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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 28, 2024

Shelah Cisneros
Commission Advising and Docketing Management
William B. Travis State Office Building
1701 North Congress, 7th Floor
Austin, Texas 78701

VIA EFILE TEXAS

RE: SOAH Docket Number 473-24-04312; PUC Docket No. 54614; ***Application of El Paso Electric Company for Approval of Texas Electric Vehicle-Ready Pilot Programs***

Dear Ms. Cisneros:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. Please notify the Administrative Law Judges and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

SOAH Docket No. 473-24-04312 **Suffix: PUC**
PUC Docket No. 54614

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF TEXAS ELECTRIC VEHICLE-READY PILOT PROGRAMS

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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PROPOSAL FOR DECISION

El Paso Electric Company (EPE) filed an application with the Public Utility Commission of Texas (Commission) on January 31, 2023, requesting approval of four electric vehicle (EV) pilot programs (Texas EV-Ready Pilot Programs) and corresponding changes to its tariff. While EPE and its selected vendor, ev.energy Corp., support approval of the programs, the City of El Paso (City), Commission staff (Staff), and the Office of the Public Utility Counsel (OPUC) either oppose the programs or ask that the Commission impose conditions on their approval. As set out below, the Administrative Law Judges (ALJs) find that the Texas EV-Ready Pilot Programs should be approved, but a condition be placed on approval of the Take

Charge TX Pilot that EPE may not collect outstanding fees under the program from EPE's non-participating customers.

I. INTRODUCTION

A. TEXAS EV-READY PILOT PROGRAMS

As a proactive response to the growing demand for EVs and the Texas Legislature's intent to promote EV infrastructure, EPE requests approval of the Texas EV-Ready Pilot Programs, which consist of four proposed programs:

- The EV Smart Rewards Pilot Program provides for utility-managed EV charging to residential customers. This program includes a one-time enrollment incentive payment of $125 and annual incentive payments of $50 to customers who enroll, while participation is limited to 880 residential customers.
- The Whole House EV Pilot Incentive Credit Rider encourages overnight (midnight to 8:00 a.m.) EV charging by providing residential EV owners an incentive credit on their bill for overnight electricity use. The credits would apply to all electric usage during the specified time frame, not just EV-related usage. EPE's proposed credits for this program are based on incremental capacity costs based on EPE's calculations in their last rate case.
- The PowerConnect Pilot Program is a rebate/credit for non-residential customers, which covers a portion of EPE's costs for distribution system updates and improvements in order to provide EV charging. The customer will procure its own charging equipment and electrical contractor, while EPE will provide utility-side installations as a rebate.
- The Take Charge TX or TCTX (Take Charge) pilot program provides non-residential customers the opportunity to choose the EV infrastructure to be purchased, owned, and operated in part, or in full, by EPE. The tariff includes a monthly fixed fee for the recovery of the EV infrastructure and equipment costs recovered over the time period selected by the customers,

and a variable fee for the recovery of Operations and Maintenance (O&M) expenses in effect for the 10-year customer agreement term.

Most of the pilot programs are proposed to last or be open for enrollment for only two years, unless extended by the Commission, and are limited in scope by the proposed budget and/or a proposed maximum of participating customers. EPE states that it would "support any reasonable modifications to the pilots that the Commission finds necessary to ensure legal compliance and protect customers, but EPE also believes inaction is not a reasonable option."[1] In this proceeding, EPE is not seeking recovery of the costs for these programs. Instead, any costs incurred under the Texas EV-Ready Pilot Programs would be reviewed if presented for recovery in a future proceeding.[2]

B. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

EPE filed its application on January 31, 2023. OPUC, the City, and ev.energy Corp. intervened.[3] On September 22, 2023, EPE amended its application. The Commission referred the proceeding to the State Office of Administrative Hearings (SOAH) on November 1, 2023, and issued a preliminary order specifying the issues to be addressed.[4] The hearing on the merits convened on April 2, 2024, via Zoom

[1] EPE Initial Brief (Br.) at 7.

[2] EPE Ex. 1 (Application) at 5.

[3] ChargePoint, Inc. intervened but later withdrew its intervention. Order No. 5 (Sept. 12, 2023).

[4] This Proposal for Decision discusses the contested issues identified in the Preliminary Order. Uncontested issues are addressed only in the Findings of Fact and Conclusions of Law.

videoconference.[5] The parties filed initial briefs on April 18, 2024, and reply briefs on May 2, 2024, upon which the record closed.

No party contested notice or jurisdiction, and these issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. APPLICABLE LAW

The Public Utility Regulatory Act (PURA)[6] and Commission rules establish that rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost.[7] However, in allowing for recovery of costs associated with, among other policy goals, load management, the Commission may authorize additional incentives for conservation, load management, purchased power, and renewable resources.[8]

With respect to EV charging, the Texas Legislature in 2023 enacted legislation creating a new chapter in PURA, pertaining to public charging of electric vehicles, Chapter 42.[9] The Legislature found it is in Texas's best interest to invest in infrastructure by establishing a framework designed to encourage competitive private

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[5] Subsequent to the hearing, ALJs Daniel Wiseman and Vasu Behara were assigned to this case, reviewed the record and evidence in this matter, and drafted the Proposal for Decision.

[6] Tex. Util. Code §§ 11.001-66.016 (PURA).

[7] *See* PURA § 36.003; 16 Tex. Admin. Code (Rule) § 25.234(a).

[8] PURA § 36.204.

[9] Act of May 8, 2023, 88th Leg., R.S. 2023 Tex. Sess. Law. Serv. ch. 53 (S.B. 1002).

sector investment in the deployment of public EV charging stations.[10] Additionally, the Legislature found it essential to encourage investment in the deployment of public EV charging stations to foster the installation and widespread use of public EV charging stations on the property of owners or tenants who desire to install public EV charging stations.[11] Regarding EV charging more broadly, the Legislature noted that electric utilities and the Commission, among others, inhabit important roles in supporting the installation of and buildout of infrastructure that would support EV charging.[12]

In any proceeding involving a rate change proposed by the utility, the electric utility has the burden of proving that the rate change is just and reasonable.[13]

III. DISCUSSION

A. EV SMART REWARDS PILOT PROGRAM

The EV Smart Rewards Pilot is a managed EV-charging program that targets efficient adoption of EVs by incentivizing residential customers to participate in active managed EV charging and charging during off-peak hours.[14] EPE would provide incentives to residential customers for enrolling and participating in the program in exchange for allowing EPE to schedule at least 80% of their monthly EV

[10] PURA § 42.0101(a).

[11] PURA § 42.0101(b).

[12] PURA § 42.0101(b)-(c)

[13] PURA § 36.006(1).

[14] EPE Ex. 1 (Application), Att. A at p. 3 of 4 (using upper-right-hand numbering).

charging during off-peak periods. For eligible customers, the pilot will offer a one-time enrollment incentive of $125, with an additional annual incentive of $50. Participating customers could earn additional rewards for participating in low carbon or other demand response events, with an incentive of $1/event with maximum cap of $5/month. The pilot is voluntary, limited to 880 participants, and would terminate after two years unless extended by the Commission.

The estimated cost of a two-year EV Smart Rewards Pilot Program is $804,947, which includes software, marketing, customer incentives, and incentive processing fees.[15] If successful, EPE states that the program can be expanded to include a larger customer base.[16]

According to EPE, utility-managed EV-charging programs like the EV Smart Rewards Pilot are necessary and beneficial. When EVs are added to the grid efficiently, they can provide economic and reliability benefits to all customers.[17] According to EPE witness Rodriguez, EPE's Supervisor of Electrification, the objective of the pilot is to evaluate customers' acceptance and efficacy of utility-managed EV charging with little or no impact to the customer's driving behavior and to reduce adverse grid impacts related to unmanaged charging while optimizing the use of existing infrastructure and minimize the need for investment in additional infrastructure.[18]

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[15] EPE Ex. 4 (Rodriguez Dir.) at 15.

[16] EPE Ex. 4 (Rodriguez Dir.) at 16.

[17] EPE Ex. 9 (Rodriguez Reb.) at 6.

[18] EPE Ex. 4 (Rodriguez Dir.) at 13-15.

Ms. Rodriguez further testified that it is important to implement this pilot before the anticipated snowballing of EV adoption to enable EPE to obtain information and experience to help mitigate negative grid impacts that may occur if that EV load is unmanaged. These impacts could include extreme, pricey peaks and issues with reliability. Charging EVs can use between 3.3 kilowatts (kW) and 20 kW of electricity, which can exceed the total peak demand of a home without EVs. If unmanaged, the increase in peak load can significantly strain the local distribution system, particularly where several EVs are clustered on a single transformer.

EPE developed the incentives for the EV Smart Rewards Pilot based on the EV Managed Charging Incentive Design guide produced by the Smart Electric Power Alliance (SEPA). SEPA's assessment of approximately 40 managed charging programs showed enrollment incentives ranging from $25 to $450, with a median incentive of $125, and annual incentives ranging from $20 to $250, with a median incentive of $50. To determine the incentive amount for low carbon or other demand response events, EPE used its selected vendor's recommendation of $5/month submitted to EPE during its competitive request for proposal process, which aligns with SEPA.[19]

[19] EPE Ex. 4 (Rodriguez Dir.) at 14-15.

Ms. Rodriguez provided examples of other utilities' enrollment and participation incentives:[20]

Utility Managed Charging Programs	Enrollment Incentive
Arizona Public Service (AZ) SmartCharge Program	$25 bonus for enrolling with up to $5/month
CPS Energy (TX) FlexEV Rewards	$250 enrollment credit on utility bill, $5 credit/month for each participating month
CPS Energy (TX) FlexEV Off-Peak Rewards	$125 enrollment credit on utility bill, $10 credit/month
Salt River Project (AZ) EV Smart Charge Program	$200 sign-up incentive and $50 incentive each participating year
Xcel Energy (NM) Optimize your Charge	$50 annual bill credit
Xcel (CO) Charging Perks	$100 enrollment incentive and $100 annual participation incentive for Level 2 EV charging

Staff argues that the EVE Smart Rewards Pilot, like the other proposed programs, is not necessary for EPE to provide continuous and adequate service. Staff witness Narvaez testified that "EPE has not shown why modifications to its rate design applicable to all customers would not better encourage a shift in electric consumption from on-peak periods to off-peak periods."[21] Instead, according to Mr. Narvaez, these payments represent "special treatment for those who choose to

[20] EPE Ex. 9 (Rodriguez Reb.) at 4.

[21] Staff Ex. 2 (Narvaez Dir.) at 10.

enroll in this program as they would receive what amounts to subsidies for electric consumption in order to encourage utility-managed charging."[22]

These subsidies, Staff argues, would likely result in unjust and unreasonably preferential and discriminatory rates. And because EPE would not commit to recovering program costs entirely from customers participating in the program, these potentially significant costs may be borne by other ratepayers.[23] Finally, Staff notes that EPE has acknowledged that PURA chapter 42, which addresses public EV-charging stations, does not apply to the EV Smart Rewards Pilot.[24]

OPUC agrees with Staff that the EV Smart Rewards Pilot's rates are unreasonably preferential, prejudicial, and discriminatory in violation of PURA § 36.003. In addition, OPUC expresses concern with the way EPE developed the incentives offered under the EV Smart Rewards Pilot. Rather than analyze its existing EV customers or the value of shifting load off-peak, EPE based the incentive payments to participating customers merely on the range of incentives offered by other utilities.[25]

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[22] Staff Ex. 2 (Narvaez Dir.) at 10.

[23] Staff Ex. 2 (Narvaez Dir.) at 11.

[24] *See* EPE Ex. 6 (Rodgriguez Supp. Dir.) at 7 ("S.B. 1002 does not have any impact on this program. The proposed EV Smart Rewards Pilot Program is a residential managed EV charging program that does not involve utility ownership or operation of public electric vehicle charging stations.").

[25] OPUC Ex. 1 (Evans Dir.) at 11.

The City argues that if the Commission is inclined to approve this pilot, it should impose a condition that none of the costs of the program are to be recovered from non-participating customers.[26]

EPE argues that the program rates are reasonable and that "the rates are cost-based as applicable or else set to incentivize the intended customer behaviors consistent with the programs of other utilities."[27] EPE further notes that the rates would not result in discriminatory or preferential rates: "The 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."[28] According to EPE witness Carrasco, "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."[29]

The ALJs find that the EV Smart Rewards Pilot is consistent with PURA and Commission rules. PURA § 36.204 provides:

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[26] City Initial Br. at 3.

[27] EPE Ex. 5 (Carrasco Dir.) at 16.

[28] EPE Ex. 5 (Carrasco Dir.) at 16.

[29] EPE Ex. 5 (Carrasco Dir.) at 16.

> In establishing rates for an electric utility, the [C]ommission 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.

In authorizing recovery of "additional incentives" beyond the reasonable costs of load management, the legislature envisioned that programs of this nature would not be subject to the strict requirements of cost recovery cited by Staff, OPUC, and the City. Because the goals of load management, conservation, etc., benefit not only the incentivized customers but all ratepayers, a total imposition of the costs of such programs on those customers is not reasonable.

As EPE explains, the pilots are intended to benefit all customers by encouraging off-peak usage and by allowing EPE to gain knowledge and experience with a rapidly growing technology. Adapting to changes in demand early should allow EPE to avoid greater expenses in infrastructure and other areas that may be borne by all ratepayers when EV charging is more universal. Accordingly, the ALJs do not find it necessary at this time to impose conditions like the ones proposed by Staff, OPUC, and the City requiring that none of the program costs be recovered from non-participating customers. The extent to which EPE may appropriately recover its program costs should be determined when EPE seeks to recover the costs in a future rate proceeding.

However, the fact that these programs are permissible incentives under PURA § 36.204 does not mean that they are exempt from general ratemaking principles. Rates for these programs must be reasonable, necessary, and neither unreasonably discriminatory nor preferential. With respect to the EV Smart Rewards Program, there is a reasonable basis for providing incentives only to eligible EV customers. As Mr. Carrasco testified, EV customers to whom this tariff would apply own electric vehicles which use large amounts of electricity when charging. Seeking to incentivize this particular customer segment is reasonable "in light of Company and customer interests in supporting, gathering information regarding, and managing EV charging activities."[30]

Finally, the ALJs are not persuaded by OPUC's arguments that the incentive payments under the EV Smart Rewards Pilot are impermissible because they are not directly tied to cost savings. The incentives under this program were developed based on those offered by other utilities under other similar programs that are already established. Given that one of the purposes of this program is to obtain further information on the appropriate levels of incentives needed to elicit off-peak EV charging, it is unreasonable to expect a direct correlation between savings and incentives. As Ms. Rodriguez explained at the hearing, EPE will evaluate and modify the incentive levels if appropriate.[31]

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[30] EPE Ex. 5 (Carrasco Dir.) at 16.

[31] Transcript (Tr.) at 66.

B. WHOLE HOUSE EV PILOT INCENTIVE CREDIT RIDER

The Whole House EV Pilot Incentive Credit Rider is a permanent program and associated tariff that would provide a credit on the bills of residential EV-owner customers for their electricity use during the hours of midnight to 8:00 a.m. The credit would apply to all usage during the specified time frame, not just EV-related usage. The purpose of the credit is to encourage EV charging during hours of typically lower demand on the system and is intended to benefit EPE's other customers by helping diminish the impact of EV charging on system peak demand. EPE's proposed credits for this program are based on incremental capacity costs calculated in EPE's last rate case.[32] The average residential customer using an estimated 319 kilowatt-hour (kWh) each month during the Incentive Credit Period to charge an EV during off-peak times will see an $8.23 (319 kWh x $0.02586 per kWh) incentive credit on their monthly electric bill.[33]

According to EPE, the Whole House EV Pilot would encourage EV-owning customers who cannot afford a second meter and whose regular electricity usage would not permit them to participate in on-demand service to charge their EVs at night. A recent EPE analysis showed that an EV-owning customer could expect to see an average increase in their monthly usage of 319 kWh because of EV charging. By comparison, recent data showed that a typical residential customer consumed a year-round monthly average of 681 kWh. Under the Standard Service Rate option offered by EPE, the incremental 319 kWh for EV charging would add $46.11 to the

[32] Staff Ex. 2 (Narvaez Dir.) at 7.

[33] EPE Ex. 5 (Carrasco Dir.) at 10.

average residential monthly bill. While other standard billing options, such as take-on-demand rates, may decrease that amount, such savings would diminish rapidly depending on when the charging is done.

EPE's existing Schedule No. EVC is designed for EV charging and was initially approved in Docket No. 44941 and again in EPE's most recent base rate case, Docket No. 52195. The rate schedule is available on a voluntary basis to residential and commercial customers, but only those who have a separately metered facility dedicated solely to the charging of electric vehicles. Installing the second meter, however, can cost up to $5,000, which can be a barrier to residential customers.

For residential EV-owning customers who cannot afford a second meter and for whom taking service under a take-on-demand rate option is not feasible, EPE's Whole House EV Pilot provides an incentive to residential customers to charge an EV during off-peak hours. Under the Whole House EV Pilot, the customer: (1) avoids the cost of in-home wiring for a second meter and (2) still saves on their monthly electric bill if they charge their EVs during the overnight hours. To encourage overnight EV charging, energy used between the hours of midnight and 8:00 a.m. (including EV charging and all other overnight usage measured by a single meter) would receive a credit of $0.02856 per kWh and be reflected in the customer's monthly bill.

EPE states that it does not expect to incur any material amount of costs for the Whole House EV Pilot, which is simply an incentive credit on the customer's monthly electric bill. While EPE states that it will publicize the availability of the

program, it does not expect those efforts to involve the expenditure of any material amount of incremental costs. Regarding customers who are not program participants, EPE contends that approval of the Whole House EV Pilot in this docket will not impact their rates, and EPE believes that it and its customers will benefit from EPE learning how and whether credit programs like the Whole House EV Pilot may assist in avoiding or delaying construction of additional infrastructure due to the impact of EV charging load on the system.

Staff recommends disapproval of this program and argues that EPE has not shown why providing unmetered EV service is necessary. Meters, according to Mr. Narvaez, are necessary to assure proper cost recovery and to avoid unreasonable cross-subsidizations. Staff contends that the Whole House EV Pilot incentives amount to preferential treatment for customers enrolled in this program, as they will be the only residential customers avoiding the cost associated with EV meters. In addition, according to Mr. Narvaez, the program "would also unreasonably subsidize non-EV energy consumption since customers enrolled in this program will receive credit for all energy usage in the early hours of the morning, including all non-EV related usage."[34]

Staff also argues that this approach is unreasonably discriminatory and preferential because any benefits associated with off-peak energy usage should accrue to all customers with such usage patterns, and not just the EV-owning customers in this program. EPE already has time-of-use options available to customers, which can

[34] Staff Ex. 2 (Narvaez Dir.) at 9.

provide incentives to customers to shift energy usage into off-peak times in a non-discriminatory manner. "There is no good reason," Mr. Narvaez testified, "to single-out certain EV customers for special treatment in this regard, when a broader rate design approach would provide more benefits in a non-discriminatory manner."[35]

OPUC argues that EPE should be required to establish service under the Whole House EV Pilot as a separate class in EPE's future base rate cases and separately design rates for service under this class that ensure non-participating customers will not subsidize the class. According to OPUC witness Evans, establishing and promoting service under the Whole House EV Pilot will result in both direct costs—including the costs of incentives, educational and marketing costs, and operating and maintenance costs—and indirect costs—including employee costs and other administrative and general expenses. Establishing service under this rider as a separate class is "the cleanest means" to protect non-participating customers from subsidizing this program.[36]

The City argues that if the Commission is inclined to approve this pilot, it should impose a condition that none of the costs of the program are to be recovered from non-participating customers.[37]

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[35] Staff Ex. 2 (Narvaez Dir.) at 9-10.

[36] OPUC Ex. 1 (Evans Dir.) at 14.

[37] City Initial Br. at 4-5.

As with the EV Smart Rewards Program, the ALJs find that the Whole House EV Pilot is permissible as an incentive under PURA § 36.204 to promote the goal of load management. EPE demonstrated that it is reasonable to target the class of EV-owning customers who may not be able to afford the cost of installing a separate EV meter at their residence and who may be disinclined to use EPE's other on-demand rate options. In other words, the program targets EV-owning customers who would not otherwise shift their charging to off-peak hours. Because the credits associated with this program are cost-based and because EPE does not anticipate incurring any material incremental costs, the effect on non-participating ratepayers should be minimal. For those reasons, the ALJs do not recommend imposing any of the conditions regarding the segregation of cost recovery proposed by the City. EPE has expressed willingness to establish service under the Whole House EV Pilot as a separate class in a future base rate case, as recommended by OPUC.[38] However, the ALJs decline to recommend imposing that condition as a requirement in the instant proceeding.

C. POWERCONNECT PILOT PROGRAM

Under a typical line extension policy, a customer seeking connection or upgrades for service is solely responsible for advancing or contributing the costs for any upgrades to a utility's distribution network. EPE describes PowerConnect as a "make-ready" program. It is designed as a temporary program and tariff to help reduce or offset the utility-side infrastructure costs for non-residential customers who install Level Two EV charging stations or Direct Current Fast Charging (DCFC)

[38] EPE Reply Br. at 13.

stations on the customers' premises.[39] There are over 17 make-ready programs in the U.S., and EPE asserts the goal of PowerConnect is to complement those programs.[40] According to EPE, PowerConnect will facilitate its involvement in the planning for the EV charging stations for non-residential customers, which lowers the costs of the infrastructure investments and can help avoid any future upgrades (and rework).[41] Through engagement with the customer in the program, EPE also seeks to ensure that the customer is aware of EPE's approved Schedule No. EVC rate and encourage off-peak charging hours.[42]

1. Subsidies - PURA § 42.0103(d)

As with all the pilot programs in this proceeding, EPE asserts it is not seeking to subsidize the costs of make-ready infrastructure but expects to address recovery of the program costs in a future proceeding.

Staff and EPE disagree whether PURA § 42.0103(d) allows subsidies. The subsection states that "[t]his section does not prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the electric utility's regulated services." Staff contends that although subsection (d) does not prohibit subsidies, it also does not explicitly

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[39] OPUC Ex. 1 (Evans Dir.) at 15.

[40] EPE Ex. 4 (Rodriguez Dir.) at 16. These programs were primarily created through the Infrastructure Investment and Jobs Act, such as the National EV Infrastructure Formula Program for installation of charging stations by Texas Department of Transportation and the Clean School Bus program administered by United State Environmental Protection Agency.

[41] EPE Ex. 9 (Rodriguez Reb.) at 8.

[42] EPE Ex. 9 (Rodriguez Reb.) at 10.

"allow" utilities to subsidize make-ready infrastructure. The plain language of the statute, however, demonstrates the Legislature's intent that subsidization is permissive.[43] Accordingly, EPE is allowed (if approved by the Commission) to subsidize make-ready infrastructure for public EV charging stations.

2. Make-Ready Infrastructure - PURA § 42.0102(6)

EPE contends the PowerConnect tariff includes the allowed facilities and excludes the disallowed facilities as prescribed in subsections (A) and (B) of PURA § 42.0102(6) (defining "make-ready infrastructure"). Specifically, PowerConnect offers rebate credits for "distribution system [*i.e.*, utility-side] upgrades or improvements necessary to provide electric vehicle charging capabilities" and the program "does not cover the costs of EV charging equipment or Customer-side of the meter infrastructure upgrades or equipment installation."[44]

EPE notes that the make-ready infrastructure under PowerConnect will support EV charging stations at or for multi-unit dwellings, fleets, public schools, and public transit.[45] EPE's proposed scope of PowerConnect implicates two important definitions in chapter 42.

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[43] *See, e.g.*, *Moore v. Henry*, 960 S.W.2d 82, 84 (Tex. App.—Houston [1st Dist.] 1996, no writ) (concluding that the phrase "does not prohibit" in the Texas Public Information Act is permissive and allowed the governmental body, in its discretion, to choose whether to comply with request).

[44] EPE Ex. 6 (Rodgriguez Supp. Dir.) at Exhibit AR-2S (Schedule No. PC page 1 of 3, Type of Service section).

[45] EPE Reply Br. at 17-18.

- PURA § 42.0102(6) defines "make-ready infrastructure" as the "electrical infrastructure required to service a ***public electric vehicle charging station's*** *electrical load* on the electric utility's or transmission and distribution utility's side of the point of delivery."[46]

- PURA § 42.0102(7) defines a "public electric vehicle charging station" as "any level two charging station or direct-current fast charging station that delivers electricity from a source outside an electric vehicle into an electric vehicle, is separate and distinct from make-ready infrastructure, and is accessible for ***commercial use by the public*** . . . ."[47]

The definitions provide that distribution system upgrades or improvements under PowerConnect only qualify as "make-ready infrastructure" to the extent the non-residential customers subject to the tariff use it to deploy a *public* EV charging station.[48] Accordingly, the Commission should clarify in the PowerConnect tariff that EPE may not recover for non-public EV charging stations.

Apparently recognizing the public EV charging station requirement under chapter 42, EPE urges "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, even if these entities' EV charging stations

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[46] Emphasis added.

[47] Emphasis added.

[48] Staff asserts that EPE failed to show the affected distribution system upgrades and improvements fall within the category of "make-ready infrastructure" because the terms could encompass costs beyond the narrow category of make-ready infrastructure. As noted above, EPE met its burden in the application to demonstrate that only utility-side upgrades or improvements would be included in the program, and the definition of "make-ready infrastructure" appropriately limits the program to public EV charging stations (non-private use). Because the parties did not brief or address cost recovery and incentives of PowerConnect under PURA § 36.204, the ALJs decline at this time to determine whether the proposed subsidies for non-public EV charging stations are appropriate incentives.

are not otherwise accessible for charging by the public."[49] The ALJs decline to recommend this conclusion as the definition of a public EV charging station is unambiguous—it requires it be "accessible for commercial use by the public."[50]

3. Cost Recovery

EPE proposes a budget of $3,095,950 for PowerConnect.[51] No party challenged the amount of the proposed budget. EPE's Application notes that program enrollments will be processed on a first-come, first-serve basis, and the program will terminate after two years unless extended in a future proceeding. Ms. Rodriguez gave the following example to describe generally how the PowerConnect's rebate will operate:

> Assume a customer needed a line extension to install a DCFC on its premises and the cost is $100,000. The PowerConnect rebate would cover $20,000 under the maximum rebate amount, which under this scenario would cover only a portion of the full line extension. This rebate is not paid by the customer and is a non-refundable incentive. The remaining $80,000 would be refundable as a customer's cash advance.[52]

EPE will offer up to $20,000 for Municipal Utility Districts, workplace, and public charging projects; up to $100,000 for fleet charging projects; and up to

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[49] EPE Reply Br. at 18. *See also, e.g., Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005) (embracing the broader and natural interpretation of public use as "public purpose").

[50] PURA § 42.0102(7).

[51] EPE Ex. 3 (Novela Dir.) at 16; EPE Ex. 4 (Rodriguez Dir.) at 18.

[52] Tr. at 55-56.

$200,000 for DCFC projects.[53] EPE presented sufficient evidence that the maximum 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.[54]

Several parties raised concerns about whether non-participating customers would bear costs due to PowerConnect. EPE counters that it will keep separate accounting to track and account for PowerConnect program costs to ensure proper ratemaking treatment in a separate proceeding, if the tariff is approved.[55]

EPE met its burden to demonstrate that the rates are just and reasonable to incentivize the intended customer to participate in PowerConnect.[56] PowerConnect targets customers not similarly situated to other customers because they are either EV owners or are seeking to install equipment to serve EV customers.[57] Accordingly, EPE presented a reasonable basis to differentiate the participants of PowerConnect in supporting, managing, and gathering information for EV charging activities. Mr. Carrasco further testified that PowerConnect is designed to provide appropriate and adequate rates and incentives to achieve the program's goals, and the program will treat eligible customers in a consistent and equitable manner according to the rebate maximums. Finally, Ms. Rodriguez testified that the pilot was designed to

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[53] EPE Ex. 4 (Rodriguez Dir.) at 17-18.

[54] EPE Ex. 4 (Rodriguez Dir.) at 18.

[55] EPE Ex. 8 (Novela Reb.) at 6.

[56] EPE Ex. 5 (Carrasco Dir.) at 16.

[57] EPE Ex. 5 (Carrasco Dir.) at 16.

cover no more than actual costs not covered by EPE's line extension policy, and then only up to the maximum rebate credit amounts.[58]

Staff contends the rates do not comply with PURA § 36.003 because PowerConnect directly violates the requirement under Rule § 25.234(a) that rates be based on cost. Specifically, Staff notes that participating customers would not be required to pay for the costs that they are causing EPE to incur. As noted above, however, PURA § 42.0103(d) permits EPE to provide specific subsidies to the extent they are used for make-ready infrastructure. While the rebate/credit amounts covered by the PowerConnect pilot program would typically be capitalized and EPE could potentially seek to recover them in the rate base, whether these amounts will be included in rate base in a future rate proceeding is an issue to be decided in that future case.

OPUC contends that costs of improvements to EPE's distribution system in excess of those covered by EPE's line extension policy will be included in EPE's base rates and recovered from all EPE's retail customers that take service at distribution voltages. Witness Evans analyzed the amount of net investment in distribution lines allocated to the classes to which the proposed PowerConnect Pilot Program tariff would apply and the associated base rate revenues for those classes from EPE's most recent base rate case, Docket No. 52195. Mr. Evans testified that the base rate revenues will not support the proposed additional investment/credits from the

[58] EPE Ex. 9 (Rodriguez Reb.) at 7; EPE Ex. 4 (Rodriguez Dir.) at 17-18 (maximum rebate credit amounts).

PowerConnect tariff.[59] In light of this, OPUC requests the Commission reject EPE's proposed PowerConnect tariff because the credits associated with the program are not cost-justified.

Mr. Carrasco offered, on the other hand, that in instances in which the estimated line extension cost exceeds those covered by the line extension policy, the policy requires the customer to be responsible for those costs as a customer contribution in the same manner as costs of improvement to support the equipment of any other non-EV customer.[60] Customer contributions are deductions from net plant in service in the development of the rate base upon which the rate of return is applied in determining a revenue requirement. The ALJs agree with Mr. Carrasco's analysis. Accordingly, Mr. Evans' testimony did not support the premise that the costs of improvements to EPE's distribution system in excess of those covered by EPE's line extension policy and rebate will be included in EPE's rate base.

4. Effect on Non-Participating Customers

As noted above, a primary concern among Staff, the City, and OPUC is that EPE would not specify in this proceeding how it will recover PowerConnect program costs such that non-participating customers could ultimately be responsible for paying the costs. The opposing parties also argue that PURA § 42.0103(d) does not contemplate or authorize subsidies to be recovered from non-participating

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[59] OPUC Ex. 1 (Evans Dir.) at 17 and Attachment EDE-2. *Application of El Paso Electric Company to Change Rates*, Docket No. 52195 (Sept. 15, 2022).

[60] EPE Ex. 10 (Carrasco Reb.) at 3.

customers. EPE notes that although it does not seek cost recovery in this proceeding, cost recovery from all of EPE's customers (including non-participating customers) is in line with PURA § 42.0103(d) because ultimately the subsidies will benefit all customers. EPE also argues that requiring EPE to recover the program costs from participating customers, as the opposing parties request, would run counter to the purpose of the program because its purpose is to provide support through rebates. According to EPE, to then charge that participating customer for the rebate it just received would remove the incentive and not enhance the project in a meaningful way.

The ALJs find that there is no immediate impact to rate base at this time, and it is premature to determine one. If PowerConnect is successful to subsidize the utility-side, up-front investments needed to incentivize make-ready public EV charging stations in the EPE service territory, EPE may be able to meet its burden at a rate proceeding to prove that the revenues from these new electricity customers outweighed the investment cost. Further, EPE will track and account for program costs separately to ensure that proper ratemaking treatment can be applied if they are disallowed. EPE also demonstrated the proposed limitations of PowerConnect, such as the two-year duration and the proposed budget are appropriate conditions to ensure that Texas customers who have not subscribed are not unreasonably affected by approval of the tariff.

As noted above, EPE provided appropriate limitations on the PowerConnect pilot, including its two-year duration, the proposed budget, and the separate tracking and accounting for the pilot costs are appropriate and sufficient conditions to ensure

that its customers who are not part of PowerConnect are not unreasonably affected by approval of the application. Given the separate tracking and accounting requirements, the Commission may determine in a separate rate proceeding that a separate EV rate class should be established. For example, EPE tracked and allocated costs associated with its Community Solar Pilot Program, approved initially by the Commission in Docket No. 44800, to ensure that only participating customers were charged for the costs of that program.[61] However, a condition to establish a separate rate class based on the pilot is premature because that determination should be based on historical and empirical data from the program, whether the direct and associated indirect costs of the pilot programs are recoverable and, if so, who are the beneficiaries that those costs should be recovered from. Accordingly, the ALJs do not propose any additional conditions on PowerConnect.

D. TAKE CHARGE PILOT PROGRAM

Take Charge is designed to be a voluntary program for nonresidential customers to choose the desired EV charging infrastructure and equipment that will be purchased, installed, and operated by EPE.[62] Unlike PowerConnect, Take Charge would allow EPE to enter an agreement with a commercial customer to provide equipment and services to support EV charging stations on the *customer side* of the meter. The customer would choose desired EV infrastructure and equipment that could be purchased, installed and operated by EPE, in whole or part, including a fully turnkey solution. EPE notes that the program would mitigate the challenge of

[61] EPE Ex. 8 (Novela Reb.) at 8.

[62] EPE Ex. 4 (Rodriguez Dir.) at 3.

managing EV charging stations, including installation and maintenance for the customer.[63] EPE will have a list of prequalified suppliers and third-party installers. EPE will have the right to reject projects based on reliability concerns or unreasonable costs.[64]

EPE proposes a budget of $7,382,650 for the program.[65] Take Charge will be open to customers who take service under certain non-residential rate schedules including general service, small general service, large power, and city and county service.[66] EPE plans to open Take Charge for two years only and contracts within that two-year window would be in place for a ten-year term, with customers having an option to select repayment terms from one to ten years.[67] EPE is proposing a 10-year expected life of the EV charging equipment for depreciation purposes, and at the end, EPE will either remove or abandon in place such equipment.[68]

Under the pilot, participating customers will be solely responsible for setting a pricing policy for the EV charging station on their premises.[69] Regarding pricing structure, participating customers will be responsible for the full costs of equipment

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[63] EPE Ex 4 (Rodriguez Dir.) at 18-19.

[64] EPE Ex. 4 (Rodriguez Dir.) at 20.

[65] EPE Ex. 3 (Novela Dir.) at 16; EPE Ex. 4 (Rodriguez Dir.) at 21.

[66] EPE Ex. 7 (Carrasco Suppl. Dir.) at Ex. MC-1s (Schedule No. TCTX, page 1 of 20); EPE Ex. 5 (Carrasco Dir.) at 12.

[67] EPE Ex. 5 (Carrasco Dir.) at 12-13; EPE Ex. 1 (Application) at 5.

[68] EPE Ex. 4 (Rodriguez Dir.) at 19.

[69] EPE Ex. 4 (Rodriguez Dir.) at 21.

and services provided through a monthly fixed fee added to their bill during the term of the pilot program agreement, along with a variable fee for the recovery of O&M expenses in effect for the 10-year customer agreement term.[70] The costs of performing site visits and meeting the customers will be included in the Schedule No. TCTX monthly fixed fee.[71] Mr. Carrasco gave the following example for the monthly level payment:

- If EPE's investment is $5,000 and the customer selects a five-year repayment period, then the monthly level payment assessed to this customer is $109.40 ($5,000 x 2.1888%) for 60 months.
- The fixed O&M charge of $10 would be added to the monthly level payment to reduce the number of line items appearing on the customer's bill.
- The customer's bill would reflect $119.40 for the Take Charge charges.

EPE is not expecting material incremental costs of administering the program, marketing the program, responding to customer requests, or indirect and overhead costs associated with the program.[72]

1. Site Hosting Agreement - PURA § 42.0103(o)

Take Charge requires clarification to comply with PURA § 42.0103(o). The subsection states that a person who is not an electric utility or an affiliate of an electric utility is not prohibited from entering into an agreement with an electric utility for the utility to own or operate a public EV charging station. The definition of a public

[70] Staff Ex. 2 (Narvaez Dir.) at 8.

[71] EPE Ex. 10 (Carrasco Reb.) at 4.

[72] EPE Ex. 10 (Carrasco Reb.) at 4.

EV charging station under PURA § 42.0102(7) specifically excludes charging equipment located on the premises of a customer of an electric utility, a transmission and distribution utility, or an affiliate that is (i) used by the customer or the customer's tenants, affiliates, or guests; and (ii) not used commercially for EV charging service.

EPE Witness Carrasco supported Section 6.4 of Schedule No. TCTX, which states that the EV charging stations under Take Charge may be made available to the general public or select users in the customer's sole discretion.[73] In other words, the scope of Take Charge, as proposed, would potentially allow EPE in a vertically integrated area to own vehicle-charging facilities or other transportation electrification and charging infrastructure not available to the general public for commercial purposes. Chapter 42 requires this offering to be left to the competitive private market.

Accordingly, like the analysis of PowerConnect, Take Charge complies with PURA § 42.0103(o) to the extent it is used for agreements to develop *public* EV charging stations, but it does not comply to the extent a customer may select its users because it would not meet the definition requiring the station be available for "commercial use."

[73] EPE Ex. 7 (Carrasco Supp. Dir.) at 13.

2. Rates

No party challenged EPE's method of calculating charges and the specific proposed budget. EPE met its burden to demonstrate that the costs associated with Take Charge will only be charged to those that voluntarily enroll, which enables for a full recovery from the participating customers and ensures compliance with PURA § 36.003.[74] EPE will enable separate accounting, which will allow EPE to track and remove direct costs from rate base and allocate indirect costs from its determination for rate payer revenue requirements in general rate cases.[75]

Staff argues that Take Charge lacks transparency, as required by PURA § 42.0101(d)(2), because it relies on non-standard pricing. Staff further contends that the customer-specific nature of each and every EV infrastructure installation, particularly with potential for numerous installations, will make it extremely difficult to scrutinize the details of EV infrastructure costs and Take Charge rider revenues. Mr. Narvaez recommends Take Charge follow more standardized-pricing approach used in EPE's Street and Outdoor lighting service under which specific rates are set for each allowed type of lighting equipment.[76] OPUC recommends the Commission require EPE to establish service under the Take Charge rider as a separate class in EPE's future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.[77]

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[74] EPE Ex. 5 (Carrasco Dir.) at 14-16.

[75] EPE Ex. 5 (Carrasco Dir.) at 13.

[76] Staff Ex 2 (Novela Dir.) at 11-12, 14-15.

[77] OPUC Ex. 1 (Evans Dir.) at 20.

EPE criticizes OPUC's proposal because, unlike the lighting service rates that OPUC compares the Take Charge Program to and which are allocated costs of operating EPE's power system based on the demands of those services, Take Charge will function like the Facilities Charge in EPE's Schedule No. 99 - Miscellaneous Service Charges.[78] A Facilities Charge is assessed when EPE constructs, owns, and maintains electrical infrastructure for the benefit of a specific customer who in turn agrees to pay for the infrastructure via a fixed payment each month, and no separate class is required in such circumstances.[79] EPE also counters that the standardized pricing urged by Staff would not account for variations in costs among program participants whose circumstances might differ in scope for wiring or trenching. According to EPE, standardized pricing would also not account for inflation in charging station prices over the next two years and ongoing changes in EV charging equipment technology. Finally, EPE also argues that specific rates would frustrate the ability to recover full costs required under PURA § 42.0103(p)(2).

Based primarily on the ability for EPE's proposed schedule to recover the full costs of Take Charge directly from the participating customers, the ALJs find that EPE's proposed schedule, including the customer agreement template that is included as part of the schedule, reasonably balances clarity, transparency, and the full-cost-recovery requirements of PURA § 42.0103(p)(2).

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[78] EPE Ex. 10 (Carrasco Reb.) at 7.

[79] EPE Ex. 10 (Carrasco Reb.) at 7.

3. Cost Recovery

As applicable to Take Charge, PURA § 42.0103(p)(2) requires EPE to ensure that revenue collected under a customer agreement pursuant to subsection (o) allows EPE to recover the costs of owning, constructing, financing, operating, and maintaining the public EV charging station from the participating customer and not the utility's other customers (i.e., non-participating customers). Take Charge includes a template agreement in the tariff that involves a participant-specific calculation of costs in a 20-page schedule within the framework of the tariff. EPE contends the customer-specific-cost nature of the schedule is necessary to reflect the statutory requirements for the full recovery of costs from the specific customer and not other customers. Specifically, Mr. Carrasco opined that the non-standardized pricing helps to ensure that customers pay only for costs associated with the services they request through a monthly level charge and a fixed O&M charge.[80] EPE also noted that in the customer agreement, if a customer terminates service prior to the end of the contract term or abandons EV infrastructure, it shall pay EPE all costs incurred by EPE to install the facilities and equipment up to that point and shall also pay EPE a lump sum equal to the remaining unpaid fees calculated through the end of the contract term.

OPUC's chief concern pertains to the hypothetical situation when a customer does not make payments under the financing transaction and EPE is unable to collect outstanding fees from that customer. According to OPUC, in the event of such default, nonparticipating customers would be forced to bear a considerable amount

[80] EPE Ex. 10 (Carrasco Reb.) at 4.

of the costs directly incurred to operate the program. Specifically, if the customer cannot pay, EPE witness Novela stated that EPE could treat it as a bad debt expense. EPE did not commit to protect non-participants in this proceeding.[81]

EPE notes that in the hypothetical bad debt scenario, there are options available before declaring the amount owed as bad debt. For example, if another customer replaces the defaulting customer at that specific facility where the equipment is located, EPE would work with that new customer to continue with the agreement; or, EPE could seek to sell the equipment and recover some of that cost.[82] Overall, however, EPE notes that it would likely seek to recover any other uncollectible amounts in the same way it deals with its other customers.

Rather than deny the program entirely, the ALJs conclude that the Commission should prohibit EPE from recovering any unrecovered Take Charge costs (bad debt) from non-participating customers. This would ensure compliance with PURA § 42.0103(p)(2).

IV. RATE CASE EXPENSES

EPE and the City seek to recover their reasonable rate case expenses incurred in this proceeding. No party disputes that this is a rate proceeding for which expenses are recoverable. Under PURA § 33.023(b), EPE is required to reimburse the municipal regulatory authorities that participate in rate proceedings for their

[81] Tr. at 34:2-35:22.

[82] Tr. at 88-89.

reasonable and necessary rate-case expenses. The City seeks to recover $1,312.50 in rate case expenses through January 31, 2024,[83] and no party challenges these expenses. EPE proposes that its own rate case expenses be reviewed in a future rate proceeding, at which time the City may recover any subsequent expenses incurred in this proceeding. The City agrees with this proposal. However, OPUC argues that only participants in EPE's proposed programs should bear the cost of the rate case expenses related to EPE's filing for approval of these proposed voluntary programs.

The ALJs agree that the question of EPE's rate case expenses for this proceeding should be taken up in a future rate proceeding. The ALJs find that expenses included in the City's Declaration of Rate Case Expenses are reasonable and may be recovered from EPE, and that any subsequent expenses incurred by the City in this proceeding should be addressed in a future rate proceeding.

V. CONCLUSION

For the reasons state above, the ALJs recommend that the Texas EV-Ready Pilot Programs should be approved, but that a condition be placed on approval of the Take Charge TX Pilot that EPE may not collect outstanding fees under that program from EPE's non-participating customers. The ALJs further recommend that the City be allowed to recover its rate case expenses through January 31, 2024. Any costs incurred by EPE under the Texas EV-Ready Pilot Programs should be reviewed if presented for recovery in a future proceeding, along with EPE's rate case expenses

[83] City Ex. 1 (Declaration of Norman Gordon).

for the instant docket and any subsequent rate case expenses incurred by the City in this docket.

In support of these recommendations, the ALJs make the following findings of fact and conclusions of law.

VI. FINDINGS OF FACT

Applicant

1. El Paso Electric Company (EPE) is a Texas corporation registered with the Texas secretary of state under filing number 1073400.

2. EPE owns and operates for compensation in Texas facilities and equipment to produce, generate, transmit, distribute, and sell electricity within its certificated service area.

3. EPE is required under CCN number 30050 to provide service to the public and retail electric utility service within its certificated service area.

Application

4. On January 31, 2023, EPE filed an application with the Public Utility Commission of Texas (Commission) for approval of its Texas Electric Vehicle (EV)-Ready Pilots Programs and Tariffs.

5. In Order No. 2 filed on March 3, 2023, the Commission administrative law judge (ALJ) found the application sufficient.

6. On August 24, 2023, the Commission issued its Order Requesting Update and directed that, in light of Senate Bill 1002, EPE must file a statement by September 23, 2023, regarding whether it intends to amend its application; withdraw or refile its application; or proceed with its application as filed.

7. On September 22, 2023, EPE filed its amended application.

Notice

8. On January 31, 2023, EPE provided the application to each municipal regulatory authority with original jurisdiction over EPE's retail rates.

9. On March 9, 2023, EPE provided the notice via email to all parties in Docket No. 52195, EPE's last base rate proceeding, as well as parties who participated on the EV-related issues in Docket No. 53719, Entergy Texas, Inc.'s then-pending base rate proceeding.

10. On March 17, 2023, EPE filed the affidavit of Curtis Hutcheson, Manager of Regulatory Case Management for EPE's Regulatory Affairs Department, attesting to the provision of notice to municipalities and to relevant parties to Docket Nos. 52195 and 53719.

11. EPE published notice of the application in each of the following newspapers having general circulation in EPE's service territory (El Paso, Hudspeth, and Culberson counties): the El Paso Times on March 7, 2023; the Hudspeth Herald on March 10, 2023; and the Van Horn Advocate on March 9, 2023.

12. Notice of the filing was published on March 8, 2023, in El Diario, a Spanish-language newspaper having general circulation in El Paso County.

13. On March 17, 2023, EPE filed affidavits attesting to the publication of notice of the application.

14. In Order No. 2 issued on March 3, 2023, the Commission ALJ found the proposed notice of the application sufficient.

Intervenors

15. In Order No. 3 issued on March 23, 2023, the Commission ALJ granted the motions to intervene filed by City of El Paso, ChargePoint, Inc., and the Office of Public Utility Counsel (OPUC).

16. In Order No. 5 issued on September 12, 2023, the Commission ALJ granted the motion to withdraw of ChargePoint, Inc.

17. In the State Office of Administrative Hearings (SOAH) Order No. 2 issued on November 21, 2023, the SOAH ALJ granted the motion to intervene filed by ev.energy Corp.

Municipal Proceedings and Appeals of Municipal Actions

18. On January 31, 2023, EPE provided a copy of the application to each incorporated municipality in its Texas service area that retains original jurisdiction over its rates and services.

19. On April 13, 2023, EPE appealed to the Commission the actions of the Village of Vinton.

20. In Order No. 4 issued on June 8, 2023, the Commission ALJ consolidated the appeals of the actions of the Village of Vinton with this proceeding.

Statements of Position and Testimony

21. On January 31, 2023, EPE filed the direct testimonies of George Novela, EPE Director of Economic and Rate Research; Angelina Rodriguez, EPE Supervisor of Electrification; and Manuel Carrasco, EPE Manager of Rate Research.

22. On September 22, 2023, EPE filed the supplemental direct testimonies of Ms. Rodriguez and Mr. Carrasco.

23. On February 20, 2024, the following parties filed direct testimony: ev.energy and OPUC.

24. On February 20, 2024, the City of El Paso filed a Declaration of Rate Case Expenses in support of the city's expenses in this proceeding as of the date of the declaration.

25. On February 27, 2024, Commission Staff filed the direct testimony of Adrian Narvaez, an analyst in the Commission's rate regulation division.

26. On March 12, 2024, ev.energy filed cross-rebuttal testimony.

27. On March 12, 2024, EPE filed the rebuttal testimony of Mr. Novela, Ms. Rodriguez, and Mr. Carrasco.

Referral to SOAH for Hearing

28. On November 2, 2023, the Commission referred this docket to SOAH and filed a preliminary order specifying issues to be addressed in this proceeding.

29. In SOAH Order No. 4, issued on January 12, 2024, the SOAH ALJ provided notice of a hearing on the merits set for 9:00 a.m. on April 2, 2024, via Zoom videoconference.

30. The hearing on the merits convened and concluded on April 2, 2024.

31. At the hearing on the merits, the parties introduced their pre-filed testimony and other materials into evidence.

32. On April 18, 2024, parties filed initial briefs.

33. On May 2, 2024, parties filed reply briefs.

Overview of Proposed Pilot Programs

34. EPE projects that it will be serving approximately five megawatt of EV load by the end of 2025 and that the number of EVs and EV load will increase by approximately six-fold between 2025 and 2030 and by approximately 12-fold between 2025 and 2035.

35. 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.

36. EPE proposed four pilot projects related to EV growth in its Texas service area. Participation in each program is voluntary. At a very high level, the four pilot project programs can be summarized as follows:

- The EV Smart Rewards Pilot Program is a managed EV-charging program for residential customers.
- The Whole House EV Pilot Incentive Credit Rider encourages overnight EV charging, midnight to 8:00 a.m., by providing residential EV owners with an incentive credit on their bill for overnight electricity use.

- The PowerConnect Pilot Program is a credit rebate program for non-residential customers that supports utility-side-of-the-meter infrastructure related to EV charging.
- The Take Charge TX Pilot Program is a charging-as-a-service-agreement-based program for non-residential customers that supports, among other things, customer-side-of-the-meter infrastructure for EV charging.

37. In Senate Bill 1002, as reflected in Public Utility Regulatory Act (PURA) § 42.0101, the legislature found that (a) encouraging investment in the deployment of public EV charging stations is essential to foster the rapid installation and widespread use of public EV charging stations on property whose owners or tenants desire to install public EV charging stations and (b) 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 EV charging.

38. The PowerConnect and Take Charge TX Pilot Programs would help carry out the legislative goals stated in Senate Bill 1002.

39. Effective management of EV incremental load can result in downward pressure on electricity rates because incremental loads occurring during those times when there is available capacity in EPE's system, between late evening and early morning hours, has the potential to improve EPE's system load factor.

40. While EPE's existing rates encourage off-peak EV charging to some extent, the proposed pilot projects such as the Whole House EV Pilot Incentive Credit Rider and the EV Smart Rewards Pilot Program will provide further incentives to encourage off-peak EV charging.

41. The proposed pilot programs would enable EPE to obtain information and experience with the growing EV load and growing number of EV customers in its service area.

Smart Rewards Pilot Program

42. The EV Smart Rewards Pilot Program is a managed EV-charging program. Under the proposed program, EPE would provide incentives to residential

customers for enrolling and participating in the program to allow EPE to schedule at least 80% of their monthly charging each month during off-peak periods.

43. This program will help provide EPE with information and experience regarding customers' acceptance of utility-managed EV charging and the efficiency of such programs to optimize the use of existing infrastructure and minimize the required investment in additional infrastructure.

44. The pilot program will help EPE determine the appropriate incentive levels for any future managed-charging program.

45. The proposed incentive levels for enrollment were based on the median levels identified in a survey of forty managed charging programs in other states across the country and are consistent with the incentives levels initially offered by EPE in its smart thermostat program. The proposed event incentives were based on input from the project vendor selected to assist in operating the program.

46. The 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.

47. The proposed incentive levels for this pilot program are reasonable.

48. The budget for the EV Smart Rewards Pilot Program is $804,947. EPE is not seeking cost recovery in this proceeding but may seek recovery of actual program costs in a future rate proceeding.

49. In consideration of EPE's EV load projections and its incremental cost of capacity, the proposed budget is reasonable. However, the reasonableness of any costs actually incurred in the pilot program and sought for cost recovery in the future would be reviewed if presented in a future proceeding, and any such request for recovery of the pilot program costs would be subject to applicable ratemaking laws and rules.

50. EPE's proposed limitations on the EV Smart Rewards pilot, including its two-year duration, limitation to 880 customers, 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.

51. The proposed Schedule No. EVRS – EV Smart Rewards Pilot Program included as Exhibit AR-4 to the direct testimony of Ms. Rodriguez is reasonable and should be approved.

Whole House EV Pilot Incentive Credit Rider

52. The Whole House EV (WHEV) Pilot Incentive Credit Rider would provide a credit on the bills of residential EV-owner customers for their electricity use from midnight to 8:00 am. The purpose of the credit is to encourage EV charging during hours of low demand on the system.

53. EPE currently has a few rate schedules or options that could mitigate the costs of EV charging for customers, but there are challenges for customers to use these rate options.

54. EPE's current Schedule No. 01 – Residential Service includes three monthly rate options: Standard Service, Alternative Time of Day (TOD), and Demand Charge TOD.

55. The Standard Service Rate option is selected by most customers and consists of a monthly customer charge and a seasonal, inclining two-block energy charge.

56. The Alternative TOD Rate is an optional rate that consists of a monthly customer charge and energy charges that apply based on the day and time that usage occurs. The peak energy charge applies from 12:00 P.M. to 6:00 P.M. weekdays during the summer season, and the off-peak energy charge applies during all other hours of the year. The on-peak energy charge is more than three times the off-peak energy charge.

57. The Demand Charge TOD Rate is another optional rate that consists of a monthly customer charge, a demand charge, and energy charges that apply based on the day and time that usage occurs. The on-peak energy charge is almost four times the off-peak energy charge.

58. A residential EV-owner customer could expect to see an average increase in their monthly usage of 319 kilowatt-hours (kWh) because of EV charging. By comparison, based on recent data, a typical residential customer consumed a year-round monthly average of 681 kWh.

59. Under the Standard Service Rate option of Schedule No. 01, the incremental 319 kWh for EV charging will add $46.11 to the average residential monthly bill. Under the Alternative TOD Monthly Rate option, and if all charging is done during the off-peak hours, the incremental cost is $36.66; a savings of $9.45 from the Standard Service Rate. Those savings diminish rapidly, however, if any charging is done during on-peak hours.

60. EPE's Schedule No. EVC (Electric Vehicle Charging) is designed for EV charging and was initially approved in Docket No. 44941 and was approved again in EPE's most recent base rate case, Docket No. 52195. The rate schedule is available, on a voluntary basis, to residential and commercial customers that have a separately metered facility dedicated solely for the charging of electric vehicles. The schedule's rates and rate structure provide customers with price incentives to encourage the charging of electric vehicles during off-peak periods and dissuade customers from charging during summer on-peak periods, when EPE's generation system experiences its peak loads.

61. The typical incremental load of EV charging under Schedule No. EVC for a residential EV-owner customer costs $21.01 per month. That monthly cost is about $25 and $16 less than the additional cost for the same incremental load billed under the Schedule No. 01 Standard and Alternative TOD rate options, respectively.

62. EPE encourages EV-owner customers to consider selecting Schedule No. EVC, but, if Schedule No. EVC is not a practical option for the customer due to the cost of in-home wiring needed to support the additional meter required to take service under the rate schedule, then EV-owner customers are encouraged to sign up for service under a TOD rate option.

63. Personal or business circumstances may not allow some customers to take service under a TOD rate option. For example, although a customer can charge their EV during overnight hours, that customer may not be able to shift non-EV charging consumption (such as air conditioning) to off-peak hours. A

TOD rate option could potentially result in a significant increase in monthly electricity costs due to the electricity consumption during on-peak hours which the customer was unable to reduce or shift to the off-peak hours.

64. The WHEV Pilot Incentive Credit Rider offers an incentive to charge from midnight to 8:00 a.m. to residential EV-owner customers that cannot fully benefit from Schedule No. EVC or Schedule No. 01's TOD rate option.

65. Under the proposed WHEV Pilot, the customer (1) avoids the cost of having a second meter installed on their premises that is required to take service under Schedule No. EVC and (2) saves on their monthly electric bill if they charge their EVs during the overnight hours.

66. The proposed incentive benefits EPE's other customers by helping diminish the impact of EV charging on system peak demand.

67. EPE calculated the credit based on its incremental capacity cost and on load data for the residential rate class.

68. While the combination of the EPE's Schedule No. 01 energy charge for residential customers and the proposed WHEV incentive credit will result in a lower, net energy charge for each kWh consumed during the Super Off-Peak Period, the net energy charge will not be less than marginal cost, that is, not less than the residential rate class's variable operation and maintenance unit cost.

69. EPE will reevaluate the credit rate and participation in its next general rate case filing.

70. EPE projects that no material level of costs will be incurred for this pilot program.

71. The expected immaterial costs of the WHEV Pilot in conjunction with EPE's proposed limitations on the program, including that qualifying accounts must provide proof of EV registration annually, and EPE's proposal to reevaluate the credit rate and participation in its next general rate case filing are appropriate and sufficient conditions to ensure that Texas customers who have not subscribed to the pilot are not unreasonably affected by approval of the application.

72. The proposed Schedule No. WHEV – Whole House EV Pilot Incentive Credit Rate Rider included as Exhibit MC-3 to the direct testimony of Mr. Carrasco is reasonable and should be approved.

PowerConnect Pilot Program

73. The PowerConnect Pilot Program supports utility-side make-ready infrastructure by providing credit rebates for commercial customers who are installing EV charging infrastructure on their premises to help reduce the upfront cost of upgrades or improvements to EPE's distribution system that are required to support service to the EV charging infrastructure.

74. The PowerConnect Pilot will offer a rebate credit to help reduce or offset utility-side infrastructure costs of improvements to the distribution system up to the utility meter that are needed to support the customers' EV charging equipment. Ineligible equipment includes customer-side equipment.

75. The goal of the pilot is to be complementary to other available federal programs created through the Infrastructure Investment and Jobs Act, such as the National Electric Vehicle Infrastructure program for installation of charging stations by Texas Department of Transportation and the Clean School Bus program administered by Environmental Protection Agency.

76. Encouraging investment in the deployment of public EV charging stations, as this pilot would do, is also consistent with the legislative goals stated in PURA § 42.0101(b).

77. Program enrollments will be processed on a first-come, first-served basis and will terminate after two years unless extended in a future proceeding.

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

79. No more than 20% of the overall PowerConnect Pilot Program budget will be available to any one entity.

80. The budget for the pilot program is $3,095,950. EPE is not seeking cost recovery in this proceeding but may seek recovery of actual program costs in a future rate proceeding.

81. Through the PowerConnect Pilot, EPE proposes to subsidize the costs of make-ready infrastructure, but does not in this proceeding seek recovery of the costs of the subsidies through rates or charges for services provided by the electric utility's regulated services under PURA § 42.0103(d).

82. The distribution system upgrades or improvements referenced in the PowerConnect Pilot tariff, to the extent they are limited to customers that deploy public EV charging stations, qualify as make-ready infrastructure as defined in PURA § 42.0102(6).

83. Under the PowerConnect Pilot, EPE will not provide EV charging service to the public as defined in PURA § 42.0102(4).

84. Under the PowerConnect Pilot, EPE will not own or operate any public EV charging stations as defined in PURA § 42.0102(7).

85. 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.

86. EPE will not recover expenses for non-public EV charging stations under the PowerConnect Pilot.

87. The proposed Schedule No. PC – PowerConnect Pilot Program included as Exhibit AR-2S to the supplemental direct testimony of Ms. Rodriguez is reasonable and should be approved.

Take Charge TX Pilot Program

88. The Take Charge TX Pilot Program would allow EPE to enter an agreement with a commercial customer to provide services to support EV charging stations on the customer side of the meter. Under the proposed program, the customer can choose the desired EV infrastructure and equipment that could

be purchased, installed and operated by EPE, in whole or part, including a fully turnkey solution, to mitigate the challenge of managing EV charging stations installation and maintenance for the customer.

89. The Take Charge TX Pilot would allow a commercial customer to enter an agreement with EPE under which EPE may own or operate a public EV charging station on the person's property.

90. The Take Charge TX Pilot will be open to customers who take service under certain non-residential rate schedules including general service, small general service, large power, city and county service.

91. The program would be open to new customers for two years only.

92. Participating customers will be responsible for the full cost of the equipment and services provided during the term of the pilot program agreement.

93. Participants will pay a monthly fixed fee to EPE for the recovery of infrastructure and equipment costs over a customer-selected repayment term (between 1 year and 10 years) as well as operations and maintenance costs over the 10-year customer agreement term. The fee will enable EPE to recover the full cost of the equipment and services provided to the customer and avoid financial impact to EPE's non-participating customers.

94. During the term of the agreement, EPE will be responsible for equipment maintenance and operations to ensure EV equipment continues to be operable.

95. EPE is proposing a 10-year expected life of the EV Charging equipment for depreciation purposes. At the end of that expected life, the company will choose to either remove or abandon in place such equipment.

96. EPE will have a list of prequalified suppliers for both EV charging manufacturers and third-party installers. Customers will have a flexibility to choose the equipment and vendor that meets their needs. However, EPE will have the right to reject projects based on reliability concerns or unreasonable costs.

97. All marketing and educational materials for the Take Charge TX Pilot will be vendor neutral.

98. Participating customers will be responsible for setting a pricing policy for EV charging stations on their premises.

99. The budget for the Take Charge TX Pilot is $7,382,650. The full actual costs of the pilot will be paid by participating customers.

100. Costs associated with Schedule No. TCTX will only be charged to those customers that voluntarily elect to enroll in the Take Charge TX Pilot. 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.

101. EPE's accounting assumptions and proposed accounting treatment under this program are reasonable.

102. The Take Charge TX Pilot complies with the requirements of PURA § 42.0103(o) regarding site hosting agreements as follows:

    a. A person who is not an electric utility or an affiliate will be able to enter an agreement with EPE to own or operate a public EV charging station on the person's property.

    b. EPE will not be providing EV charging service to the public.

    c. EPE will not brand or market the public EV charging station as owned or operated by the utility, including by presenting the utility's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the public EV charging station.

    d. The contracting customer will solely determine the physical access to and use of the public EV charging station necessary to carry out responsibilities associated with ownership and operation of the public EV charging station; and prices for the EV charging service.

    e. The contracting customer will pay for all electric utility-related costs under the proposed tariff, and the tariff will provide for full recovery of the costs of the public EV charging station from the

contracting customer, including incremental revenues paid by the contracting customer to the utility associated with the EV charging service.

f. EPE may not collect outstanding fees incurred by customers under the Take Charge TX Pilot from EPE's non-participating customers.

103. EPE will offer service under the terms of the tariff to other persons seeking agreements in the EPE's service area on a nondiscriminatory basis under PURA § 42.0103(p)(1).

104. The revenue collected by EPE under each agreement with a participating person will allow the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public EV charging station from the person and not the utility's other customers under PURA § 42.0103(p)(2).

105. The proposed Schedule No. TCTX – Take Charge TX Pilot Program included as Exhibit MC-1S to the supplemental direct testimony of Mr. Carrasco is reasonable and should be approved.

Rate Case Expenses

106. The expenses included in the City of El Paso's Declaration of Rate Case Expenses are reasonable.

107. EPE may seek recovery of its own rate case expenses for this proceeding and any subsequent expenses of the City of El Paso in a future rate proceeding.

VII. CONCLUSIONS OF LAW

1. EPE is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).

2. The Commission has authority over this matter under PURA §§ 14.001, 32.001, 36.101 through 36.111, and 42.0103.

3. SOAH exercised jurisdiction over the proceeding under PURA § 14.053 and Texas Government Code §§ 2003.021 and 2003.049.

4. The application is sufficient under 16 Texas Administrative Code (TAC) § 22.75(d).

5. EPE provided adequate notice of the application in accordance with 16 TAC § 22.55.

6. The hearing on the merits was set, and notice of the hearing was provided, in compliance with PURA and Texas Government Code §§ 2001.051 and 2001.052.

7. The Commission processed this docket in accordance with the requirements of PURA, the Administrative Procedure Act, and Commission rules.

8. The rates approved by this Order are just and reasonable under PURA § 36.003(a).

9. In accordance with PURA § 36.003(b), the rates established by this Order are not unreasonably preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each class of customer.

10. The PowerConnect Pilot complies with PURA § 42.0103(d).

11. The Take Charge TX Pilot complies with PURA § 42.0103(o) and (p).

VIII. PROPOSED ORDERING PARAGRAPHS

In accordance with the above findings of fact and conclusions of law, the ALJs recommend the Public Utility Commission of Texas issue the following orders:

1. The Commission approves the application, including each of the four proposed pilot programs, to the extent provided in this Order.

2. Within ten days of the date this Order, EPE must file a clean copy of each of the four proposed pilot project tariffs with Central Records to be marked Approved and filed in the Commission's tariff book.

3. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

Signed June 28, 2024

Vasu Belara

Administrative Law Judge

Daniel Wiseman

Administrative Law Judge