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

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

**OFFICE OF PUBLIC UTILITY COUNSEL'S
REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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August 19, 2024

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APPLICATION OF EL PASO ELECTRIC COMPANY FOR APPROVAL OF TEXAS ELECTRIC VEHICLE-READY PILOT PROGRAMS	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**OFFICE OF PUBLIC UTILITY COUNSEL’S
REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits these replies to exceptions to the proposal for decision (“PFD”)¹ filed by Staff of the Public Utility Commission of Texas (“Staff”)² and El Paso Electric Company (“EPE”) on August 1, 2024.³ The deadline to file replies to exceptions to the PFD is August 19, 2024.⁴ Therefore, this pleading is timely filed.

I. INTRODUCTION

OPUC is generally supportive of Staff’s exceptions to the PFD.⁵ Regarding the exceptions filed by EPE, OPUC has no opinion on whether the PowerConnect Program should apply to Public Transit and Public School Buses.⁶ Rather, OPUC maintains its position that the PowerConnect Program should be rejected in whole, because the credits associated with the tariff are not cost-

¹ Proposal for Decision (Jun. 28, 2024). (PFD).

² Staff’s Exceptions to Proposal for Decision (Aug. 1, 2024). (Staff’s Exceptions).

³ EPE’s Exceptions to Proposal for Decision (Aug. 1, 2024). (EPE’s Exceptions);

⁴ Exceptions and Replies Memorandum (Aug. 1, 2024).

⁵ Staff’s Exceptions.

⁶ EPE’s Exceptions.

justified and the base rate revenues will not support the proposed additional investment required for the program.⁷

II. DISCUSSION

A. Staff's EV Rate Class Recommendation

OPUC agrees with Staff's reasoning as to establishing a separate electric vehicle ("EV") rate class "where EV-specific policies are embedded into rates."⁸ OPUC also agrees with Staff's reasoning that each of EPE's EV-ready pilot programs are unreasonably preferential, prejudicial, or discriminatory.⁹ Specifically, OPUC supports Staff's analysis that "[e]ven 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."¹⁰ OPUC concurs with Staff's reasoning that establishing a separate EV rate class would enable EPE to provide rate structures that are based on costs, assign EV-related costs to EV customers, and allow for rate options that can be available to all EV customers in a non-discriminatory manner.¹¹ Therefore, OPUC believes EPE should seek approval of a separate EV rate class in a future rate case proceeding.¹²

⁷ Evans Direct at 17:9 - 21 and EDE-2.

⁸ Staff's Exceptions at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

B. EV Smart Rewards Pilot Program

OPUC agrees with Staff's analysis that granting EPE the ability to spread the costs of the EV Smart Reward Pilot Program to non-participating customers is not consistent with the "additional incentives" contemplated under PURA § 36.204.¹³ OPUC also agrees with Staff's argument that the EV Smart Reward Pilot Program is preferential because it provides incentives only to participating customers and is discriminatory to both non-eligible and eligible but non-participating customers who will be disadvantaged by the program.¹⁴ Finally, OPUC agrees that incentives for the program should be cost-based, regardless of the pilot nature of the program.¹⁵

C. Whole House EV Pilot Incentive Credit Rider

OPUC agrees with Staff's reasoning that the Whole House EV ("WHEV") Pilot Incentive Credit Rider will entail "additional costs that could be passed on to non-participating customers in the form of reduced revenues that would otherwise be collected from participating customers...."¹⁶ OPUC also agrees with Staff's assessment that "the effect on non-participating customer will not be minimal [which] is especially true since the ALJs do not recommend imposing any conditions regarding the segregation of cost recovery."¹⁷ OPUC continues to support "adequate protections to ensure costs associated with [the WHEV] rider do not impact costs borne by customers who do not take service under the rider."¹⁸ Finally, OPUC agrees with Staff's recommendation "that it

¹³ Staff's Exceptions at 4-5.

¹⁴ Staff's Exceptions at 4-5.

¹⁵ Staff's Exceptions at 6-7.

¹⁶ Staff's Exceptions at 8.

¹⁷ Staff's Exceptions at 9.

¹⁸ Evans Direct at 14:4-5.

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.”¹⁹

D. PowerConnect Pilot Program

OPUC does not contest that PURA § 42.0103(d) is permissive, but underscores Staff’s assertion that it also does *not* “outright authorize or allow a utility to subsidize make-ready infrastructure for public EV charging stations.”²⁰ OPUC’s concern remains that EPE has expressly confirmed that it intends to seek recovery of all costs associated with the PowerConnect Program from all of its retail customers and not limit the recovery from only participating customers.²¹ OPUC joins Staff’s assertion 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, 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 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.”²² Furthermore, OPUC supports Staff’s recommendation to the Commission 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

¹⁹ Staff’s Exceptions at 9.

²⁰ Staff’s Exceptions at 11.

²¹ OPUC’s Post-Hearing Reply Brief at 6.

²² Staff Exceptions at 11.

proceeding with any potential requirement that EPE must recover the program costs from only participating customers.”²³

E. Take Charge TX Pilot Program

OPUC supports and agrees with Staff’s recommendations and exceptions regarding the Take Charge TX Pilot Program site-hosting agreement, rates, and cost recovery.²⁴ Additionally, OPUC continues to urge the Commission to require EPE to establish service under the TakeCharge TX Pilot Program rider as a separate rate class in EPE’s future base rate cases and separately design rates for service under this rate that ensure non-participating customers will not subsidize this rate.²⁵

III. CONCLUSION

For the reasons stated herein, OPUC respectfully requests that the Commission modify the PFD to include findings of fact and conclusions of law consistent with OPUC’s and Staff’s Exceptions to the PFD and that OPUC be granted any other relief to which it may be entitled.

Date: August 19, 2024

²³ Staff’s Exceptions at 12.

²⁴ Staff Exceptions at 16.

²⁵ OPUC’s Post-Hearing Reply Brief at 10.

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**ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 19th day of August 2024 by facsimile, electronic mail, and/or first class, U.S. Mail.

Renee Wiersema

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