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<b>APPLICATION OF EL PASO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC COMPANY FOR</b>	<b>§</b>	
<b>APPROVAL OF TEXAS ELECTRIC</b>	<b>§</b>	<b>OF TEXAS</b>
<b>VEHICLE-READY PILOT</b>	<b>§</b>	
<b>PROGRAMS</b>	<b>§</b>	

**EL PASO ELECTRIC COMPANY’S REPLIES TO EXCEPTIONS**

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## **EPE'S REPLIES TO EXCEPTIONS**

El Paso Electric Company (EPE or the Company) files this its replies to the exceptions filed by Commission Staff and the Office of Public Utility Counsel (OPUC) and would respectfully show as follows:

### **I. INTRODUCTION**

On August 1, 2024, Commission Staff filed exceptions to the proposal for decision (PFD) issued by the administrative law judges (ALJs) on June 28, 2024. On August 12, 2024, OPUC filed its exceptions. Pursuant to the Exceptions and Replies Memo issued by Commission Counsel on August 1, 2024, these replies are due August 19, 2024.

### **II. BACKGROUND AND REPLY TO STAFF'S EV RATE CLASS RECOMMENDATION**

As detailed in EPE's testimony and briefing, customers and communities in EPE's service area are purchasing electric vehicles (EVs) in increasing numbers.<sup>1</sup> 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 in the future is integrated efficiently with the grid.<sup>2</sup>

As a means of taking a proactive role, EPE filed its application in this proceeding on January 31, 2023, proposing four EV-related pilot programs. 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 where participating customers allow EPE to directly control the timing of their EV charging at home.
- The Whole House EV Pilot Incentive Credit Rider encourages overnight charging of EVs, from midnight to 8 am, 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 commercial customers that supports utility-side-of-the-meter infrastructure related to public EV charging stations.<sup>3</sup>

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<sup>1</sup> Direct Testimony of George Novela, EPE Ex. 3, at 4:15-16; EPE Initial Brief at 1-2.

<sup>2</sup> EPE Ex. 3 at 4:16-26.

<sup>3</sup> For the reasons detailed in the Company's Exceptions, EPE requests that "public EV charging stations" include EV charging stations used for the charging of public-school busses and public transit.

- The Take Charge TX (TCTX) Pilot Program is a charging-as-a-service, agreement-based program for commercial customers that supports, among other things, customer-side-of-the-meter infrastructure for public EV charging.

Among other things,<sup>4</sup> the pilot programs will help EPE learn more about the effective management of EV load and enable the Company to support public EV charging stations consistent with PURA Chapter 42.

In the PFD, the ALJs recommended approval of all four proposed pilot programs with one condition on approval of the TXTC Pilot that EPE may not collect outstanding fees under the program from EPE's non-participating customers.<sup>5</sup>

Rather than supporting EPE's proposal to be proactive and learn more about managing EV-related issues through its proposed pilot projects, Staff recommends that EPE establish a separate EV rate class to implement these pilot programs and tariffs.<sup>6</sup> It is unclear and unexplained how Staff's proposed EV rate class would address the specific and separate goals and benefits of the four proposed pilot projects (such as learning about customer response to managed charging programs and supporting public EV charging stations under PURA Chapter 42).

Moreover, it must be noted that EPE currently has no list of all EV owners in its service area to whom to apply Staff's proposed new EV rate schedule. EV owners are not required to identify themselves to EPE or to Commission Staff. It is conceivable that future developments and programs may enable EPE to detect signs of EV charging on its system, but no such program currently exists for EPE. Accordingly, EPE is only proposing voluntary programs for EV owners in this docket.

Further, as detailed in EPE's initial brief, the benefits of programs such the managed EV charging program in the Smart Rewards Pilot are expected to accrue to all customers.<sup>7</sup> It is unclear why Staff has prejudged that only EV owners should be allocated the costs of these pilot programs. Staff's proposal for an EV rate class is under-developed and premature and should at least be rejected for the time-being.

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<sup>4</sup> For additional pilot program benefits, see EPE Ex. 3 at 4:26-5:12 and EPE Initial Brief at 1-2.

<sup>5</sup> PFD at 34.

<sup>6</sup> Staff Exceptions at 2.

<sup>7</sup> EPE Initial Brief at 8-10.

### **III. REPLIES TO EXCEPTIONS**

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

*Staff argument:*<sup>8</sup> Staff excepts to the ALJs' analysis that supports the finding that the EV Smart Rewards Pilot Program is consistent with PURA and Commission rules. Specifically, Staff notes that the ALJs cite to PURA § 36.204, which provides, in relevant part, that, "[i]n 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 . . ."

However, Staff argues, the "additional incentives" under PURA § 36.204(2) 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. Staff contends that 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. Accordingly, Staff asserts, the incentive is limited to an amount that can be recovered by an electric utility that goes beyond the reasonable costs associated with load management.

*EPE reply:* While Staff's exceptions here focus on the meaning of "additional incentives" under PURA § 36.204(2), EPE would contend that discussion of PURA § 36.204(2) is unnecessary in that PURA § 36.204(1) fully supports approval of this program and its costs without the need for the "additional incentives" language in PURA § 36.204(2) because EPE does not request, nor does it plan to request, any cost recovery amounts over and above the actual costs of this pilot program.

Moreover, PURA § 39.905 addresses the Texas Legislature's goal for energy efficiency and does not apply to the proposed EV pilot programs nor does it purport to apply to all programs covered by PURA § 36.204. The mere fact that the Commission has indicated that a performance bonus is the type of incentive the Legislature intended to be developed for energy efficiency programs under PURA § 39.905(b)(2) does not mean that a performance bonus is the only type of

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<sup>8</sup> Staff Exceptions at 3-4.

incentive allowed under PURA § 36.204(2) nor does Staff cite to any precedent to support such a proposition. Staff's exceptions here are without merit.

**Staff argument:**<sup>9</sup> Citing to PURA § 39.905(b)(4), Staff argues that the Legislature 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. Because this program is only available to residential customers, Staff contends that the residential rate class is the only class that will have eligible customers. For this reason, Staff argues that program costs at least should not be spread amongst the other classes. Staff further argues that the program costs should not be spread within the residential rate class, and that because 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.

**EPE reply:** Staff's arguments relate to the allocation of cost recovery. EPE has not requested cost recovery at this time, but to the extent the Commission decides cost allocation should be determined at this time, Staff's proposal to allocate all the pilot program costs to EV owners is problematic and should be rejected. In particular, while PURA § 39.905(b)(4) provides that the Commission shall ensure that "the costs associated with programs provided under this section and any shareholder bonus awarded are borne by the customer classes that receive the services under the programs," PURA § 39.905 addresses the Texas Legislature's goal for energy efficiency and does not apply to the proposed EV pilot programs. Moreover, even PURA § 39.905 would not require that the costs of an energy efficiency program be recovered only from a specific subgroup within the general customer class to which the program applies. For example, the costs of smart thermostat programs under EPE's energy efficiency portfolio are not recovered only from residential class members who have smart thermostats or who have air conditioning but rather from all residential customers. Moreover, as noted above, EPE does not currently have a list of all its customers who own EVs, and Staff's recommendation could not be implemented at this time. Staff's exceptions here are without merit.

**Staff argument:**<sup>10</sup> Staff also excepts to the ALJs' analysis that the EV Smart Rewards Pilot Program is not unreasonably discriminatory or preferential. Specifically, Staff argues, the

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<sup>9</sup> Staff Exceptions at 5.

<sup>10</sup> Staff Exceptions at 6.

ALJs seemingly focus on EPE's argument that it is reasonable to provide incentives only to eligible EV customers. However, Staff continues, neither EPE nor the ALJs 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. Specifically, Staff asserts, 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. Unlike PURA § 39.905, Staff concludes, there is not any statutory provision related to EV load management that controls over PURA § 36.003 that would allow EPE to provide this preferential and discriminatory treatment.

**OPUC argument:**<sup>11</sup> OPUC disagrees with the ALJs on their recommendation for the EV Smart Rewards Pilot Program. OPUC maintains that the EV Smart Rewards Pilot Program's rates are unreasonably preferential, prejudicial, and discriminatory in violation of PURA § 36.003.

**EPE reply:** Staff's argument that the incentive payments represent "special treatment" for those enrolled in the program to the disadvantage of other customers that do not enroll ignores the purpose of the incentives and the purpose of the pilot program. Under the proposed pilot program, EPE would pay an incentive to eligible EV customers in exchange for the participants allowing EPE to manage the timing of their EV charging at home, where charging will be shifted to hours when the electric grid has available capacity ensuring optimized grid utilization rate that benefits all customers, including non-participating customers. Doing so is no more "special treatment" than it is when EPE provides incentives to customers that participate in the Company's smart thermostat program or interruptible service programs.

Additionally, with regard to the broader complaint of Staff and OPUC that the Smart Rewards Pilot's rates are unreasonably preferential, prejudicial, and discriminatory in violation of PURA § 36.003, the record demonstrates, as indicated in the PFD at page 12, that there is a reasonable basis for providing incentives under the Smart Rewards Pilot 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.<sup>12</sup> Seeking to incentivize this

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<sup>11</sup> OPUC Exceptions at 2.

<sup>12</sup> Rebuttal Testimony of Mamel Carrasco, EPE Ex. 10, at 1:30-31.

particular customer segment is reasonable “in light of Company and customer interests in supporting, gathering information regarding, and managing EV charging activities.”<sup>13</sup>

Staff’s and OPUC’s exceptions here are without merit.

**Staff argument:**<sup>14</sup> Staff excepts to the ALJs’ conclusion that the incentives, at least at this time, do not need to be cost-based. According to Staff, that the incentives are for pilot program should not alleviate the responsibility for the incentives to be cost-based.

**OPUC argument:**<sup>15</sup> OPUC argues that EPE’s proposed incentives for the EV Smart Rewards Program are not cost-based and that the program does not protect non-participating customers from bearing costs associated with the program.

**EPE reply:** The ALJs directly addressed these arguments in the PFD as did EPE in its initial and reply briefs, which the ALJs reference in the PFD.<sup>16</sup> In its briefing, EPE demonstrated that the proposed incentives for this pilot are reasonable, explaining that the proposed incentive levels were based on the median levels identified in a survey of forty managed charging programs in other states across the country and that the proposed incentives are also consistent with the uncontested incentives levels initially offered by EPE in its smart thermostat program.<sup>17</sup> The essential 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.<sup>18</sup>

Further, on page 12 of the PFD, the ALJs explained: “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

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<sup>13</sup> Direct Testimony of Manuel Carrasco, EPE Ex. 5, at 16:22-26.

<sup>14</sup> Staff Exceptions at 6-7.

<sup>15</sup> OPUC Exceptions at 2.

<sup>16</sup> EPE Initial Brief at 12-13; EPE Reply Brief at 7; PFD at 12.

<sup>17</sup> EPE Reply Brief at 7.

<sup>18</sup> EPE Reply Brief at 7.



hearing, EPE will evaluate and modify the incentive levels if appropriate.” (Citations omitted). Staff’s and OPUC’s exceptions here are without merit.

### **B. Whole House EV (WHEV) Pilot Incentive Credit Rider**

*Staff argument:*<sup>19</sup> Staff excepts to the ALJs’ analysis of the WHEV Pilot Incentive Credit Rider under PURA § 36.204, contending that (a) 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 and that (b) 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. According to Staff, 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.

*EPE reply:* EPE disagrees with Staff’s strained argument on this point. The purpose of the proposed incentive credit is to manage EV charging load by encouraging EV charging during hours of typically lower demand on the system.<sup>20</sup> The proposed incentive benefits EPE’s other customers by helping diminish the impact of EV charging on system peak demand.<sup>21</sup> The record shows that similar WHEV credits have been approved by regulators. For example, in EPE’s New Mexico Transportation Electrification Plan filing, the New Mexico Public Regulation Commission approved a \$0.04740 per kWh incentive credit for all residential service energy usage during the hours of midnight to 8:00 AM, and the record identified that other utilities offer WHEV rate plans that simply provide a lower energy charge during late night/early morning hours for EV charging energy usage.<sup>22</sup> The basis for Staff’s apparent position that the program will not encourage customers to shift EV charging to off peak periods is unclear and unsupported. Rather than support its concerns, Staff merely conflates its argument that the credit is too broad (an argument addressed further below) with whether the credit could be effective at all. With regard to the effectiveness of the credit, EPE would note that load management, such as through large power interruptible service tariffs or commercial load management programs in utilities’ energy efficiency portfolios,

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<sup>19</sup> Staff Exceptions at 7.

<sup>20</sup> EPE Initial Brief at 15.

<sup>21</sup> EPE Ex. 5 at 8:25-27.

<sup>22</sup> EPE Ex. 5 at 11:17-22.

is commonly achieved through financial incentives to encourage customers to reduce load or to shift load from peak load periods to off-peak periods and that is the point of the pilot program as well. Whether offering the proposed credit to EPE's Texas customers will in practice be effective in helping to manage the growing EV charging load is one of the very purposes of the pilot program.

Further, as EPE addresses above, PURA § 39.905 does not apply to the proposed EV pilot programs. There is no precedent supporting, or any reasonable basis for the argument indicating, that the incentives allowed under PURA § 36.204(2) are limited to the type of incentives provided to utilities under PURA § 39.905. Moreover, the focus on PURA § 36.204(2) ignores that PURA § 36.204(1) provides sufficient support for the costs of this program because EPE is not seeking any "additional" incentives. Staff's exceptions here are without merit.

**Staff argument:**<sup>23</sup> Staff also excepts to the ALJs' 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. Staff disagrees with this assessment, as EPE's rates without the discount were established by the Commission based on cost. Staff contends that, 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.

**OPUC argument:**<sup>24</sup> OPUC argues that EPE's proposed Whole House EV Pilot Incentive Credit Rider does not contain adequate protections to ensure costs associated with this rider do not impact the costs borne by customers who do not take service under this rider.

**EPE reply:** No rate-setting effort achieves perfection with regard to allocation of historical costs let alone all potential prospective aspects of cost allocation.<sup>25</sup> In its last rate case, EPE did

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<sup>23</sup> Staff Exceptions at 8.

<sup>24</sup> OPUC Exceptions at 2.

<sup>25</sup> The Commission exercises broad discretion in designing rates. *Texas Alarm & Signal Ass'n v. Public Util. Comm'n*, 603 S.W.2d 766, 772 (Tex.1980). Implicit in this authority to establish reasonable, not perfect, classifications is the acknowledgment that some unequal treatment may result. *Amtel Communications v. Public Util. Comm'n*, 687 S.W.2d 95, 101-02 (Tex.App.—Austin 1985, no writ). However, unequal treatment does not necessarily produce unlawful discrimination;

not purport to reflect the prospective impact of the growth of EV charging in rates. However, EPE witness Carrasco's direct testimony in this docket demonstrates that residential customers with EV charging do not reflect the typical residential customer. In particular, due to EV charging, a residential EV-owning customer could expect to see an average increase in their monthly usage of 319 kWh above the typical residential-customer year-round monthly average of 681 kWh.<sup>26</sup> EPE's proposed credits for this program are reasonably based on incremental capacity costs calculated in EPE's last base rate case.<sup>27</sup> The Whole House EV Pilot would encourage EV-owning customers who cannot afford a second meter and whose pattern of electricity usage would not otherwise reasonably allow them to participate in time-of-day (TOD) service options to charge their EVs during overnight hours.<sup>28</sup> The proposed rider is a reasonable, cost-based approach to reflecting the development of EV charging in rates and to encourage overnight charging of EVs to the benefit of all customers. The exceptions here are without merit.

**Staff argument:**<sup>29</sup> Staff contends that, 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. Staff argues that EPE did not provide a clear proposal in this proceeding as regards to how the cost of the incentive credits will be recovered.

**EPE reply:** The record reflects that the programs costs are expected to be minimal,<sup>30</sup> and neither those minimal costs nor any reduced revenues will be recovered at this time. EPE will bear the costs for the time being. The effect of any costs or reduced revenues would not be reflected in

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as long as a substantial and reasonable basis exists for the distinction, unequal treatment is neither a violation of PURA nor a reason to invalidate agency decisions. *Id.*

*El Paso Elec. Co. v. Pub. Util. Comm'n of Texas*, 917 S.W.2d 846, 864 (Tex.App.—Austin 1995), writ dismissed by agreement sub nom. *El Paso Elec. Co. v. Pub. Util. Comm'n*, 917 S.W.2d 872 (Tex.App.—Austin 1996). See also, *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 356 (Sept. 21, 2017) (explaining that rate design is not an exact science but is more an art with a range of possible reasonable approaches to implement rate increases that result in just and reasonable rates).

<sup>26</sup> EPE Ex. 5 at 4:13-26.

<sup>27</sup> EPE Ex. 5 at 9:12-13.

<sup>28</sup> EPE Ex. 5 at 7:16-25 and 8:21-24.

<sup>29</sup> Staff Exceptions at 8-9.

<sup>30</sup> Rebuttal Testimony of George Novela, EPE Ex. 8, at 6:5-9.

the rates of other customers until after some future rate proceeding and then only in the event that EPE meets its burden to show the reasonableness of costs.

Additionally, EPE has expressed willingness to consider establishing service under the Whole House EV Pilot as a separate class in a future base rate case.<sup>31</sup> EPE's proposal to reevaluate the credit rate and participation in EPE's next general rate case filing<sup>32</sup> is appropriate and sufficient to ensure that Texas customers who have not subscribed to the pilot are not unreasonably affected by approval of EPE's application. Staff's exceptions here are without merit.

**Staff argument:**<sup>33</sup> Staff contends that the proposed rider is entirely unnecessary because EPE's existing TOD rate options already serve the purpose of incentivizing customers to use energy during off-peak times in a nondiscriminatory 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. According to Staff, to provide additional incentives for off-peak energy usage to a select group of customers is unreasonably preferential and discriminatory.

**EPE reply:** The record reflects the challenges associated with the existing rate offerings, which supports the reasonableness of the proposed pilot program. In particular, with regard to taking service under EPE's TOD rate options, Mr. Carrasco's testimony details how and why circumstances may not allow some customers to take service under a TOD rate option.<sup>34</sup> For example, the existing TOD rate options could potentially result in a significant increase in monthly electricity costs due to the electricity consumption during on-peak hours that the customer was unable to reduce or shift to off-peak hours (such as air conditioning).<sup>35</sup> Additionally, the existing Schedule No. EVC rate often requires in-home wiring upgrades to support the requisite separate meter to measure the EV charging, and the expense of the wiring upgrades (up to \$5,000) is often cost-prohibitive for residential customers.<sup>36</sup> As discussed in the PFD at page 17, EPE demonstrated that it is reasonable to target the class of EV-owning customers who may not be able

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<sup>31</sup> EPE Reply Brief at 13.

<sup>32</sup> EPE Ex. 5 at 10:31.

<sup>33</sup> Staff Exceptions at 9.

<sup>34</sup> EPE Ex. 10 at 2:16-17; EPE Ex. 5 at 7:16-22.

<sup>35</sup> EPE Ex. 10 at 2:17-20; EPE Ex. 5 at 7:16-22.

<sup>36</sup> EPE Ex. 5 at 9:4-5.

to afford the cost of installing a separate EV meter at their residence or who may be disinclined to use EPE's other on-demand rate options. In other words, the pilot 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, if any, should be minimal. Staff exceptions here are without merit.

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

*Staff argument:*<sup>37</sup> 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.

*EPE reply:* With regard to whether the proposed pilot program rates comply with the requirements of PURA § 36.003 and 16 TAC § 25.234(a), the evidence supports that they do, which was detailed in EPE's initial brief.<sup>38</sup> In particular, the basis for developing the proposed rebate credits under this program are explained and supported in Company witness Rodriguez's direct testimony: 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.<sup>39</sup> In his direct testimony, Company witness Carrasco further explained and supported how, as required under PURA § 36.003, the PowerConnect Pilot and other proposed pilots are just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of consumer.<sup>40</sup> Moreover, as explained in the rebuttal testimony of Company witness Rodriguez, this pilot was designed to cover no more than the actual costs not covered by EPE's line extension policy and, even then, only up to the maximum

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<sup>37</sup> Staff Exceptions at 10.

<sup>38</sup> EPE Initial Brief at 25-26.

<sup>39</sup> Direct Testimony of Angelina Rodriguez, EPE Ex. 4, at 18:5-8.

<sup>40</sup> EPE Ex. 5 at 16:15-17:2.

rebate credit amount shown in her direct testimony.<sup>41</sup> It is also clear that PURA § 42.0103(d) now allows for subsidies to the extent they are used for supporting make-ready infrastructure as EPE proposes. Staff's exceptions here are without merit.

**Staff argument:**<sup>42</sup> 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. Specifically, Staff argues that, by generally stating that the program offers rebate credits for "distribution system upgrades or improvements necessary to provide electric vehicle charging capabilities," 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).

**EPE reply:** To the extent the Commission finds it necessary or appropriate to add language to its order to expressly limit distribution system upgrades or improvements provided under this pilot program to "site-specific electrical infrastructure," as required by PURA § 42.0102(6)(A), EPE has no objection.

**Staff argument:**<sup>43</sup> 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. Specifically, Staff argues that, 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. And, Staff adds, that the subsidies may benefit all customers, as suggested by EPE, 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.

**EPE reply:** Staff's complaint here is with the statute itself, not EPE's proposed program. PURA § 42.0103(d) states that subsidies for make-ready infrastructure are not prohibited. Staff's argument is that the statute should have prohibited such subsidies. This disagreement should be

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<sup>41</sup> Rebuttal Testimony of Angelina Rodriguez, EPE Ex. 9, at 7:22-25 and 8:1-4. See EPE Ex. 4 at 17:31-18:2 for the maximum rebate credit amounts.

<sup>42</sup> Staff Exceptions at 11.

<sup>43</sup> Staff Exceptions at 11.

addressed to the Legislature and not the ALJs or the Commission. The exceptions on this point are without merit.

**Staff argument:**<sup>44</sup> 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. Conversely, Staff argues, 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. Further, Staff adds, 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. Staff concludes that, 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.

**OPUC argument:**<sup>45</sup> OPUC remains concerned that the costs associated with this program will be borne by EPE's non-participating customers.

**EPE reply:** As detailed in Section III.A.3 of its initial brief, EPE understands the importance of, and has ongoing experience with, tracking and accounting for program costs to ensure proper ratemaking treatment and will do so for this pilot as well.<sup>46</sup> Further, while EPE is not seeking recovery of program costs at this time, EPE does believe that cost recovery would be consistent with newly enacted PURA § 42.0103(d). All customers may benefit from infrastructure investments found essential by the Legislature in PURA § 42.0101(b) and allowed under PURA § 42.0103(d). EPE also understands that it is the Commission that would ultimately determine the appropriate cost allocation of any allowed cost recovery. Moreover, 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

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<sup>44</sup> Staff Exceptions at 12.

<sup>45</sup> OPUC Exceptions at 3.

<sup>46</sup> EPE Ex. 8 at 6:16-28.

have not subscribed to the pilot program are not unreasonably affected by approval of the application.

Further, Staff's exceptions do not explain how establishing a separate EV rate class would help to support the construction of public EV charging stations, which is the purpose of the PowerConnect Pilot as allowed by PURA Chapter 42. In the context of support for the construction of public EV charging stations, establishing a separate EV rate class would appear to be a non-sequitur. The implementation of a separate EV rate class is an issue that should be addressed in a future rate proceeding once the results and costs of the pilot programs proposed in this docket are better understood.

Staff's and OPUC's exceptions on this point are without merit.

#### **D. Take Charge TX Pilot Program**

*Staff argument:*<sup>47</sup> 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). Notably, Staff states, 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. According to Staff, "all electric utility-related costs" include both TCTX Pilot Program related costs, as well costs associated with base rates and non-fuel firm rate schedules.

*EPE reply:* Staff's exceptions appear to reflect a misunderstanding of how the proposed pilot program would work. The TCTX Pilot Program addresses the cost of installing and maintaining EV charging stations, but participation in the program does not supplant the charges the participating customer will pay under applicable rate schedules for the electricity delivered to and used by the charging station. In the charges for such electricity, the participating customer will pay its share of all the other electric utility-related costs not included in the TXTC Pilot Program charges including the indirect costs and overheads allocated to the applicable rate schedule. Staff's exceptions on this point are without merit.

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<sup>47</sup> Staff Exceptions at 13-14.



**Staff argument:**<sup>48</sup> Staff argues that 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. To comply with PURA § 36.003 and 16 TAC § 25.234(a), Staff asserts, EPE's rates must be examined to ensure they are just, reasonable, non-discriminatory, non-preferential, and based on cost. Staff further asserts that 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. According to Staff, a more reasonable approach would be to establish a separate EV rate class similar to the manner in which lighting rates are treated.

**EPE reply:** EPE disagrees with Staff's exceptions on this point. Staff's complaint appears to arise out of the customer-specific nature of the rate calculation methodology in the proposed schedule that is needed to comply with the statutory requirements for full cost recovery of the customer-specific costs from the participating customer. As Mr. Carrasco explained in his rebuttal testimony, non-standardized, customer-specific pricing (as proposed by the Company) helps to ensure that customers pay only for the costs associated with the services they request, while a more generic, standardized, non-customer-specific approach (as recommended by Staff) would risk frustrating cost-causation and full-recovery principles.<sup>49</sup> It is important to note that this is also a voluntary program, where interested customers would make a decision whether the price is reasonable for them before execution of the TCTX Pilot agreement with EPE. All site-specific pricing will be developed as a result of receiving multiple bids from private EV charging and installation vendors.<sup>50</sup> Staff's approach would be inconsistent with the full-cost-recovery requirements of PURA § 42.0103(p)(2). EPE's proposed Schedule No. TCTX, including the customer agreement template that is included as part of the schedule, reasonably balances clarity, transparency, and the full-cost-recovery requirements of the statute.

Moreover, regarding the complaint of lack of transparency, EPE would note the application of 16 TAC § 25.241(b), which states, "Every contract for electric service...shall be deemed part

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<sup>48</sup> Staff Exceptions at 14-15.

<sup>49</sup> EPE Ex. 10 at 4:1-3.

<sup>50</sup> EPE Ex. 4 at 20:7-16.

of the effective tariff, and shall be filed with the commission upon request.” Staff may accordingly request the applicable agreements and review them if there is a concern regarding the customer-specific details that would be added for individual customers. Staff’s exceptions here are without merit.

**Staff argument:**<sup>51</sup> Staff argues that, pursuant to PURA § 36.201, the Commission is prohibited from establishing a tariff that would authorize an electric utility to make and pass through automatic adjustments, except as permitted by PURA § 36.204. As discussed previously within the context of the PowerConnect Pilot Program, Staff asserts that 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, Staff continues, 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 concludes that its proposal would thus comply with PURA § 36.201, while EPE’s proposed Schedule No. TCTX would effectively violate PURA § 36.201.

**EPE reply:** The proposed TCTX Pilot Program tariff does not include a prohibited automatic adjustment clause. Rather, the proposed tariff prescribes how rates are calculated on a customer-specific basis to ensure full recovery of costs as required under PURA § 42.0103(p)(2). This is consistent with 16 TAC § 25.241(b), which states, “[t]he tariff may include mathematical formulas that express the pricing terms for service.”

Moreover, viewing the pilot program as authorizing a prohibited automatic adjustment clause would mean that numerous discretionary services provided under electric utility tariffs in Texas that are based on actual costs may also be prohibited. These services include the Facilities Rental Charge and Non-Routine Miscellaneous Charge included in EPE Rate Schedule No. 99<sup>52</sup> as well as several of the “as calculated” rates included in Oncor’s Rate Schedule 6.1.2.2, Construction Service Charges and Rate Schedule 6.1.2.3, Company-Specific Discretionary Service

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<sup>51</sup> Staff Exceptions at 15.

<sup>52</sup> See *Compliance Docket for the Final Order in Docket No. 52195 (Application of El Paso Electric Company to Change Rates)*, Docket No. 53997, Clean Copy of Tariff (Feb. 15, 2023).

Charges Other Than Construction Service Charges.<sup>53</sup> Staff's proposed application of PURA § 36.201 here is overly broad and inconsistent with regulatory practice in Texas. Staff's exceptions on this point are without merit.

#### **E. Rate Case Expenses**

**OPUC argument:** OPUC excepts to the fact that the PFD avoided addressing OPUC's recommendation of ensuring EPE only collects rate case expenses from participating customers.

**EPE reply:** As EPE indicated in its reply brief, no cost recovery is requested in this docket, and the allocation of any program costs including rate case expense costs is ultimately a decision for the Commission in a future proceeding.<sup>54</sup> OPUC's exception is without merit.

#### **IV. CONCLUSION**

In the PFD, the SOAH ALJs the ALJs recommended approval of all four proposed pilot projects with just one condition added to what the Company proposed. For the reasons detailed below, EPE requests that the Commission (1) reject Staff's and OPUC's exceptions, (2) adopt the PFD with the limited modifications proposed in EPE's exceptions and (3) grant such further relief to which EPE is entitled.

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<sup>53</sup> See *Compliance Filing for Final Order in Docket No. 53601 (Application of Oncor Electric Delivery Company LLC for Authority to Change Rates)*, Docket No. 54817, Oncor's Clean Copies of Tariffs to be Stamped Approved (Aug 16, 2023).

<sup>54</sup> EPE Reply Brief at 21.

Respectfully submitted,

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**ATTORNEYS FOR EL PASO ELECTRIC  
COMPANY**

**CERTIFICATE OF SERVICE**

I certify that on August 19, 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/ Everett Britt  
Everett Britt