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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 REPLY BRIEF

Dated: May 2, 2024

Respectfully submitted,

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COMMISSION STAFF’S REPLY BRIEF

I. INTRODUCTION

Staff reiterates its position that the Commission should reject El Paso Electric Company’s (EPE) 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. Importantly, the programs and tariffs do not comply with the applicable requirements of Chapter 42 and 36 of PURA.¹

While EPE does not argue in briefing that Chapter 42 of PURA supports the EV Smart Rewards Pilot Program Rider and the WHEV Pilot Incentive Credit Rider, because EPE’s witness testified as such, Staff reiterates that these two residential programs are not consistent with Chapter 42 of PURA, which is related the deployment of public EV charging stations. Moreover, both do not comply with PURA § 36.003, because the programs provide what amount to subsidies for electric consumption that provide unreasonably preferential treatment to participating customers. For the PowerConnect Pilot Program, while EPE argues that PURA § 42.0103(d) allows for EPE to ultimately subsidize the costs of the program, the program does not comply with PURA § 36.003 and 16 Texas Administrative Code (TAC) § 25.234(a), because participating customers would not be required to pay for the costs they are causing EPE to incur.

Lastly, the TCTX Pilot Program does not comply with PURA § 42.0101(d), because it is underspecified in terms of costs, such that it is not transparent and does not provide rates that are based on cost causation principles or at least prevents the Commission from determining whether the rates are based on costs. Furthermore, based on EPE’s proposal, some of the TCTX Pilot

¹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

Program costs will in fact be subsidized by all of EPE's customers. Accordingly, the rider does not comply with PURA § 42.0103(o)(3) and (p)(2). In turn, the TCTX Pilot Program does not comply with PURA § 36.003, as it is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable. Notwithstanding the foregoing, the TCTX Pilot Program would not comply with Chapter 42 of PURA to the extent that EPE makes it available to customers who do not intend to offer EV charging services to the public. Specifically, PURA § 42.0103(o) only applies to agreements concerning *public* EV charging stations, such that a participating customer must offer EV charging services to the public, while EPE intends to offer the rider to customers that will not be offering EV charging services to the public.

Altogether, in terms of the TCTX Pilot Program, Staff reiterates that EPE should not be allowed to own transportation and electrification and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application. Rather, if EPE is to own such infrastructure and facilities, Staff recommends that EPE should establish an EV base rate class with standard EV rates established consistent with PURA Chapters 42 and 36, Commission rules, and standard ratemaking practice.

For all of the programs described, Staff reiterates that EPE's EV-ready pilot programs and tariffs are unreasonably preferential and discriminatory, are inequitable, and grant an unreasonable preference concerning rates to certain persons in a classification, and should be rejected as they are not just and reasonable and not based on cost. Furthermore, the Commission should be concerned that each program has costs that EPE has refused to commit to recovering only from participating customers. To that end, if the Commission determines to approve EPE's application, it should impose a condition that none of the program costs are to be recovered from non-participating customers.

A. Description of Application

Staff addressed this in its Initial Brief.

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 May 2, 2024 for parties to file Reply Briefs. Therefore, this pleading is filed timely.

II. JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter under PURA §§ 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

Staff addressed this in its Initial Brief.

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

Staff still asserts that that EV Smart Rewards Pilot Program is unreasonably preferential and discriminatory, is inequitable, and should be rejected as it is not just and reasonable under PURA § 36.003. EPE questions Mr. Narvaez's belief that the incentive payments are subsidies for electric consumption.² Specifically, EPE cites to the fact that customers may have additional costs such as a program for networked charging equipment or charges to enable a vehicle telematics subscription.³ However, this does not change the character of the subsidization by adding additional costs. This program still provides an incentive payment for certain customers that disadvantages other customers with similar usage but that are not enrolled. Customers not enrolled would not receive incentive payments, and therefore, those that did not enroll would be in a disadvantaged position in comparison to those who enrolled.

² Initial Brief of El Paso Electric at 11 (Apr. 18, 2024) (EPE's Brief).

³ *Id.*

Further, EPE is incorrect in its interpretation of PURA § 36.204 regarding authorized load management programs.⁴ The rule states that it authorizes incentives for load management but is limited to demand response.⁵ However, as noted by the Office of Public Utility Counsel (OPUC), the incentive payments are not based upon any estimated cost savings and are not cost-based.⁶ And as stated above, the incentive payment is discriminatory towards customers that are not able to enroll.

3. Costs and Cost Recovery

EPE asserts that it will protect non-participating customers by tracking and allocating costs using program specific workorder numbers and project codes to enable identification and proper accounting for the costs actually incurred.⁷ However, as Staff addressed its initial brief, EPE does not commit to recovering program costs entirely from customers participating in the program.⁸

4. Discussion of any other preliminary order issues

Staff addressed this in its Initial Brief.

B. Whole House EV Pilot Incentive Credit Rider

1. Introduction/Program Description

Staff addressed this in its Initial Brief.

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

EPE misunderstands Staff's reasoning for stating that the WHEV Pilot is unreasonably preferential. EPE cites to Mr. Carrasco's testimony to explain that the basis for treating these customers differently is because customers who own EVs use large amounts of electricity when

⁴ *Id.* at 11-12.

⁵ *Id.* at 12

⁶ Office of Public Utility Counsel's Post-Hearing Initial Brief at 2-6 (Apr. 18, 2024) (OPUC's Brief).

⁷ *Id.* at 14.

⁸ Commission Staff's Initial Brief at 8 (Apr. 18, 2024) (Staff's Brief).

they are charging.⁹ EPE states that by incentivizing these customers to charge overnight or early morning, it would benefit all EPE's customers.¹⁰ However, this reasoning is precisely why Staff believes this to be preferential. Any non-participating customer who chooses to use large amounts of electricity in off-peak hours would not receive the benefits of the WHEV program. As Mr. Narvaez stated previously, there is no legitimate need for EPE's proposed WHEV program because EPE's existing Time of Day rate options already serve the purpose of incentivizing customers to use energy during off-peak times in a non-discriminatory manner.¹¹ To provide additional incentives for off-peak energy usage to a select group of customers is unreasonably preferential and discriminatory.

3. Costs and Cost Recovery

EPE acknowledges that EPE will incur some costs for this program.¹² And as noted by the City of El Paso, there clearly will be costs in the nature of reduced revenues that would otherwise be collected from these customers.¹³ Not only will there be reduced revenues from credits being applied against customers' bills regarding the intended EV electric consumption, but also the non-EV electric consumption that the rider is not able to disaggregate from EV electric consumption.¹⁴ Further, EPE does not commit in this proceeding to recover these costs and under-recovered non-EV electric consumption revenues from participating customers.

4. Discussion of any other preliminary order issues

Staff addressed this in its Initial Brief.

⁹ EPE's Brief at 19.

¹⁰ *Id.*

¹¹ Staff's Brief at 13.

¹² EPE's Brief at 20.

¹³ City of El Paso's Initial Brief at 4 (Apr. 18, 2024).

¹⁴ Staff's Brief at 12.

C. PowerConnect Pilot Program

1. Introduction/Program Description

Staff addressed this in its Initial Brief.

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

Staff disagrees with EPE's assertion that PURA § 42.0103(d) allows for subsidies to the extent they are used for supporting make-ready infrastructure.¹⁵ As stated in its Staff's Initial Brief, there is nothing in the statute that explicitly allows utilities to subsidize the cost of make-ready infrastructure.¹⁶ EPE does not cite to any source when stating that the rule allows for this subsidization.¹⁷ Furthermore, EPE has failed to show that the affected distribution system upgrades and improvements fall within the category of make-ready infrastructure, as the terms used by EPE could encompass costs beyond the narrow category of make-ready infrastructure.¹⁸

3. Costs and Cost Recovery

Staff addressed this in its Initial Brief.

4. Discussion of any other preliminary order issues

Staff addressed this in its Initial Brief.

D. Take Charge TX Pilot Program

1. Introduction/Program Description

Staff addressed this in its Initial Brief.

¹⁵ EPE's Brief at 26.

¹⁶ Staff's Brief at 14.

¹⁷ EPE's Brief at 26.

¹⁸ Staff's Brief at 14.

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

Staff disagrees with EPE's assertion that Staff's approach would be inconsistent with PURA § 42.0103(p)(2). However, the requirement under PURA § 42.0103(p)(2) that the utility must only recover the costs of "owning, constructing, financing, or operating, and maintaining the public EV charging station" from the participating customer and not the utility's other customers relates to the requirement under PURA § 42.1013(o)(3) that a tariff must provide for "full recovery of the costs of the public EV charging station" from the participating customer. Accordingly, Staff reiterates that "all electric utility-related costs" include both TCTX related costs, as well costs associated with base rates and non-fuel firm rate schedules. The Legislature would not have distinguished the two categories of costs for no reason, and it is contrary to the principles of statutory interpretation for EPE to equate the two. Even if, assuming *arguendo*, EPE has appropriately characterized the electric utility-related costs, OPUC pointedly indicates that EPE's proposal has not ensured that participating customers will pay an appropriate share of overhead and indirect and incremental costs that are being subsidized by all other customers but that will be necessary to serve only the participating customers.¹⁹ In fact, that such costs are necessary to provide service to participating customers under the TCTX Program demonstrates that such costs should ultimately be recovered from only the participating customers rather than being subsidized by all of EPE's customers. Notably, such a finding would comport with cost causation principles and 16 TAC § 25.234(a). Furthermore, as stated in Staff's Initial Brief, EPE intends to offer the program to customers that may not offer EV charging services to the public, such that such EV charging stations will in fact not be *public* EV charging stations that directly conflicts with the type of EV charging stations that are allowed by PURA § 42.0103(o).²⁰

3. Costs and Cost Recovery

EPE asserts that it will protect non-participating customers by tracking and allocating costs using program specific workorder numbers and project codes to enable identification and proper accounting for the costs actually incurred.²¹ However, as Staff addressed its initial brief, EPE does

¹⁹ OPUC's Brief at 9.

²⁰ Staff's Brief at 17-18.

²¹ EPE's Brief at 33.

not commit to recovering unrecovered program costs entirely from customers participating in the program.²² Furthermore, Staff reiterates that it would be reasonable for the Commission to prohibit EPE from recovering any unrecovered costs from any of EPE's customers, as these costs are not necessary for the functioning of the EPE system in the provision of standard utility system.²³

4. Discussion of any other preliminary order issues

Staff addressed this in its Initial Brief.

E. Appropriate treatment of Rate Case Expenses

Staff does not have any further comments to this section.

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, Staff's Initial Brief, and in the direct testimony of Mr. Narvaez, Staff respectfully recommends that the SOAH ALJ reject EPE's application.

²² Staff's Brief at 20-21.

²³ *Id.* at 20.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on May 2, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Anthony Kanalas
Anthony Kanalas