



## **Filing Receipt**

**Filing Date - 2024-05-02 02:37:32 PM**

**Control Number - 54614**

**Item Number - 82**

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

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

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

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**May 2, 2024**

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
	<b>A. EV Smart Rewards Pilot Program.....</b>	<b>2</b>
	<b>B. Whole House EV Pilot Incentive Credit Rider.....</b>	<b>4</b>
	<b>C. PowerConnect Pilot Program .....</b>	<b>5</b>
	<b>D. TakeCharge TX Pilot Program .....</b>	<b>6</b>
	<b>E. Appropriate Treatment of Rate Case Expenses.....</b>	<b>7</b>
<b>II.</b>	<b>CONCLUSION .....</b>	<b>7</b>

**SOAH DOCKET NO. 473-24-04312  
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<b>APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF ITS ELECTRIC VEHICLE-READY PILOT PROGRAMS AND TARIFFS</b>	<b>§ § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**OFFICE OF PUBLIC UTILITY COUNSEL'S  
POST-HEARING REPLY 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 reply brief.<sup>1</sup>

**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.<sup>2</sup> The Office of Public Utility Counsel (“OPUC”) filed its Motion to Intervene on March 20, 2023,<sup>3</sup> and its intervention was granted March 23, 2023.<sup>4</sup> Thereafter, OPUC participated in the hearing on the merits, held April 2, 2024. OPUC filed its post-hearing initial brief on April 18, 2024.<sup>5</sup> Pursuant to State Office of Administrative Hearings (“SOAH”) Order No. 7, the deadline to file Reply Briefs is May 2, 2024.<sup>6</sup> Therefore, this pleading is timely filed.

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<sup>1</sup> 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.

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

<sup>3</sup> OPUC’s Motion to Intervene (Mar. 20, 2023).

<sup>4</sup> Order No. 3 Granting Interventions (Mar. 23, 2023).

<sup>5</sup> OPUC’s Post-Hearing Initial Brief (Apr. 18, 2024).

<sup>6</sup> SOAH Order No. 7, Memorializing Post-Hearing Deadlines (Apr. 3, 2024).

#### **A. EV Smart Rewards Pilot Program**

EPE argues that the incentives proposed in the EV Smart Rewards Pilot Program are consistent with the incentive levels offered by EPE in its smart thermostat program.<sup>7</sup> While OPUC appreciates EPE's attempt at rationalizing its level of incentives offered, the comparison is not apples to apples. The smart thermostat program is an energy efficiency program, not based on electric vehicle charging. It must be supported by costs – it is based on the impacts, loads, and usage levels of thermostats. Whereas 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.<sup>8</sup> The program would permit EPE to remotely manage the charging of its participating customers' electric vehicles.<sup>9</sup> Additionally, unlike the Smart Thermostat Program, the EV Smart Rewards Program requires certain participating customers to incur additional costs if they select certain options within the program. Furthermore, OPUC would like to note that these additional optional costs are customer costs, not additional costs that are associated with EPE providing service to its customers. Therefore, it is not appropriate to consider these additional optional costs as justification for the establishment of cost-justified incentives.

OPUC maintains its position 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

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<sup>7</sup> El Paso Electric Company Initial Brief at 12 (Apr. 18, 2024). (EPE Initial Brief).

<sup>8</sup> Direct Testimony of Angelina Rodriguez at 48:21-27 (Jan. 31, 2023). (Rodriguez Direct).

<sup>9</sup> *Id.*

participating in this proposed program. This is particularly important because the incentives proposed under the EV Smart Rewards Pilot Program are not cost-based.<sup>10</sup>

EPE suggests that OPUC witness Mr. Evans and Staff witness Mr. Narvaez unfairly characterize these pilot programs as routine cost-based tariffs, while EPE asserts that because these are pilot programs, the components of the programs that EPE will seek cost-recovery on are not subject to the cost-based requirements of other such tariffs. OPUC contends that just because this is a proposed pilot program does not alleviate the responsibility for the tariff and incentives to be cost-based, particularly if EPE intends to recover the costs associated with these incentives from customers at a later time. Furthermore, it is very important that incentives for a pilot program are not set at a level that is too high, that would encourage uneconomic decisions by customers, but would be later reduced and cause the economic calculus of customers' decisions to be radically changed. Furthermore, EPE has not provided any evidence that any of these programs will save all customers, both participating and non-participating customers, money in the long run.

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.<sup>11</sup> 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,

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<sup>10</sup> Evans Direct at 12:3 - 15.

<sup>11</sup> "With regard to cost recovery, for the Take Charge TX Program, participating customers will be responsible for the full cost of the equipment and services provided through a monthly fixed fee added to their bill. *For the other three pilot programs, EPE may seek cost recovery related to the programs in a future proceeding.*" See Application at 6.

unless the Commission approves extending the program in EPE's next base rate case or other future proceeding.<sup>12</sup>

Additionally, in its initial brief, EPE pointed to its incremental cost when arguing that the proposed budget for the pilot programs was reasonable.<sup>13</sup> However, the incremental capacity cost that EPE is referring to is based on load at EPE's peak. There has been no analysis or evidence provided that shows the expected reduction to EPE's system peak that will result from this program. In fact, as OPUC showed in its initial post-hearing brief, EPE witness Rodriguez confirmed there has not been any analysis performed regarding shifting load off peak.<sup>14</sup>

Therefore, OPUC maintains that 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.<sup>15</sup> It is vital for the Commission to ensure that participating customers 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**

In its initial brief, EPE tries to discredit OPUC's concerns regarding protecting nonparticipating customers from subsidizing the costs incurred solely from participating customers.<sup>16</sup> EPE has merely repeated that it does not expect to incur any material cost<sup>17</sup> and

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<sup>12</sup> Evans Direct at 13:1 – 5.

<sup>13</sup> EPE Initial Brief at 13 (Apr. 18, 2024).

<sup>14</sup> OPUC Initial Brief (Apr. 18, 2024).

<sup>15</sup> Evans Direct at 12:16 – 13:1.

<sup>16</sup> EPE Initial Brief at 14 (Apr. 18, 2024).

<sup>17</sup> *Id.*

continues to ignore OPUC's request for some assurances that nonparticipating customers will not be saddled with any indirect and overhead costs incurred to develop and implement the program. OPUC maintains its position that establishing a separate rate class under the Whole House EV rider is the best way to ensure non-participating customers will not subsidize this rate.<sup>18</sup>

### **C. PowerConnect Pilot Program**

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.<sup>19</sup>

OPUC remains concerned that 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.<sup>20</sup> Even though EPE is not seeking cost recovery for this program in this proceeding, it continues to assert it will likely seek recovery in a future proceeding.<sup>21</sup> Furthermore, EPE expressly states that it believes cost recovery from all of EPE's customers is in line with PURA 42.0103(d).<sup>22</sup> However, OPUC asserts that PURA 42.0103(d) does not contemplate or authorize subsidies to be recovered from nonparticipants or other customers.<sup>23</sup>

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<sup>18</sup> Evans Direct at 14:15 – 22.

<sup>19</sup> Evans Direct at 15.

<sup>20</sup> Evans Direct at 16.

<sup>21</sup> EPE initial brief at 26 (Apr. 18, 2024).

<sup>22</sup> *Id.*

<sup>23</sup> PURA 42.0103(d).



As EPE mentions in its initial brief, EPE witness Mr. Novela even confirmed during the hearing that “in the future [EPE] would seek that recovery because as described these types of programs can benefit all of EPE’s customers.”<sup>24</sup> Therefore, the Commission should reject EPE’s proposed PowerConnect Pilot Program.

#### **D. TakeCharge TX Pilot Program**

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.<sup>25</sup> 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.<sup>26</sup>

OPUC’s chief concern with the TakeCharge TX Pilot Program remains that EPE’s non-participating customers will be forced to bear a considerable amount of the costs directly incurred to operate this program.<sup>27</sup> During the hearing, EPE witness Mr. George Novela, Director of Economic and Rate Research, expressed EPE’s unwillingness to commit that it will protect non-participants from bearing the unrecovered costs of the TakeCharge TX Pilot Program’s facilities investment related to under-recovered costs and customers who default.<sup>28</sup> Absent those assurances, OPUC cannot recommend approval of this program as proposed.

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<sup>24</sup> EPE initial brief at 26 (date), see also Tr. at 28:21-24.

<sup>25</sup> Rodriguez Direct at 3.

<sup>26</sup> *Id.*

<sup>27</sup> OPUC’s Initial Brief (April 18, 2024).

<sup>28</sup> Tr. at 35:6 – 22. (Novela Cross). (Apr. 2, 2024).

OPUC recommends the Commission require EPE to establish service under the TakeCharge TX Pilot Program rider as a separate rate 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.<sup>29</sup> OPUC maintains that this is the cleanest means to ensure that customers under the 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.<sup>30</sup> In the 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.<sup>31</sup>

#### **E. Appropriate Treatment of Rate Case Expenses**

OPUC maintains its position that 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.

## **II. CONCLUSION**

For the reasons stated herein and discussed in the Direct Testimony and Cross-Rebuttal Testimony of OPUC witness Mr. Evan D. Evans, OPUC respectfully requests that the SOAH administrative law judges adopt and incorporate OPUC's recommendations into the Proposal for

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<sup>29</sup> Evans Direct at 20:7 -14.

<sup>30</sup> *Ibid.*

<sup>31</sup> Evans Direct at 20:15 – 19.

Decision in this proceeding. OPUC further requests to be granted any other relief to which it may be entitled.

Date: May 2, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**  
**SOAH DOCKET NO. 473-24-04312**  
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 2nd day of May 2024 by facsimile, electronic mail, and/or first class, U.S. Mail.

*Renee Wiersema*

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