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APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF TEXAS ELECTRIC VEHICLE-READY PILOT PROGRAMS	§ § § § §	STATE OFFICE OF ADMINISTRATIVE HEARINGS
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REPLY BRIEF OF EL PASO ELECTRIC COMPANY

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REPLY BRIEF OF EL PASO ELECTRIC COMPANY

El Paso Electric Company (EPE or the Company) files this its reply brief and would respectfully show as follows:

I. INTRODUCTION

A. Description of Application

No reply.

B. Procedural History

No reply.

II. JURISDICTION AND NOTICE

No reply.

III. DISCUSSION

In the EV Smart Rewards section of its initial brief, Staff presents a number of arguments applicable to all of the proposed pilot programs. EPE will first address those general arguments before moving to the program-specific arguments.

Staff Argument: None of EPE's proposals in this proceeding are necessary for adequate and reasonable electric service.¹

EPE reply: As indicated in EPE's initial brief, the Company strongly disagrees.² The Legislature found in PURA § 42.0101(c) that "electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging." EPE's application provides a golden opportunity for the Staff and the Commission to be proactive as well and explore how the growing EV demand can be managed. In contrast, doing nothing in response to the growing penetration of EV load on the system that EPE is experiencing is not a reasonable response.³ Utilities are responsible for the operation of the electric grid.⁴ Early planning is required to ensure the electric grid will be able to accommodate and support the increased demand caused as customers shift towards

¹ Staff Brief at 5.

² EPE Brief at 7.

³ Rebuttal Testimony of George Novela, EPE Ex. 8 at 2:23-24 (using page numbers at bottom middle of page for all EPE testimony exhibits). See EPE Ex. 3 at 6-15 in which Mr. Novela describes the existing and forecasted EV data for EPE's Texas service territory and describes EV loads' potential impact on resource planning efforts.

⁴ EPE Ex. 8 at 3:3.

electric vehicles.⁵ EPE needs to conduct early planning and data collection to ensure the electric grid and system generation will be able to accommodate increased demand due to customers' EV adoption.⁶ The proposed pilots are designed to provide EPE with necessary information (and operational experience) to evaluate the need for infrastructure upgrades from increased saturation of electric vehicles on its distribution system.⁷ The urgency of preparing for widespread transportation electrification, including planning to accommodate the growth of EV charging on the grid, has been identified by the Board of Directors of the National Association of Regulatory Utility Commissioners.⁸ Taking a proactive role in preparing for transportation electrification now - while EV adoption remains relatively low - is important for EPE to ensure that EV adoption is integrated efficiently with the grid, which is why it is absolutely necessary to explore how the EV load demand can be effectively managed, to ensure utilities can minimize any potential infrastructure upgrades and maintain affordable rates for all customers.⁹ For these very reasons, utilities across the nation have implemented similar programs, and EPE has obtained approval of similar programs for its New Mexico service area.¹⁰

Staff Argument: EPE's proposals do not comply with PURA §§ 36.003, 36.006, and 16 TAC §§ 25.1 and 25.234.¹¹

EPE Reply: To the contrary of Staff's argument, and consistent with the PURA sections and the Commission rules cited by Staff, the record shows that the proposed pilots are just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; and are sufficient, equitable, and consistent in application to each class of consumer.¹²

⁵ *Id.* at 3:3-5.

⁶ *Id.* at 3:5-7.

⁷ *Id.* at 3:7-4:2.

⁸ Direct Testimony of Angelina Rodriguez, EPE Ex. 4, at Exhibit AR-3.

⁹ Direct Testimony of George Novela, EPE Ex. 3, at 4:16-18.

¹⁰ EPE Ex. 4 at 4:15-18 (identifying EPE's New Mexico programs); 14:31-15:7 (identifying 40 other utilities' managed charging programs); 18:10-15 (identifying other utilities' infrastructure rebate programs); and Rebuttal Testimony of Angelina Rodriguez, EPE Ex. 9, at Exhibit ARR-R-3 (describing over 70 utility make-ready infrastructure programs including programs in Georgia, Florida, North Carolina, and New Mexico). See also Direct Testimony of Manuel Carrasco, EPE Ex. 5, at 11:2-28 (identifying other approved programs offering reduced rates to encourage off-peak EV-charging).

¹¹ Staff Brief at 5.

¹² EPE Brief at 10-11.

In particular, Company witness Carrasco, EPE's Manager of Rate Research, affirmed that the rates in all four pilot programs are reasonable, adding that "the rates are cost-based as applicable or else set to incentivize the intended customer behaviors consistent with the programs of other utilities."¹³

Mr. Carrasco also confirmed that the proposed pilots are not unreasonably preferential, prejudicial, or discriminatory, stating that "[t]he pilot programs target customers who are not similarly situated to other customers because they are either EV owners or are seeking to install equipment to serve EV customers. This difference provides a reasonable basis for these targeted pilot programs in light of Company and customer interests in supporting, gathering information regarding, and managing EV charging activities."¹⁴ Mr. Carrasco further explained in his rebuttal testimony that there is a reasoned basis for treating the customers to whom the pilot programs would apply in a different manner, namely that customers who own EVs use large amounts of electricity when they are charging.¹⁵

Additionally, Mr. Carrasco testified that the proposed pilots are sufficient, equitable, and consistent in application to each class of consumer and explained that "[t]he programs are designed to provide appropriate and adequate rates or incentives to achieve the program goals, and the programs will treat eligible customers in a consistent and equitable manner according to the program requirements and parameters."¹⁶ In its initial brief, EPE affirmed that EPE will offer the programs in a nondiscriminatory manner to all eligible customers under the terms of the applicable tariffs.¹⁷

Company witness Rodriguez's direct and rebuttal testimonies provides further support for the reasonableness of the proposed pilot programs, detailing how the tariffs and program incentives were developed.¹⁸

¹³ EPE Ex. 5 at 16:15-18.

¹⁴ *Id.* at 16:20-26.

¹⁵ Rebuttal Testimony of Mamel Carrasco, EPE Ex. 10 at 1:29-31. See also EPE Ex. 5 at 16:22-26, in which Mr. Carrasco explains that the pilot projects target customers who are not similarly situated to other customers because they are EV owners or are seeking to install EV charging equipment.

¹⁶ *Id.* at 16:28-17:2.

¹⁷ EPE Brief at 31.

¹⁸ See, e.g., EPE Ex. 4 at 14:29-15:10 and EPE Ex. 9 at 2:1-3:25.

Staff argument: 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 42.¹⁹ 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.²⁰ As such, the EV Smart Rewards pilot program and the WHEV Pilot Incentive Credit Rider are not consistent with Chapter 42 of PURA.²¹

EPE reply: No portion of PURA Chapter 42 can be read to discourage, let alone prohibit, utilities from seeking to acquire information and experience to improve effective management of EV charging load. In that sense, the Smart Rewards and WHEV pilot programs are both consistent with Chapter 42. Further, PURA § 42.0101(c) states that "[t]he legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the commission have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging," which on its face is not limited to public EV charging and addresses the important role of utilities in supporting how all EV charging stations are both installed and used (i.e., managed). Both the WHEV and Smart Rewards Pilots are crucial in exploring the ways to shift EV load to off-peak hours, thus increasing existing systems utilization rate, which has the potential of improving utility's load factor, and which can potentially create a downward pressure on rates and therefore benefit all customers.²² Alternatively, unmanaged EV load can result in future transformer failures and an increased need for investments in additional electrical infrastructure, which would result in higher rates for everyone.²³

Staff argument: 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.²⁴ This is

¹⁹ Staff Brief at 7.

²⁰ Staff Brief at 7.

²¹ Staff Brief at 7.

²² EPE Ex. 10 at 1:31-2:3.

²³ EPE Ex. 9 at 5:5-23.

²⁴ Staff Brief at 8.

because EV charging requires investment in equipment and infrastructure that is unique to EV customers.²⁵ 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.²⁶ 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 may have similar usage characteristics.²⁷

EPE reply: It is somewhat difficult to follow Staff's line of argument in this portion of its brief. For example, when Staff states "EV charging requires investment in equipment and infrastructure that is unique to EV customers and that 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," it is unclear what equipment and infrastructure Staff is referencing in the context of the Smart Rewards or WHEV Pilots because EPE is not installing EV equipment under either pilot. Further, in the context of the Take Charge TX Pilot, the participating customers will pay the full cost of the services and equipment provided, and in the context of the PowerConnect Pilot, the rebate credits will be recovered from other customers to the extent allowed under PURA § 42.0103(d).

Moreover, Staff appears to claim that the benefits of the pilot programs accrue solely to program participants and that the incentives are provided to pilot participants for no benefit to other customers in return. To the contrary, the balance of the costs of incentives and the expected benefits of EPE's proposed pilots are as follows:

- To the extent incentives are provided to Smart Rewards Pilot participants, it is in exchange for participants allowing EPE to control the timing of a participant's EV charging up to 80% of the time each month and matching the charging times with the times when EPE has grid capacity to serve EV load. Discovering the extent to which this exchange can provide benefits to other EPE customers is a key purpose of the pilot. Similar managed charging programs have been implemented by other utilities nationwide where utilities explored ways of shifting of EV load from peak to off-peak

²⁵ Staff Brief at 8.

²⁶ Staff Brief at 8.

²⁷ Staff Brief at 8-9.

hours, which has a potential for improving utilities system utilization rate (load factor), to reduce the need for investments in new additional infrastructure and therefore maintain affordable rates for all customers.

- To the extent credits are provided to WHEV Pilot participants, it is to encourage participants to charge EVs during off-peak times, which provides benefits to all customers (avoiding load during peak-time periods resulting in longer-term capacity planning benefits). Discovering the extent to which this exchange provides benefits to other customers is a key purpose of the pilot.
- To the extent incentives are provided to PowerConnect Pilot participants, it is intended to benefit the public for the reasons identified by the Legislature in PURA Chapter 42, as well as to benefit the public for the reasons EPE described for this program in its initial application in this docket.
- To the extent equipment and services are provided under the Take Charge TX Pilot, the participant will pay the full costs of the equipment and services as outlined in PURA § 42.0103(p), and the public will benefit from EPE's support of the installation and use of EV charging infrastructure, as envisioned by the Legislature in PURA §§ 42.0101(c) and 42.0103(o).

The balance of incentives provided to program participants and the benefits to EPE's other customers as described above is reasonable and supports approval of the programs.

Staff argument: 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.²⁸

EPE Reply: To the extent Staff here is challenging whether the proposed pilots involve discounted rates under PURA § 36.007, EPE addressed that issue, consistent with the Commission's preliminary order, in its initial brief.²⁹

A. EV Smart Rewards Pilot Program

1. Introduction/Program description

No reply.

²⁸ Staff Brief at 9.

²⁹ EPE Brief at 21 and 26-27.

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

OPUC argument: The incentive payments under the Smart Rewards Pilot are not based upon any estimated cost savings, but instead are based upon the range of incentives offered by other utilities.³⁰

EPE reply: As detailed in EPE's initial brief, the proposed incentives for this pilot are reasonable. In particular, the proposed incentive levels were based on the median levels identified in a survey of forty managed charging programs in other states across the country,³¹ and the proposed incentives are also consistent with the uncontested incentives levels initially offered by EPE in its smart thermostat program.³² The essential purpose of the incentives is to encourage participation, and it is appropriate to set the incentives at levels the utility can reasonably expect to elicit the desired behaviors. Further, one of the very purposes of a pilot program with incentives is to develop further information on the appropriate level of the incentives.³³ As Mr. Rodriguez explained at the hearing, EPE will evaluate and reduce the incentive levels if appropriate.³⁴

3. Costs and Cost Recovery

Staff argument: The incentive payments under this pilot 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.³⁵ This is preferential treatment to those who enroll that disadvantages other customers.³⁶

OPUC argument: 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.³⁷

EPE reply: The proposed Smart Rewards incentives will not apply to customer's electric consumption. Participants in the Smart Rewards Pilot merit the incentive payments because they

³⁰ OPUC Brief at 2 and 3-4.

³¹ EPE Ex. 4 at 14:30-15:7 and EPE Ex. 9 at 2:1-14.

³² EPE Ex. 9 at 3:12-19.

³³ See EPE's Response to RFI OPUC 2-6, OPUC Ex. 8.

³⁴ Tr. at 66:19-23.

³⁵ Staff Brief at 8.

³⁶ Staff Brief at 8.

³⁷ OPUC Brief at 3.

are allowing EPE to manage a portion of their electric usage, namely their EV charging. To successfully participate, the participants must allow EPE to schedule 80% of their EV charging per month, and they must ensure that they have their own smart charging stations or have the telematics subscription on the vehicle.³⁸ EV customers will need to incur additional costs in order to participate in the program and the proposed incentives are only going to help cover a small portion of these additional costs.³⁹ In exchange, EPE is allowed to acquire information and experience it can put to use for the benefit of all customers. This provides a reasonable basis for providing the incentives to the Smart Rewards Pilot participants. The Smart Rewards Pilot does not constitute special treatment that disadvantages others customers. To the contrary, proactively managing EV load has the potential to benefit all customers.

More generally, Mr. Carrasco explained in his testimonies that there is a reasoned basis for treating EV customers to whom this tariff would apply in a different manner, namely that the customers who own EVs use large amounts of electricity when they are charging.⁴⁰ As Mr. Carrasco confirmed in his direct testimony, “[t]he pilot programs target customers who are not similarly situated to other customers because they are either EV owners or are seeking to install equipment to serve EV customers. This difference provides a reasonable basis for these targeted pilot programs in light of Company and customer interests in supporting, gathering information regarding, and managing EV charging activities.”⁴¹

OPUC argument: Adequate protections must be imposed to protect against costs associated with this program being borne by EPE’s non-participating customers.⁴²

City of El Paso argument: If the Commission is inclined to approve this pilot program, it should impose as a condition for approval that none of the costs of the program are to be recovered from non-subscribing customers.⁴³

³⁸ EPE Ex. 9 at 2:15-3:2.

³⁹ *Id.*

⁴⁰ EPE Ex. 10 at 1:29-31.

⁴¹ EPE Ex. 5 at 16:20-26.

⁴² OPUC Brief at 3.

⁴³ City of El Paso Brief at 3.

Staff argument: 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, and EPE refused to commit to recovering program costs entirely from customers participating in the program.⁴⁴

EPE reply: Requiring cost recovery from participating customers for this pilot would, on its face, eliminate any incentive to participate in the program. Charging participants for the program is inconsistent with having cost recovery come from those who benefit from the program, which, as explained by Ms. Rodriguez in her rebuttal testimony, would be all customers (“[w]hen EVs are added to the grid efficiently, it can provide economic and reliability benefits to all customers”).⁴⁵ Charging participants for the program would also be inconsistent with cost recovery for the EPE smart thermostat program, whose costs are more broadly allocated than just to program participants.

Because charging all costs of the pilot to participants would likely lead to zero or near zero participation, parties’ proposals would effectively prohibit this pilot. Prohibiting cost recovery for load management programs in this manner is inconsistent with PURA § 36.204, which provides: “In establishing rates for an electric utility, the commission may: (1) allow timely recovery of the reasonable costs of conservation, load management, and purchased power, notwithstanding Section 36.201; and (2) authorize additional incentives for conservation, load management, purchased power, and renewable resources.” (Emphasis added.) There is no requirement in PURA § 36.204 that the costs of load management programs should be recovered only from the participating members as Staff and others propose here.

The Smart Rewards Pilot is not an aggressively innovative program the likes of which no regulator has ever seen. Rather, the record shows that 40 managed EV charging programs have been approved in other states and that the Company has residential load management experience with its own smart thermostat program. EPE sees no reasonable basis for such extreme caution in approving this pilot that the Commission should reject the pilot program because EPE might ask for recovery of the incurred costs in the future. EPE’s proposed limitations on the pilot, including its two-year duration, limitation to 880 customers, the proposed budget, the requirements of PURA and the Commission’s rules that would apply to any future requested cost recovery, and the

⁴⁴ Staff Brief at 8.

⁴⁵ EPE Ex. 9 at 6:22-23.

tracking and accounting for the pilot costs as described in the rebuttal testimony of Mr. Novela⁴⁶ are appropriate and sufficient conditions to ensure that Texas customers who have not subscribed to the pilot program are not unreasonably affected by approval of EPE's application.⁴⁷ It is also important to underscore that properly managed EV load has a potential to improve utility's load factor, improve system utilization rate, thus potentially creating a downward pressure on rates for all EPE customers.

OPUC argument: 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.⁴⁸

EPE reply: The Company opposes this proposal for reasons explained in Ms. Rodriguez's rebuttal testimony as follows: "The full two-year period of the EV Smart Rewards Pilot Program, as requested by EPE, is needed and appropriate to allow EPE to collect the necessary data to evaluate the effectiveness of an active EV managed charging program. During the first year of program deployment, EPE will focus on program implementation, marketing, customer enrollment and begin data collection process. During the first and second years, EPE will perform data gathering and evaluation of the results of the pilot program, e.g., reduction of EV charging impacts on the electric grid during peak hours, mitigation of new load spikes after peak hours, evaluation of the potential to absorb excess renewable energy or energy during low carbon hours; and the ability to increase customer engagement with the utility and help customers control charging costs."⁴⁹

4. Discussion of any other preliminary order issues

Staff argument: 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.⁵⁰ The cost of EV infrastructure

⁴⁶ EPE Ex. 8 at 6:16-28.

⁴⁷ EPE Brief at 15.

⁴⁸ OPUC Brief at 3.

⁴⁹ EPE Ex. 9 at 7:3-12

⁵⁰ Staff Brief at 10.

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.⁵¹ This is the same treatment applied to Street and Outdoor lighting customers by all regulated utilities in Texas.⁵²

EPE reply: EPE does not believe Staff's argument here undercuts the reasonableness of and need for the pilot programs. Rather, pilots such as the Smart Rewards Pilot (and the WHEV Pilot) will provide EPE-specific information regarding EV charging by EPE customers to make further determination about programs structures in the future. It is important to note that no evidence was provided in this case of any other utility creating a separate rate class for EV customers, and none of white papers or best practices guides reviewed by EPE and offered into the record⁵³ have any indication of industry implementing a separate rate class treatment for EV customers. EVs are charged behind the meter and represent a behind the meter device or distributed energy resource (similar to smart thermostats or water heaters) that can be managed to benefit the grid and all customers.

B. Whole House EV Pilot Incentive Credit Rider

1. Introduction/Program description

No reply.

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

No reply.

3. Costs and Cost Recovery

Staff argument: 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.⁵⁴ 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.⁵⁵ This discriminatory program is also completely unnecessary, as EPE has time-of-use options available to customers, which can

⁵¹ Staff Brief at 10.

⁵² Staff Brief at 10.

⁵³ See, e.g., EPE Ex. 9 at Exhibits AR-R-1, AR-R-2, and testimony workpapers.

⁵⁴ Staff Brief at 12.

⁵⁵ Staff Brief at 12.

provide incentives to customers to shift energy usage into off-peak times in a fair and non-discriminatory manner.⁵⁶

EPE reply: Incentivizing customers that own EVs to charge their cars in the overnight/early morning hours is beneficial to all customers on EPE's system because it can increase system utilization rate during the times when EPE's system has available capacity, which in turn can create a downward pressure on the electricity rates.⁵⁷ Additionally, the WHEV Pilot credit was calculated as a cost-based credit consistent with PURA and Commission rules. In particular, as detailed in Mr. Carrasco's direct testimony, based on EPE's incremental capacity cost of \$107.90 per kW-year and on the load data of the residential rate class, the incremental generation cost on a kilowatt-hour basis was determined to be \$0.02586 per kWh.⁵⁸ Based on the assumption that 100% of that capacity cost could be avoided during off-peak period energy usage, the proposed WHEV Pilot credit is set at \$0.02586 per kWh.⁵⁹ Accordingly, there is a reasonable basis for the WHEV Pilot credit.⁶⁰

With regard to taking service under EPE's time-of-day (TOD) rate options, Mr. Carrasco's testimony details how and why circumstances may not allow some customers to take service under a TOD rate option.⁶¹ The existing TOD rate options could potentially result in a significant increase in monthly electricity costs due to the electricity consumption during on-peak hours that the customer was unable to reduce or shift to off-peak hours (such as air conditioning).⁶² And the existing Schedule No. EVC rate often requires in-home wiring upgrades to support the requisite separate meter to measure the EV charging, and the expense of the wiring upgrades (up to \$5,000) is often cost-prohibitive for residential customers.⁶³

OPUC argument: 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

⁵⁶ Staff Brief at 13.

⁵⁷ EPE Ex. 10 at 1:31-2:3.

⁵⁸ *Id.* at 9:12-15.

⁵⁹ *Id.* at 9:15-17.

⁶⁰ *Id.* at 2:3-5.

⁶¹ *Id.* at 2:16-17.

⁶² *Id.* at 2:17-20. See also EPE Ex. 5 at 7:16-22.

⁶³ EPE Ex. 5 at 9:4-5.

rates for service under this rate that ensure non-participating customers will not subsidize this rate.⁶⁴ 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.⁶⁵

EPE reply: EPE does not oppose the idea of establishing service under the Whole House Pilot as a separate class in a future base rate case, but approving the WHEV Pilot now will allow EPE to acquire EPE-customer-specific information that would be useful and helpful for purposes of developing such a separate rate class in a future proceeding. Discussion of any other preliminary order issues

City of El Paso argument: If the Commission is inclined to approve this pilot program, it should impose as a condition for approval that none of the costs of the program are to be recovered from non-subscribing customers.⁶⁶

EPE reply: For the WHEV Pilot, EPE does not expect to incur any material amount of costs for the pilot.⁶⁷ This rider is simply an incentive credit on the applicable customer's monthly electric bill.⁶⁸ While EPE will publicize the availability of the program, the Company does not expect that those efforts will involve the expenditure of any material amount of incremental costs.⁶⁹

As explained in EPE's initial brief, with regard to customers who are not program participants, approval of the WHEV Pilot in this docket will not impact them or their rates, and the Company and its customers will benefit from EPE learning how and whether programs such as WHEV Pilot may assist in avoiding or delaying construction of additional infrastructure due to the impact of EV charging load on the system.⁷⁰

The expected immaterial level of costs of the WHEV Pilot in conjunction with EPE's proposed limitations on the program, including that qualifying accounts must provide proof of EV

⁶⁴ OPUC Brief at 7.

⁶⁵ OPUC Brief at 7.

⁶⁶ City of El Paso Brief at 5.

⁶⁷ EPE Ex. 3 at 16:11-12; EPE Ex. 8 at 6:5-6.

⁶⁸ *Id.* at 6:6-7.

⁶⁹ *Id.* at 6:7-9.

⁷⁰ *Id.* at 2:24-3:7.

registration annually to EPE,⁷¹ and EPE's proposal to reevaluate the credit rate and participation in EPE's next general rate case filing⁷² are appropriate and sufficient conditions to ensure that Texas customers who have not subscribed to the pilot are not unreasonably affected by approval of EPE's application.

C. PowerConnect Pilot Program

1. Introduction/Program description

No reply.

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

Staff argument: PURA § 42.0103(d) does not explicitly and outright allow utilities to subsidize the cost of make-ready infrastructure.⁷³

EPE reply: PURA § 42.0103(d) makes clear that the Legislature intended to allow make-ready programs like the PowerConnect Pilot. If the Legislature did not intend to allow such programs, the statutory language would have prohibited them instead of stating that such programs were not prohibited. In its Preliminary Order in this docket, the Commission identified compliance of the PowerConnect Pilot with PURA § 42.0103(d) in its "issues to be addressed," indicating that, if compliant, the Commission would likewise allow the program.

Staff argument: 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.⁷⁴ The PowerConnect Pilot Program could violate PURA § 36.003 as EPE refuses to commit to recovering costs entirely from customers participating in this program.

EPE reply: In his direct testimony, Company witness Carrasco explained how, as required under PURA § 36.003, the PowerConnect Pilot and other proposed pilots are just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of consumer.⁷⁵ In addition, Company witness Rodriguez described the basis for developing the proposed rebate credits under this program: the maximum

⁷¹ See EPE Ex. 5 at Exhibit MC-3 (Schedule No. WHEV, under the Applicability heading).

⁷² EPE Ex. 5 at 10:31.

⁷³ Staff Brief at 14.

⁷⁴ Staff Brief at 14.

⁷⁵ EPE Ex. 5 at 16:15-17:2.

available rebate credit amounts per site were determined using EPE's infrastructure upgrade cost estimates from similar EV charging infrastructure projects requested by EPE customers and are consistent with incentives seen in other utilities' programs.⁷⁶

Requiring EPE to recover the program costs from the participating customers would be non-sensical because the very purpose of the program is to provide support for customers installing EV charging stations through rebates. To then charge the participating customer for the rebate they just received makes no sense.

Moreover, construction of public EV stations benefits more than just the customers who are installing the charging stations. Accordingly, in Senate Bill 1002, the Legislature found that "encouraging investment in the deployment of public electric vehicle charging stations is essential"⁷⁷ and chose to allow utilities to subsidize the costs of make-ready infrastructure "through rates or charges for services provided by the electric utility's regulated services."⁷⁸

Staff argument: EPE has not shown that the affected distribution system upgrades and improvements fall within the category of make-ready infrastructure.⁷⁹ The terms used by EPE could encompass costs beyond the narrower category of make-ready infrastructure.⁸⁰

EPE reply: No party filed testimony challenging this program's compliance with PURA Chapter 42, and EPE explained in its brief how the PowerConnect Pilot complies with the scope and requirements of PURA § 42.0103(d).⁸¹ However, to the extent Staff's argument here is similar to its argument further detailed in Section III.D.2 below that the PowerConnect and Take Charge TX pilots should only be used to support public EV charging stations, EPE would address the issue to the extent and as more fully described below in Section III.D.2.

3. Costs and Cost Recovery

Staff argument: The PowerConnect Program subsidizes non-residential EV customers through rebates that would reduce or offset the cost of improvements to EPE's distribution system

⁷⁶ EPE Ex. 4 at 18: 5-8.

⁷⁷ PURA § 42.0101(b).

⁷⁸ PURA § 42.0103(d).

⁷⁹ Staff Brief at 14.

⁸⁰ Staff Brief at 14.

⁸¹ EPE Brief at 23-25.

needed in order to provide EV service to customers enrolled in this program.⁸² 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 Company to incur.⁸³

EPE reply: PURA § 42.0103(d) allows for subsidies to the extent they are used for supporting make-ready infrastructure as EPE proposes. Moreover, as explained in the rebuttal testimony of Company witness Rodriguez, this pilot is cost based in that it was designed to cover no more than the actual costs not covered by EPE's line extension policy and, even then, only up to the maximum rebate credit amount shown in her direct testimony.⁸⁴

4. Discussion of any other preliminary order issues

City of El Paso argument: If the Commission is inclined to approve this pilot program, it should impose as a condition for approval that none of the costs of the program are to be recovered from non-subscribing customers.⁸⁵

Staff argument: 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.⁸⁶ Of more concern, EPE refused to commit to recovering program costs entirely from customers participating in this program.⁸⁷

OPUC argument: OPUC is concerned the costs associated with this program will be borne by EPE's non-participating customers.⁸⁸

EPE Reply: As noted above and as detailed in Section III.A.3 of its initial brief, EPE understands the importance of, and has ongoing experience with, tracking and accounting for program costs to ensure proper ratemaking treatment and will do so for this pilot as well.⁸⁹ Further, while EPE is not seeking recovery of program costs at this time, EPE does believe that cost

⁸² Staff Brief at 14.

⁸³ Staff Brief at 14-15.

⁸⁴ EPE Ex. 9 at 7:22-25 and 8:1-4. See EPE Ex. 4 at 17:31-18:2 for the maximum rebate credit amounts.

⁸⁵ City of El Paso Brief at 6.

⁸⁶ Staff Brief at 15.

⁸⁷ Staff Brief at 15.

⁸⁸ OPUC Brief at 7.

⁸⁹ EPE Ex. 8 at 6:16-28.

recovery would be consistent with newly enacted PURA § 42.0103(d). All customers may benefit from infrastructure investments found essential by the Legislature in PURA § 42.0101(b) and allowed under PURA § 42.0103(d). EPE also understands that it is the Commission that would ultimately determine the appropriate cost allocation of any allowed cost recovery. Moreover, EPE's proposed limitations on the pilot, including its two-year duration, the proposed budget, and the tracking and accounting for the pilot costs are appropriate and sufficient conditions to ensure that Texas customers who have not subscribed to the pilot program are not unreasonably affected by approval of the application.

D. Take Charge TX Pilot Program

1. Introduction/Program description

No reply.

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

Staff argument: 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.⁹⁰ However, 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.⁹¹

EPE Reply: No party offered testimony challenging this program's compliance with PURA Chapter 42, and EPE disagrees with Staff's narrow reading of public EV charging service. As detailed in EPE's initial brief, the record shows that EPE's proposed pilot complies with the scope of PURA §§ 42.0103(o) and (p), and, as noted above, PURA § 42.0101(c), regarding the important role of utilities, is not limited to public EV charging.

Moreover, as reflected in EPE's initial application in this docket, which was filed prior to the passage of PURA Chapter 42, the Commission has the general authority to authorize the Take Charge TX and PowerConnect pilots to support EV charging at all sites allowed under the proposed Schedule No. TCTX, including for charging stations at or for multi-unit dwellings, fleets, public school buses, and public transit. Allowing the Take Charge TX and PowerConnect Pilots

⁹⁰ Staff Brief at 17.

⁹¹ Staff Brief at 18. Staff also makes several arguments on pages 18-19 regarding PURA § 42.0103(e), but that section would only apply if EPE were seeking to provide EV charging service directly to customers, which is not the case under any of the pilots proposed in this proceeding.

to operate at all of the proposed types of sites would benefit the public for the reasons described in EPE's application, testimony, and briefing.

However, given the nature of the Take Charge and PowerConnect programs as pilots, to the extent the Commission agrees with the Staff argument regarding the scope of PURA § 42.0103(o), EPE would support the Commission limiting the availability of the Take Charge TX and PowerConnect pilots to customers installing public EV charging stations instead of the Commission rejecting the programs in full. In the event of such limitation, however, EPE would urge the Commission to conclude and clarify that public-school-district EV charging stations used for public school busses and public-transit EV charging stations used for public transit both constitute public EV charging stations in light of the public use of the public school busses and public transit even if these entities' EV charging stations are not otherwise accessible for charging by the public.

Staff argument: The program 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.⁹²

EPE reply: The Company's proposed 20-page Schedule No. TCTX is detailed and transparent in how it operates. Staff's complaint arises out of the customer-specific-cost nature of the schedule that is needed to reflect the statutory requirements for full cost recovery of the customer-specific costs from the specific customer. As Mr. Carrasco explained in his rebuttal testimony, non-standardized pricing (as proposed by the Company) helps to ensure that customers pay only for the costs associated with the services they request, while a more standardized approach (as recommended by Staff) would risk frustrating cost-causation principles.⁹³ Staff's approach would be inconsistent with the full-cost-recovery requirements of PURA § 42.0103(p)(2). EPE's proposed Schedule No. TCTX, including the customer agreement template that is included as part of the schedule, reasonably balances clarity, transparency, and the full-cost-recovery requirements of the statute.

⁹² Staff Brief at 19-20.

⁹³ EPE Ex. 10 at 4:1-3.

3. Costs and Cost Recovery

OPUC argument: OPUC's chief concern with the TakeCharge TX Pilot Program is that EPE's nonparticipating customers will be forced to bear a considerable amount of the costs directly incurred to operate this program.⁹⁴

EPE reply: EPE understands that tracking and accounting for the pilot program costs is an important issue to ensure appropriate allocation of costs to customers.⁹⁵ EPE has experience in tracking and accounting for program costs to ensure proper ratemaking treatment and will do so for this pilot program as well.⁹⁶ As Mr. Carrasco explained in this direct testimony, costs associated with Schedule No. TCTX will only be charged to those customers that voluntarily elect to enroll in the Take Charge TX Pilot.⁹⁷ To ensure this, EPE will maintain separate accounting of all infrastructure and equipment costs associated with Schedule No. TCTX through the implementation of subaccounts to track and remove direct and allocation of indirect costs from its determination of ratepayer revenue requirements in general rate cases.⁹⁸ Participating customers will be charged a monthly fixed fee on their electric bill for this service to recover the full cost of the equipment and services provided to the customer and avoid financial impact to EPE's non-participating customers.⁹⁹ Accordingly, the associated cost of each EV charging unit and monthly operations and maintenance costs, if any, will be integrated into the participating customer's monthly bill. Thus, these costs are recovered directly from the customer and will not be shifted to non-participating customers.

Staff argument: 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 treat it as a bad debt expense.¹⁰⁰ And although Mr. Novela indicates that it would be reasonable to only seek recovery

⁹⁴ OPUC Brief at 8-9.

⁹⁵ EPE Ex. 8 at 6:16-17.

⁹⁶ *Id.* at 6:20-28.

⁹⁷ EPE Ex. 5 at 13:19-20.

⁹⁸ *Id.* at 13:20-24.

⁹⁹ EPE Ex. 8 at 5:29-6:2.

¹⁰⁰ Staff Brief at 20-21.

of the bad debt expense from the participating customers, he indicated that EPE is not willing to commit to that in this proceeding.¹⁰¹

City of El Paso argument: The TCTX agreement does not contain a guaranty or security for payment of the facilities.¹⁰²

EPE Reply: With regard to concerns related to the potential for bad debt expense resulting from the pilot, EPE would note that an electric utility, including EPE, already bears the risk of a defaulting customer, regardless of whether it is a result of an arrangement made under the Take Charge TX Pilot or some other contract, and the existence of this risk does not support denial of the Take Charge TX Pilot.

City of El Paso argument: Given the accounting treatment proposed (inclusion of costs in Account 371) part of the invested capital rate base, and the recording of expenses as part of Account 598 it appears that the costs of this program will indeed be borne in part by non-participating customers.¹⁰³ EPE apparently intends an inclusion in rate base accounts which are allocated to all distribution customer classes only to be offset as part of "other revenues" which are not allocated by customer class or to specific customers.¹⁰⁴

EPE reply: Costs and revenues for this program will be booked in accordance with the FERC Uniform System of Accounts, as they should be. To ensure the tracking of the accounting associated with Schedule No. TCTX, EPE will maintain separate accounting through the implementation of subaccounts as indicated in Mr. Carrasco's direct testimony.¹⁰⁵ These are subaccounts to FERC Accounts 371 and 598 among others, including revenue account 456, which will limit exposing non-participating customers to any liability.

4. Discussion of any other preliminary order issues

No additional issues identified.

¹⁰¹ Staff Brief at 21.

¹⁰² City of El Paso Brief at 7.

¹⁰³ City of El Paso Brief at 7.

¹⁰⁴ City of El Paso Brief at 7.

¹⁰⁵ EPE Ex. 5 at 13:16-24

E. Appropriate treatment of Rate Case Expenses

OPUC argument: 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.¹⁰⁶

EPE reply: As previously noted, no cost recovery is requested in this docket, and the allocation of any program costs including rate case expense costs is ultimately a decision for the Commission in a future proceeding.

IV. CONCLUSION

For the reasons detailed above and EPE's initial brief, EPE requests that the ALJ issue a proposal for decision recommending approval of the Company's four proposed pilot programs and granting such further relief to which the Company may be entitled.

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**ATTORNEYS FOR EL PASO ELECTRIC
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¹⁰⁶ OPUC Brief at 10.

CERTIFICATE OF SERVICE

I certify that on May 2, 2024 a true and correct copy of this document was served on all parties of record by electronic service consistent with the Commission's Second Order Suspending Rules filed on July 16, 2020 in Project No. 50664.

A handwritten signature in black ink, appearing to read 'CWA-Britt', written over a horizontal line.

Everett Britt