



Filing Receipt

Filing Date - 2024-08-01 01:41:37 PM

Control Number - 54614

Item Number - 87

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

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

EL PASO ELECTRIC COMPANY’S EXCEPTIONS TO PROPOSAL FOR DECISION

El Paso Electric Company (EPE or the Company) files these its exceptions to the proposal for decision (PFD) and would respectfully show as follows:

I. EXCEPTIONS TO SECTION III.2.C

In section III.C.2 of the PFD, the administrative law judges (ALJs) addressed the issue of whether public school-bus and public transit electric vehicle (EV) charging should be treated as public EV charging in the context of EPE’s proposed PowerConnect Pilot Program. The PowerConnect Pilot provides rebates for utility-side make-ready infrastructure that is needed to support the installation of public EV charging stations. The program was initially proposed for approval under the Commission’s general authority to approve utility programs and services, but, in its 2023 session, the Texas Legislature expressly addressed make-ready-infrastructure subsidy programs for public EV charging stations in PURA Chapter 42.

As the ALJs noted, EPE, in its reply brief, urged the Commission to “conclude and clarify that public-school-district EV charging stations used for public school busses and public-transit EV charging stations used for public transit both constitute public EV charging stations in light of the public use of the public school busses and public transit.”¹

In response, the ALJs declined to recommend this conclusion, explaining that “the definition of a public EV charging station is unambiguous-it requires it be ‘accessible for commercial use by the public.’”² EPE believes, however, that the relevant issue is not ambiguity but rather a reasonable reading of “commercial use by the public.”

¹ PFD at 20-21.

² PFD at 21.

EPE notes that EPE direct testimony included letters of support from local school districts for the Company's application and for the PowerConnect Pilot in particular.³ Accordingly, this is an important issue to supporters of EPE's application in this docket. As described in direct testimony of Angelina Rodriguez, school districts interested in electrification of school buses that have applied for Clean School Bus Program⁸ with the Environmental Protection Agency ("EPA"), or intend to apply in the future program years, discovered that the EPA's funding does not cover any utility-side of the meter upgrades that may be needed to support the installation of charging stations.⁴ This is a significant barrier for schools when planning for their public electric school bus fleet electrification, which can be addressed by the proposed PowerConnect Program.⁵

As noted in the PFD, 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**" (Emphasis added.)

The ALJs' reading of the definition, however, ignores the public and commercial nature of EV charging by public entities for public transit and public-school busses. EV charging of public transit and public-school busses by public entities such as public school districts and public transit authorities constitutes commercial use by the public because these forms of transit are accessible by the public and the public pays for use of these forms of transit through a combination of direct user fees and taxes. The ALJs' construction of the statute effectively modifies the statute with a "*direct* commercial use by the *general* public" test that is simply not present in the text. Texas case law discourages the addition of words to a statute that are not present in the language approved by the legislature.⁶

Moreover, as reflected in EPE's initial application in this docket, which was filed prior to the passage of PURA Chapter 42, the Commission has the general authority to authorize the Take Charge TX and PowerConnect pilots to support EV charging at all sites allowed under the initially proposed schedules, including for charging stations at or for multi-unit dwellings, fleets, public

³ See Direct Testimony of Angelina Rodriguez, EPE Ex. 4, at Exhibit AR-1.

⁴ EPE Ex. 4 at 11:12-16.

⁵ *Id.* at 11:25-12:9.

⁶ *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 508-9 (Tex. 2015).

school buses, and public transit. EPE does not except to the limitation of these programs as to multi-unit dwellings and fleets, but it would ask the Commission to clarify that public school buses and public transit may take advantage of the PowerConnect Pilot because the public's use of public school buses and public transit is reasonably construed as commercial use of the EV charging stations that are used to charge these vehicles.

II. CONCLUSION

EPE requests that the Commission (1) approve the PFD in all respects except for the ALJs' conclusion that public EV school bus and public transit vehicle charging would not constitute public EV charging, (2) modify the PFD to reflect that public EV school bus and public transit charging stations would constitute public EV charging stations, and (3) grant such further relief to which EPE is duly entitled.

Respectfully submitted,

/s/Rosanna Al-Hakeem

Rosanna Al-Hakeem

State Bar No. 24097285

El Paso Electric Company

P.O. Box 982

El Paso, Texas 79960

P: (915) 521-4664

E: rosanna.alhakeem@epelectric.com

Everett Britt

State Bar No. 24001789

Duggins Wren Mann and Romero, LLP

P.O. Box 1149

Austin, Texas 78767

P: (512) 744-9300

F: (512) 744-9399

E: ebritt@dwmrlaw.com

**ATTORNEYS FOR EL PASO ELECTRIC
COMPANY**

CERTIFICATE OF SERVICE

I certify that on August 1, 2024, a true and correct copy of this document was served on all parties of record by electronic service consistent with the Commission's Second Order Suspending Rules filed on July 16, 2020, in Project No. 50664.

/s/Rosanna Al-Hakeem
Rosanna Al-Hakeem