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STATEMENT OF INTENT AND	§	PUBLIC UTILITY COMMISSION
APPLICATION OF EL PASO	§	
ELECTRIC COMPANY FOR	§	OF TEXAS
APPROVAL OF TEXAS ELECTRIC	§	
VEHICLE-READY PILOT PROGRAMS	§	
AND TARIFFS	§	

COMMISSION STAFF’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION

On January 31, 2023, El Paso Electric Company (EPE), filed a statement of intent and application with the Public Utility Commission of Texas (Commission), seeking approval of its proposed Texas electric vehicle (EV)-ready pilot programs and tariffs, which include the (1) EV Smart Rewards Pilot Program, (2) Whole House EV (WHEV) Pilot Incentive Credit Rider, (3) the PowerConnect Pilot Program, and (4) the Take Charge TX (TCTX) Pilot Program.

On June 28, 2024, the administrative law judges (ALJ) from the State Office of Administrative Hearings (SOAH) filed a Proposal for Decision (PFD) in this docket, and on July 15, 2024, Commission Counsel filed an Exceptions and Replies Memorandum, establishing a deadline of August 1, 2024 to file exceptions to the PFD. Therefore, this pleading is timely filed.

Commission Staff (Staff) is grateful for the reasoned consideration of the SOAH ALJs. This proceeding presented novel issues and the ALJs have carefully considered each of the issues in this proceeding. While Staff agrees with limited portions of the PFD regarding 1) the inapplicability of the PowerConnect Pilot Program and the TCTX Pilot Program to EPE’s customers that intend to use non-public EV charging stations, pursuant to relevant provisions under PURA¹ §§ 42.0102 and 42.0103, and 2) the prohibition imposed on the TCTX Pilot program to the recovery of unrecovered costs (bad debt) from non-participating customers,² Staff respectfully excepts to the remainder of the PFD and the ALJs’ recommendations that the EV-ready pilot programs and tariffs be approved.

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

² Proposal for Decision at 19-21, 28-29, and 32-33 (Jun. 28, 2024) (PFD).

II. EV RATE CLASS RECOMMENDATION

As an initial matter, Staff addresses its recommendation that it is much more reasonable, if not necessary, for EPE to establish a separate EV rate class to implement these pilot programs and tariffs where EV-specific policies are embedded into rates.³ Notably, each of EPE's EV-ready pilot programs and tariffs inherently entail various forms of preferential treatment that are not applicable to other customers within the same class and result in subsidies that are applied to EV customers at the expense of non-EV customers.⁴ Specifically, in terms of facilitating certain consumption patterns, there is preferential treatment, because despite the fact that there are other customers who may have similar usage characteristics as EV customers, the proposed discounts and incentives are only available to EV customers.⁵ In terms of promoting adoption of EV charging facilities and technologies, proposals inevitably result in the discriminatory policy of subsidizing EV customers by shifting costs to other customers.⁶ Further, there are costs unique to EV customers that do not provide benefits to EPE's distribution system as a whole, and the subsidization of potentially large loads by EV customers might in the long run reduce the resiliency and reliability of EPE's system.⁷

Even if EPE commits to recovering the costs of these programs from participating customers or the Commission conditions approval in that regard, such conditions would not necessarily prevent the non-participating customers from potentially bearing some of the costs.⁸ When it comes time to review and reconcile these costs in a major electric rate proceeding, there is only a limited time window in which to review, opine, and decide on issues related to these costs.⁹ However, in addition to the costs of these non-standard programs, there many other utility-specific nonstandard programs, as well as incremental cost recovery riders, that have been approved or expanded, such that the Commission runs the risk of unreasonably burdening itself in future rate proceedings from being able to sufficiently review every EV-related cost.¹⁰

³ Commission Staff's Initial Brief at 8-11 (Apr. 18, 2024) (Staff's Initial Brief).

⁴ *Id.* at 8.

⁵ *Id.* at 8-9.

⁶ *Id.* at 9.

⁷ *Id.* at 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 10.

Instead, establishing a separate EV rate class would 1) be consistent with well-established ratemaking practice, 2) provide more transparency for the Commission and stakeholders in the review of costs, and 3) more reasonably facilitate compliance with PURA and Commission rules.¹¹ More specifically, it would enable EPE to provide rate structures for EV customers in a manner that is based on costs, because EV-specific costs would be assigned or allocated to, and recovered from, EV customers, which is the same treatment applied to Street and Outdoor lighting customers by all regulated utilities in Texas.¹² Similar to lighting service, there are unique infrastructure and equipment related to providing EV-related services to EV customers, and an EV rate class can provide various rate structures based on different equipment, such that rate options can be available for all residential and non-residential EV customers in a non-discriminatory manner.¹³

With that said, Staff acknowledges that the ALJs declined to recommend imposing conditions for EPE to establish a separate EV rate class in this proceeding,¹⁴ in part on the basis that such a condition is premature at this time.¹⁵ Given that EPE has indicated an intention to file a rate case later this year, EPE could establish the rate class in that proceeding, such that there should not be a concern about the delay in being able to implement these EV-related services through an EV rate class rather than through EPE's proposed pilot programs and tariffs.¹⁶ Alternatively, EPE may seek approval of a separate EV rate class outside of its base rate case.¹⁷ Further, EPE may also, as necessary, seek approval to establish additional EV rate options outside of a base rate case, such that additional options for EV-related services, infrastructure, and equipment may be added, as necessary, in the future on an expedited basis.¹⁸ Notwithstanding the foregoing options, to the extent that the Commission determines to approve EPE's application, Staff recommends that EPE be required to establish a separate EV rate class in a future rate proceeding so that the costs for these programs are recovered only from an EV rate class.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 10-11.

¹⁴ PFD at 17, 26, and 31.

¹⁵ *Id.* at 26.

¹⁶ Staff's Initial Brief at 11.

¹⁷ *Id.*

¹⁸ *Id.* (citing to Docket Nos. 42742, 50786, and 54241).

III. EXCEPTIONS

A. EV Smart Rewards Pilot Program

Staff excepts to the ALJs' analysis to support the finding that the EV Smart Rewards Pilot Program is consistent with PURA and Commission rules.¹⁹ Specifically, the ALJs cite to PURA § 36.204, which relevantly provides that, in establishing rates for an electric utility, the Commission may 1) allow timely recovery of the reasonable costs of load management and 2) authorize additional incentives for load management.²⁰ Regarding the latter, Staff agrees with the PFD that, in authorizing recovery of "additional incentives, the Legislature did not envision that load management must adhere to strict cost recovery requirements."²¹ However, Staff disagrees in the types of additional incentives that may be authorized by the Commission. Specifically, based on the ALJs' conclusion that a total imposition of the costs on participating customers is not reasonable,²² Staff understands the incentives in this proceeding to which the ALJs are referring are the ability for EPE to spread the costs of the EV Smart Rewards Pilot Program to non-participating customers.²³

Notwithstanding the fact that the ALJs ultimately recommended that such a determination as from whom EPE may recover costs should be deferred to a future rate proceeding,²⁴ Staff recommends that the "additional incentives" under PURA § 36.204 are more akin to authorizing an electric utility to recover additional costs that are not necessary to implement a load management program, but that are authorized to incentivize an electric utility to implement such a load management program. As an example, Staff notes that the Legislature established goals for energy efficiency under PURA § 39.905, which the Legislature directed the Commission to adopt rules to establish 1) an energy efficiency cost recovery factor (EECRF) to ensure timely recovery of reasonable costs, pursuant to PURA § 36.204, and 2) incentives under PURA § 36.204 to reward utilities administering energy efficiency programs that exceed minimum goals.²⁵

¹⁹ PFD at 10-12.

²⁰ *Id.* at 10-11 (citing to PURA § 36.204).

²¹ *Id.* at 11.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *See* PURA § 39.905(b)(1)-(2).

Pursuant to that directive, the Commission has interpreted that a performance bonus, currently under 16 Texas Administrative Code (TAC) § 25.182(e), is the type of incentive under PURA § 39.905(b)(2) that the Legislature intended for the Commission to establish, pursuant to PURA § 36.204, to reward utilities that exceed the statutory energy efficiency goals.²⁶ Accordingly, the incentive must be something that can be recovered by an electric utility that goes beyond the reasonable costs associated with load management. In this circumstance, however, EPE will not be able to recover more than the reasonable costs associated with the EV Smart Rewards Pilot Program. As such, if the Commission were to approve the EV Smart Rewards Pilot Program and allow EPE to recover costs from non-participating customers, such approval would not be authorizing additional incentives for load management under PURA § 36.204(2).

Furthermore, Staff would also note that the Legislature also directed the Commission to ensure that the costs and incentives associated with the energy efficiency programs are borne by the customer classes that receive the services under the programs.²⁷ Pursuant to the directive, 16 TAC § 25.182(d), related to EECRF cost recovery, requires an EECRF to directly assign costs to the participating rate classes to the maximum extent reasonably possible.²⁸ Additionally, in contrast to the ALJs' discussion of the system-wide benefits that may be received through the EV Smart Rewards Pilot Program,²⁹ that such system-wide benefits may be realized does not mean that EPE should not adhere to cost causation principles in terms of imposing the costs of the program on participating customers or at least on the class of eligible customers. Specifically, despite the same arguments made by the utilities regarding system-wide benefits of energy efficiency programs, the Commission stated the rule should require direct assignment and allocations of costs based on cost causation and not receipt of benefits.³⁰

This conclusion about the direct assignment and allocation of costs to the rate classes in the context of the energy efficiency programs should be informative in whether non-participating

²⁶ See *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Project No. 37623, Order Adopting Amendment to § 25.181 as approved at the July 30, 2010 Open Meeting at 76 (Aug. 9, 2010) (discussing 16 TAC § 25.181(h), the predecessor to 16 TAC § 25.182(e)).

²⁷ PURA § 39.905(b)(4).

²⁸ 16 TAC § 25.182(d)(2).

²⁹ PFD at 11.

³⁰ See *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Project No. 39674, Order Adopting Amendments to § 25.181 as approved at the September 28, 2012 Open Meeting at 91-93 (Oct. 17, 2012).

customers should be included in the assignment of costs related to the EV Smart Rewards Pilot Program. Specifically, because the program is only available to residential customers, the residential rate class is the only class that will have eligible customers, such that costs at least should not be spread amongst the other classes. Additionally, 16 TAC § 25.182(c)(2) provides further guidance that rate classes and the direct assignment of costs to participating rate classes do not include non-eligible customers within a particular rate class.³¹ Accordingly, within the residential rate class, the only eligible customers would specifically be EV owners, such that costs should not be shifted onto non-EV owners, who are the non-eligible customers.

Aside from Staff's exceptions related to the analysis of PURA § 36.204 and cost recovery conditions, or lack thereof, Staff also excepts to the ALJs' analysis that the EV Smart Rewards Pilot Program is not unreasonably discriminatory or preferential.³² Specifically, the ALJs seemingly focus on EPE's argument that it is reasonable to provide incentives only to eligible EV customers.³³ EPE and the ALJs, however, do not address Staff's argument that there is not only discriminatory treatment towards non-eligible customers, but also towards eligible customers that do not or are not able to enroll.³⁴ Specifically, the incentive payments represent special treatment for those enrolled in the program to the disadvantage of other customers that do not enroll, including other eligible customers with similar EV usage but that are not enrolled.³⁵ Unlike PURA § 39.905,³⁶ there is not any statutory provision related to EV load management that controls over PURA § 36.003 and that would allow EPE to provide this preferential and discriminatory treatment.

Lastly, Staff excepts to the ALJs' conclusion that the incentives, at least at this time, do not need to be cost-based. Specifically, as stated in the PFD, because the purpose of the pilot program is to obtain further information on the appropriate levels of incentives for this program, it is unreasonable to expect a direct correlation between savings and incentives.³⁷ However, as noted

³¹ See also 16 TAC § 25.181(c)(11).

³² PFD at 12.

³³ *Id.* at 10.

³⁴ Commission Staff's Reply Brief at 5 (May 2, 2024) (Staff's Reply Brief).

³⁵ *Id.*; see also Staff's Initial Brief at 8.

³⁶ See Project No. 39674, Order Adopting Amendments to § 25.181 as approved at the September 28, 2012 Open Meeting at 48 and 52.

³⁷ PFD at 12.

by OPUC, that the incentives for pilot program should not alleviate the responsibility for the incentives to be cost-based.³⁸ Furthermore, that EPE based the incentive payments to participating customers merely on the range of incentives offered by other utilities under other similar programs does not mean such incentives in these other programs were not cost-based.³⁹ In fact, EPE did not even attempt to determine how the other incentives were established,⁴⁰ such that EPE has not sufficiently carried its burden to demonstrate that the incentive payments for the EV Smart Rewards Pilot Program were reasonably developed. And in contrast to the ALJs' finding that it is appropriate to set the incentives at levels the utility can reasonably expect to elicit desired behaviors,⁴¹ the ability to reach participation goals is not dependent on the type and size of the incentives offered.⁴²

Overall, the preceding exceptions demonstrate that requiring EPE to establish a separate EV rate class would be more reasonable, and to a certain extent necessary, than approving the EV Smart Rewards Pilot Program in this proceeding.

B. Whole House EV Pilot Incentive Credit Rider

As an initial matter, Staff excepts to the ALJs' analysis of the WHEV Pilot Incentive Credit Rider under PURA § 36.204.⁴³ Importantly, the WHEV Pilot program is not a load management program, but merely a blanket credit rate available only to a subset of customers with a high-consuming electrical device applying to all overnight electricity usage and not just EV usage. Such a blanket overnight credit rate does nothing to reduce the incentive for customers to impose load on the system at the time of EPE's system peak, an important aspect of any load management program. Accordingly, PURA § 36.204 does not apply in this context. However, to the extent the Commission determines otherwise, the type of "additional incentive" referenced in the PFD, for EPE to promote the goal of load management, is not a type of "additional incentive" the Legislature intended under PURA § 36.204. As discussed above, Staff recommends that the "additional

³⁸ OPUC's Post-Hearing Reply Brief at 3 (May 2, 2024).

³⁹ OPUC's Post-Hearing Initial Brief at 5-6 (Apr. 18, 2024).

⁴⁰ *Id.*

⁴¹ PFD at proposed Finding of Fact No. 46

⁴² OPUC's Post-Hearing Initial Brief at 6.

⁴³ PFD at 17.

incentives” must be something that can be recovered by an electric utility that goes beyond the reasonable costs associated with load management. In this circumstance, however, EPE will not be able to recover more than the reasonable costs, if any, associated with the WHEV Pilot Incentive Credit Rider.

Staff also excepts to the finding that because the credits are cost-based and because EPE does not anticipate incurring any material incremental costs, the effect on non-participating ratepayers should be minimal.⁴⁴ Staff disagrees with this assessment, as EPE’s rates without the discount were established by the Commission based on cost. The implicit claim that a customer who owns an EV imposes a lower level of cost on the system by running their dishwasher at 9pm than a customer who does not own an EV and who runs their identical dishwasher at 9pm defies logic. If increased usage during the off-peak hours does not cause EPE to incur any material incremental costs, then the rate credit should be made available to all customers and not just customers with EVs. Additionally, because the rider does not require a customer to have a separate meter that specifically measures only for EV energy consumption, it is logically impossible for EPE to disaggregate the EV energy consumption from the non-EV energy consumption behind a customer’s meter, such that the rider will unreasonably subsidize the non-EV energy consumption for the enrolled customers at the expense of other customers.⁴⁵ Conversely, any non-participating customer who chooses to use large amounts of electricity in off-peak hours would not receive the benefits of the program even if their electrical usage is identical to a program participant.⁴⁶

Ultimately, such subsidization is 1) outside the scope of the program and 2) blatantly an unreasonably discriminatory and preferential, as any benefits with off-peak energy usage should accrue to all customers with such usage patterns and not just the EV-owing customers.⁴⁷ In addition to the subsidization of non-EV energy consumption, there will be additional costs that could be passed onto non-participating customers in the form of reduced revenues that would otherwise be collected from the participating customers and such reduced revenues apply equally to both EV and non-EV energy consumption.⁴⁸ Furthermore, EPE did not provide a clear proposal

⁴⁴ *Id.*

⁴⁵ Staff’s Initial Brief at 12.

⁴⁶ Staff’s Reply Brief at 7.

⁴⁷ Staff’s Initial Brief at 13.

⁴⁸ Staff’s Reply Brief at 7.

in this proceeding as regards to how the cost of the incentive credits will be recovered. Accordingly, in contrast to the ALJs' findings, the effect on non-participating customers will not be minimal.⁴⁹ This is especially true since the ALJs do not recommend imposing any conditions regarding the segregation of cost recovery.⁵⁰

Lastly, the rider is entirely unnecessary, because EPE's existing Time of Day rate options already serve the purpose of incentivizing customers to use energy during off-peak times in a non-discriminatory manner, by providing for lower rates in off-peak times independent of any discriminatory requirement that the customer own an EV or other high energy usage appliance.⁵¹ To provide additional incentives for off-peak energy usage to a select group of customers is unreasonably preferential and discriminatory.⁵² EPE, as the party that bears the burden of proof, has failed to properly explain why the existing tariffs available to residential EV customers do not properly incentivize some customers to shift their charging to off-peak hours. EPE has also failed to demonstrate why modifications to the rate design applicable to all customers, such as mandatory demand charges or adjustments to the time-of-use rate design, would not better serve the goal of encouraging a shift of electric consumption from on-peak periods to off-peak periods in a non-discriminatory manner.⁵³ While the stated purpose of this program is to make off-peak EV charging available to customers who cannot afford to install a second EV meter, a second meter is unnecessary in order to take service under EPE's existing Time of Day rate options.

To the extent that the Commission determines the rider is reasonable, insofar as it seeks to reach EV customers who may not be able to afford the cost of installing a separate EV meter or who would be disinclined to use EPE's other time-of-use rate options,⁵⁴ Staff recommends that it would be more reasonable and appropriate to require EPE to establish such an on-demand option, like the WHEV Pilot Incentive Credit Rider, in a separate EV rate class. Particularly, such a requirement, in lieu of approving the rider, would help to ensure that any costs associated with off-peak credits could be properly included in rates recovered from EV customers.

⁴⁹ PFD at 17.

⁵⁰ *Id.*

⁵¹ Staff's Initial Brief at 13.

⁵² Staff's Reply Brief at 7.

⁵³ *Id.*

⁵⁴ PFD at 17.

C. PowerConnect Pilot Program

1. Subsidies – PURA § 42.0103(d)

Staff agrees with the ALJs' conclusion that PURA § 42.0103(d) is permissive and does not outright authorize or allow a utility to subsidize make-ready infrastructure for public EV charging stations.⁵⁵ However, Staff excepts to the extent that the PFD does not address or consider that PURA § 42.0103(d) should be read in context with PURA § 36.003 and 16 TAC § 25.234(a), which require that rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of customer.⁵⁶ Further, consistent with the ALJs' conclusion related to the TCTX Pilot Program and that such offerings for non-public EV charging stations and infrastructure be left to the competitive private market,⁵⁷ Staff recommends that, to the extent that Staff's exceptions to the overall approval of the PowerConnect Pilot Program are not granted, the ALJs revise proposed Finding of Fact No. 86 to state that EPE may not offer the PowerConnect Pilot Program to customers that will only be using non-public EV charging stations.⁵⁸

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

Staff agrees with the ALJs' conclusion that the scope the PowerConnect Pilot Program should be limited to customers that will use the make-ready infrastructure for purposes of deploying a public EV charging station that will be accessible for commercial use by the public,⁵⁹ meaning the participating customer will need to provide EV charging services to the public.

Furthermore, in response to the ALJs' potential inquiry into whether the proposed subsidies for servicing non-public EV charging stations are appropriate incentives under PURA § 36.204,⁶⁰ Staff recommends that allowing EPE to subsidize make-ready infrastructure for non-public EV charging stations is not associated with conservation, load management, purchased power, and renewable resources, as required under PURA § 36.204. Further, even if the Commission

⁵⁵ *Id.* at 17-18.

⁵⁶ Staff's Initial Brief at 14.

⁵⁷ PFD at 29.

⁵⁸ *Id.* at proposed Finding of Fact No. 86 (stating only that EPE will not recover expenses for non-public EV charging stations).

⁵⁹ *Id.* at 19-21 (citing to PURA § 42.0102(6)-(7)).

⁶⁰ *Id.* at 20, footnote 48.

determines otherwise, the potential incentive is not the type of “additional incentive” the Legislature intended under PURA § 36.204. Specifically, as discussed above, Staff recommends that the “additional incentives” under PURA § 36.204 must be something that can be recovered by an electric utility that goes beyond the reasonable costs associated with conservation, load management, purchased power, and renewable resources. In this circumstance, however, EPE will not be able to recover more than the reasonable costs associated with the PowerConnect Pilot Program.

Separately, Staff excepts to the ALJs’ conclusion that EPE met its burden to show that the affected distribution system upgrades and improvements fall within the category of make-ready infrastructure.⁶¹ Specifically, by generally stating that the program offers rebate credits for “distribution system upgrades or improvements necessary to provide electric vehicle charging capabilities,”⁶² EPE has failed to state whether such distribution system upgrades or improvements are limited site-specific electrical infrastructure, as required by PURA § 42.0102(6)(A).

3. Cost Recovery

Staff excepts to the ALJs’ determination to defer cost recovery to a future rate proceeding despite Staff’s contention that the PowerConnect Pilot Program does not comply with the requirements in PURA § 36.003 and 16 TAC § 25.234(a) that rates be based on cost.⁶³ Specifically, because participating customers would not be required to pay for the costs that they are causing EPE to incur, the program improperly provides subsidies to participants in violation of PURA and Commission rules.⁶⁴ And that the subsidies may benefit all customers, as suggested by EPE,⁶⁵ does not mean that the Commission should not require direct assignment and allocations of costs based on cost causation and not receipt of benefits, as discussed above.⁶⁶

In addition to EPE’s proposed subsidies, there are state and federal subsidies already available to potential participants, such that adding another subsidy through EPE’s PowerConnect

⁶¹ *Id.* at 19 and 20, footnote 48.

⁶² *Id.* at 19.

⁶³ *Id.* at 23.

⁶⁴ Staff’s Initial Brief at 14-15.

⁶⁵ PFD at 25.

⁶⁶ *Supra* note 30.

Pilot Program may lead to over-investment in EV-related infrastructure and costs that is likely to eventually harm the broader body of ratepayers.⁶⁷ Ultimately, EPE failed to demonstrate that adopting the PowerConnect Pilot Program helps to provide adequate electric service instead of merely promoting EV adoption through subsidies provided to program participants at the expense of other ratepayers.⁶⁸

4. Effect on Non-Participating Customers

Staff excepts to the ALJs' finding that there is no immediate impact to rate base at this time and that it is premature to determine such impacts at this time.⁶⁹ Conversely, the preliminary order in this proceeding required SOAH to address the impacts on current customers who subscribe to the program and those who do not subscribe if the program is approved.⁷⁰ Further, by not determining the appropriate cost recovery at this time, there is no guarantee that the Commission or parties in a future rate proceeding will be able to sufficiently review costs from this program and ensure that customers who have not subscribed are not unreasonably affected by approval of the program.⁷¹

Instead, in lieu of approving the PowerConnect Pilot Program in this proceeding, it would be more reasonable to require EPE to establish a separate EV rate class to 1) prevent the risk of the Commission becoming overburdened by a review of EV-related costs amongst other costs in a future rate proceeding and 2) address EPE's concerns in this proceeding or a future rate proceeding with any potential requirement that EPE must recover the program costs from only participating customers.⁷² Regarding the latter, a separate EV rate class would include both residential and non-residential customers that are separately eligible for EPE's various programs and tariffs.

⁶⁷ Staff's Initial Brief at 15.

⁶⁸ Direct Testimony of Adrian Narvacz, Staff Exhibit No. 2 at 10:16-19.

⁶⁹ PFD at 25.

⁷⁰ Preliminary Order at Issue Nos. 25 and 26 (Nov. 3, 2023).

⁷¹ *Supra* notes 8, 9, and 10.

⁷² PFD at 25.

D. Take Charge TX Pilot Program

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

Staff agrees with the ALJs' conclusions that the TCTX Pilot Program only complies with PURA § 42.0103(o) to the extent that it is used for agreements to develop public EV charging stations, but does not comply to the extent a customer does not make the charging station available for commercial use by the public.⁷³ Further, Staff agrees that, in regard to non-public EV charging stations, ownership of such facilities and infrastructure should be left to the competitive private market.⁷⁴ In contrast, allowing EPE to offer the TCTX Pilot Program to such customers would allow EPE to inappropriately provide a competitive service in a manner not authorized by Chapter 42 of PURA.⁷⁵

The PFD, however, does not include a proposed finding of fact related to this conclusion for the TCTX Pilot Program. Accordingly, Staff recommends that, to the extent that Staff's exceptions to the overall approval of the TCTX Pilot Program are not granted, the ALJs include a finding of fact stating that EPE may not offer the TCTX Pilot Program to customers that will only be using non-public EV charging stations.

2. Rates

Staff excepts to the ALJs' conclusion that the TCTX Pilot Program and tariff reasonably balances clarity, transparency, and the full-cost-recovery requirements of PURA § 42.0103(p)(2).⁷⁶ Notably, the requirement under PURA § 42.0103(p)(2) that the utility must only recover the costs of "owning, constructing, financing, or operating, and maintaining the public EV charging station" from the participating customer and not the utility's other customers relates to the requirement under PURA § 42.1013(o)(3) that a tariff must provide for "full recovery of the costs of the public EV charging station" from the participating customer.⁷⁷ Accordingly, "all

⁷³ *Id.* at 29.

⁷⁴ *Id.*

⁷⁵ Staff's Initial Brief at 19.

⁷⁶ PFD at 31.

⁷⁷ Staff's Reply Brief at 9.

electric utility-related costs” include both TCTX Pilot Program related costs, as well costs associated with base rates and non-fuel firm rate schedules.⁷⁸

The Legislature would not have distinguished the two categories of costs for no reason, and it is contrary to the principles of statutory interpretation for EPE to equate the two.⁷⁹ Even if, assuming *arguendo*, EPE has appropriately characterized the electric utility-related costs, OPUC pointedly indicates that EPE’s proposal has not ensured that participating customers will pay an appropriate share of overhead and indirect and incremental costs that are being subsidized by all other customers but that will be necessary to serve only the participating customers.⁸⁰ In fact, that such costs are necessary to provide service to participating customers under the TCTX Pilot Program demonstrates that such costs should ultimately be recovered from only the participating customers rather than being subsidized by all of EPE’s customers.⁸¹ Notably, such a finding would comport with cost causation principles and 16 TAC § 25.234(a).⁸²

Notwithstanding the foregoing discussion demonstrating that the TCTX Pilot Program is, on its face, not based on cost causation principles, the TCTX Pilot Program does not comply with Chapter 42 of PURA in terms of ensuring transparency in prices, because the program relies on non-standard pricing tailored to individual customers for both the monthly charge, as well as the fixed operations and maintenance charge.⁸³ To comply with PURA § 36.003 and 16 TAC § 25.234(a), EPE’s rates must be examined to ensure they are just, reasonable, non-discriminatory, non-preferential, and based on cost.⁸⁴ EPE’s proposed customer-specific pricing, however, would severely impair the ability of the Commission and intervenors to fully evaluate EPE’s costs and revenues associated with Schedule No. TCTX.⁸⁵ Therefore, it would significantly interfere with the ability of the Commission and stakeholders to determine whether any undue cross-subsidization, or other form of discriminatory or preferential treatment, was occurring under the

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* (citing to OPUC’s Post-Hearing Initial Brief at 19).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Staff’s Initial Brief at 19-20.

⁸⁴ *Id.* at 20.

⁸⁵ *Id.*

application of Schedule TCTX.⁸⁶ Instead, Staff continues to believe that a more reasonable approach would be to establish a separate EV rate class similar to the manner in which lighting rates are treated.⁸⁷ EPE contends that Staff's proposal would not account for variations in costs among program participants, including accounting for inflation in charging station prices and ongoing changes in EV charging equipment technology.⁸⁸ However, this assertion ignores the fact that Staff's proposal would allow EPE the possibility of providing rate structures tailored to various EV customers, just like EPE's lighting class provides various rate options tailored to various lighting customers despite ongoing inflation and changes in lighting equipment technology.⁸⁹ EPE also fails to demonstrate how the effect of inflation in charging station prices and the ongoing changes in EV charging equipment technology differ in any meaningful way with the effect that inflation and technological innovation will have in every other facet of EPE's provision of electric service.

In turn, EPE disregards that, despite the effects of inflation and technological innovation, other facets of EPE's provision of electric service do not automatically adjust and pass through to customers changes in the costs of such service. Specifically, pursuant to PURA § 36.201, the Commission is prohibited from establishing a tariff that would authorize an electric utility to make and pass through such automatic adjustments, except as permitted by PURA § 36.204. As discussed previously within the context of the PowerConnect Pilot Program, PURA § 36.204 similarly would not apply for TCTX Pilot Program, because the reasonable costs for the program are not for conservation, load management, purchased power, or renewable resources. Accordingly, consistent with other facets of EPE's provision of electric service, EPE should be prohibited from automatically adjusting and passing through to customers any changes in EV charging station and infrastructure costs. Staff's proposal would thus comply with PURA § 36.201, while EPE's proposed Schedule No. TCTX would effectively violate PURA § 36.201.

⁸⁶ *Id.*

⁸⁷ *Id.* at 10.

⁸⁸ PFD at 31.

⁸⁹ Staff's Initial Brief at 10.

Ultimately, EPE ignores the fact that Staff's proposal to establish a separate EV rate class is consistent with well-established ratemaking practice, is more transparent for all stakeholders, and would more reasonably facilitate compliance with PURA and Commission rules.⁹⁰

3. Cost Recovery

Aside from the exceptions discussed in the preceding subsection, Staff agrees with the conclusion that the Commission should prohibit EPE from recovering unrecovered TCTX Pilot Program costs from non-participating customers to ensure compliance with PURA § 42.0103(p)(2).⁹¹ Importantly, because these costs are not ultimately needed for the functioning of EPE's system in the provision of standard utility service, it would not be reasonable to shift any unrecovered bad debt expenses onto non-participating customers.⁹²

IV. CONCLUSION

Based on the foregoing discussion, Staff excepts to the PFD's recommendations and findings that EPE's EV-ready pilot programs and tariffs should be approved. Instead, if the Commission desires to establish or facilitate EV-specific treatments in EPE's rates and tariffs, EPE should be allowed to request the establishment of an EV rate class in a future proceeding. Staff respectfully requests that these exceptions to the PFD and Staff's recommendations for an EV rate class be taken into consideration.

⁹⁰ *Id.*

⁹¹ PFD at 33.

⁹² Staff's Initial Brief at 21.

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Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on August 1, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles