost-of-service principles only the separate EV rate class would enjoy these benefits. By treating EVs as just another load for *ratemaking* purposes, and by exploiting EVs as a uniquely flexible load for *load management* purposes, EPE and the Commission can ensure that all customers enjoy the benefits of EV adoption.

ev.energy concurs with the analysis and conclusion in EPE's Initial Brief that the EV Smart Rewards Pilot complies with the requirements of PURA § 36.003 because it is just and reasonable

⁶ Ballew Direct at 9-10, Ballew Cross-Rebuttal at 11-13.

and is not preferential, prejudicial, or discriminatory. These requirements are discussed in more detail in the section below. As EPE also points out, PURA § 36.204 explicitly empowers the Commission to allow EPE to recover the reasonable costs of load management programs and to authorize EPE to offer incentives for load management programs. To the extent the Commission has any doubt that the EV Smart Rewards Pilot complies with the general requirements of PURA § 36.003, the legislature's specific authorization of load management programs in PURA § 36.204 should assuage all such doubts.

For these reasons and the reasons stated in EPE's Initial Brief and ev.energy's Initial Brief, the Commission should find that the EV Smart Rewards Pilot complies with all relevant PURA and PUCT rules.

3. Costs and Cost Recovery

Staff argues that the incentive payments customers will receive through the EV Smart Rewards Program “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.”⁷ Without further explanation or analysis, Staff concludes that this “is preferential treatment to those who enroll that disadvantages other customers.”⁸ Similarly, based on the fact that EPE's proposed incentive levels are based on incentives offered by other utilities, OPUC concludes that the incentives are subsidies that fail to comport with PURA and PUCT rules.⁹

Staff and OPUC fail to acknowledge that the EV Smart Rewards Pilot will compensate customers for doing something they otherwise would have no obligation or reason to do: namely,

⁷ Staff Initial Brief at 8.

⁸ *Id.*

⁹ OPUC Initial Brief at 2-3.

to allow EPE to actively control their EV charging so that their charging load occurs during beneficial periods (e.g., avoiding on-peak charging, reducing curtailment of renewable generation, participating in demand response events to help avoid grid constraints and blackouts, etc.). If EPE were unable to shift EV charging load in this manner, it would likely increase investment in new generation and grid upgrades, as well as miss out on the other benefits associated with managed charging, to the detriment of all customers. Because the EV Smart Rewards Pilot *compensates* customers for providing a valuable service, it is inaccurate to describe the Pilot's incentives as "subsidies."

The EV Smart Rewards Pilot is analogous to the Energy Wise Savings Program, through which EPE provides customers with discounts on smart thermostats and participation incentives in exchange for the right to control the thermostats to shift cooling load away from peak hours. This incentive package is not a type of "unreasonable preference or advantage concerning rates" that is prohibited by PURA § 36.003. Customers that participate in the Energy Wise Savings Program are not simply receiving a subsidy; rather, participants are providing a valuable service to EPE and all of EPE's other customers by reducing the amount that their cooling load contributes to peak demand. Likewise, the incentives included in the EV Smart Rewards Pilot are not subsidies as Staff asserts, but rather are compensation to customers for providing load management services through the program. Again, the legislature's specific authorization of incentives for load management programs in PURA § 36.204 trumps the generic prohibition on subsidies in PURA § 36.003 on which Staff and OPUC rely.

Staff, OPUC, and the City have failed to rebut *any* of the substantial evidence that EPE and ev.energy provided demonstrating that the EV Smart Rewards Pilot can be expected to provide

benefits to all customers, not just participants.¹⁰ As a result, Staff's assertion that the EV Smart Rewards Pilot "disadvantages other customers" is not only unsupported, the opposite is expected to be true. When managed effectively, EV charging has the potential to provide massive benefits to *all* customers in the form of downward pressure on rates by increasing the utility's energy sales without contributing to peak demand, among other benefits described in ev.energy's witness Mr. Ballew's Direct Testimony and Rebuttal Testimony.¹¹

In this context, Staff's, OPUC's, and the City's complaints that EPE has not committed to recovering the cost of the EV Smart Rewards Pilot entirely from participating customers make no sense.¹² Given that these parties have not acknowledged the expected benefits of the EV Smart Rewards Pilot, it is absurd for them to suggest that EPE should offer an incentive program that recovers the costs of the program exclusively from participating customers. No customers would sign up for an incentive program if they were also required to pay for the cost of both the incentives and the cost of administering the program. Moreover, given that the record demonstrates that the EV Smart Rewards Pilot can be expected to provide benefits to all customers, this suggestion also fundamentally misunderstands the purpose of load management programs like the EV Smart Rewards Pilot, which is to provide benefits to *all* utility customers through more efficient use of the grid. If non-participating customers did not pay for the cost of the EV Smart Rewards Pilot, then under traditional cost-of-service principles they should not receive any benefits from it. It is entirely reasonable for all of EPE's customers to pay the start-up costs for a load management program that is expected to provide widespread benefits to all customers when it is fully implemented.

¹⁰ Rodriguez Rebuttal at 3-6, Ballew Direct at 9-10, Ballew Cross-Rebuttal at 11-13.

¹¹ Ballew Direct at 9-10, Ballew Cross-Rebuttal at 11-13.

¹² Staff Initial Brief at 8, OPUC Initial Brief at 6, City Initial Brief at 3.

Simply put, because the record is replete with un rebutted evidence that the EV Smart Rewards Pilot can be expected to create benefits for all customers, the Pilot is neither an unreasonable preference or advantage to participating customers nor prejudicial or discriminatory to non-participating customers. For the same reason, the Commission should reject OPUC's recommendation that the Commission "ensure that participants bear all costs associated with the EV Smart Rewards Pilot" because doing so would prevent the Pilot from providing benefits to all customers.¹³

In this context, OPUC's recommendation that the Commission "direct EPE to develop cost-based incentives" simply makes no sense.¹⁴ Again, though OPUC, Staff, and the City do not acknowledge that the EV Smart Rewards Pilot can be expected to provide benefits to all customers, these parties failed to rebut any of the evidence that EPE and ev.energy provided demonstrating that benefits can be expected to occur. If the incentives that EPE provided to EV drivers for enrolling in active managed charging were "cost-based" as OPUC recommends, then the incentives would be equal to the value that participants provide through their participation in the Pilot. However, in that scenario, non-participating customers would not enjoy any of the benefits from the program because the benefits would all be allocated to participants. Here again, OPUC's recommendation would undermine the very purpose of the EV Smart Rewards Pilot.

It is crucial to remember that the EV Smart Rewards Pilot is a small pilot program that is limited in time (two years), participants (880), and cost (\$804,947). Because the EV Smart Rewards Pilot is a pilot program, it is impossible to know with any precision the level of cost savings the program will achieve. Again, the purpose of the program is to provide cost savings to all customers in the form of avoided investments in new generation and grid upgrades and

¹³ OPUC Initial Brief at 6.

¹⁴ *Id.*

downward pressure on rates. If the Pilot is a success, the benefits enjoyed by all customers should far outweigh the total cost of the program. Additionally, utility programs are iterative and incentive levels can be refined in future iterations of EPE's managed charging program offerings once data is collected through the pilot. The purpose of any pilot program is for the utility to develop and refine tools that will allow it to maximize the benefits of a successful pilot when it is rolled out to all customers as a full-fledged program. For these reasons, it is entirely unreasonable for OPUC to expect EPE to have quantified the benefits of the EV Smart Rewards Pilot prior to implementing and testing the program.¹⁵

For all these reasons, the Commission should reject Staff's, OPUC's, and the City's concerns with respect to the cost of the EV Smart Rewards Pilot. EPE has demonstrated that the value the EV Smart Rewards Pilot, in terms of both the benefits that will accrue to all customers and the valuable learnings and insight that EPE will gain, far outweighs its modest cost.

4. Discussion of any other preliminary order issues

IV. Conclusion

ev.energy again thanks the Commission for the opportunity to participate in this proceeding. For the reasons discussed above and in ev.energy's Initial Brief, ev.energy respectfully recommends and requests that the Commission approve EPE's proposed EV Smart Rewards Pilot.

Respectfully submitted on May 2, 2024,

/s/ Scott F. Dunbar
Scott F. Dunbar
Keyes & Fox LLP
1580 Lincoln St., Suite 1105
Denver, CO 80203
949-525-6016
sdunbar@keyesfox.com

Counsel to EV.ENERGY CORP.

¹⁵ *Id.* at 5.

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record on May 2, 2024.

/s/ Alicia Zaloga
Alicia Zaloga