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

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

**COMMISSION STAFF’S REPLY TO 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 August 1, 2024, Commission Counsel filed an Exceptions and Replies Memorandum, establishing a deadline of August 19, 2024 to file replies to exceptions to the PFD. Therefore, this pleading is timely filed.

Commission Staff (Staff) remains grateful for the reasoned consideration of the SOAH ALJs. Aside from the exceptions raised in Staff’s exceptions to the PFD, filed on August 1, 2024, Staff remains supportive of the 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 PURA<sup>1</sup> §§ 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.<sup>2</sup> In terms of the former, Staff respectfully replies to EPE’s exception to the conclusion that public EV school bus and public transit vehicle charging would not constitute public EV charging.

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

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

## II. REPLY TO EXCEPTIONS

EPE incorrectly asserts that the public's general use of public school buses and public transit are reasonably construed as commercial use of the EV charging stations to argue that the EV charging stations used by public transportation entities are public EV charging stations.<sup>3</sup> However, to expand upon the conclusions in the PFD that a public EV charging station must be accessible for commercial use by the public,<sup>4</sup> a public EV charging station specifically does not include EV charging equipment that is located on the premises of a customer for use by the customer and *not used commercially for EV charging service*.<sup>5</sup> Further, EV charging service means sales made from a public EV charging station to the public.<sup>6</sup>

EPE argues that EV charging of public transit and public school buses 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 paid for by the public through a combination of direct user fees and taxes.<sup>7</sup> Further, EPE also argues that the ALJs' construction of the definition a public EV charging station effectively and improperly modifies the statute to require “*direct commercial use by the general public*.”<sup>8</sup> Because PURA § 42.0102(7)(B) excludes, from the definition, EV charging equipment that is located on the premises of a customer for use by the customer and *not used commercially for EV charging service*, a public EV charging station must be used to *directly* provide EV charging service to the public, such that there must be sales made from the EV charging station to the public. As such, an EV charging station must be available for *direct* commercial used by the *general* public in order for it to be considered a public EV charging station.

In terms of EV charging equipment that is used to charge public transit and public school buses, the general public does not pay the public entities providing such transportation for purposes of receiving EV charging services. More specifically, such payments by the public are not in return from a sale that is made from any EV charging station, but are simply for use of public

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<sup>3</sup> El Paso Electric Company's Exceptions to Proposal for Decision at 3 (Aug. 1, 2024) (EPE's Exceptions).

<sup>4</sup> PFD at 21 (citing to PURA § 42.0102(7)).

<sup>5</sup> PURA § 42.0102(7)(B).

<sup>6</sup> PURA § 42.0102(4).

<sup>7</sup> EPE's Exceptions at 2.

<sup>8</sup> *Id.*

transportation provided by the public entities. So, while public transit and public school buses may be used generally by the public, the EV charging equipment used to charge such vehicles are not used commercially for EV charging service, since only public transit and public school buses can use this equipment. Accordingly, such EV charging equipment cannot be considered public EV charging stations pursuant to PURA § 42.0102(7)(B) and the overall legislative framework under Chapter 42 of PURA.

Lastly, EPE also argues that the Commission has the general authority to authorize the TCTX and the PowerConnect Pilot Programs to support EV charging at all sites, including for charging stations at or for multi-unit dwellings, fleets, public school buses, and public transit.<sup>9</sup> In terms of the PowerConnect Pilot Program, because it purports to provide rebates for utility-side make-ready infrastructure,<sup>10</sup> and because PURA § 42.0103(d) permits, but does not require, the Commission to authorize a utility to subsidize make-ready infrastructure,<sup>11</sup> the PowerConnect Pilot Program, as proposed, can only be offered according to the legislative framework under Chapter 42 of PURA. As such, because PURA § 42.0102(6) defines make-ready infrastructure as the electrical infrastructure required to service a public EV charging station,<sup>12</sup> any make-ready infrastructure used to service a non-public EV charging station, such as those discussed above, cannot qualify. In the least, PURA § 42.0103(d) does not apply to such make-ready infrastructure, such that the Commission does not have any authority, permissive or otherwise, to authorize a utility to subsidize the costs of such make-ready infrastructure. Here, because the rebates in the PowerConnect Pilot Program will allow participating customers to avoid paying the costs of make-ready infrastructure, EPE effectively seeks the Commission to authorize EPE to subsidize such costs. Therefore, to the extent that the Commission determines to approve the PowerConnect Pilot Program, it should not do so with regard to customers that will not use the make-ready infrastructure for purposes of servicing public EV charging stations.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 1

<sup>11</sup> Commission Staff's Exception to the Proposal for Decision at 10-12 (Aug. 1, 2024) (Staff's Exceptions); Staff, however, continues to recommend that the PowerConnect Pilot Program does not comply with the requirements in PURA § 36.003 and 16 TAC § 25.234(a), such that the Commission *should not* in this proceeding, or in a future proceeding, exercise its permissive authority under PURA § 42.0103(d) and authorize EPE to subsidize the costs of make-ready infrastructure.

<sup>12</sup> PFD at 20 (citing to PURA § 42.0102(6)).

<sup>13</sup> Staff's Exceptions at 10 (referring to Staff's exception to Finding of Fact No. 86).

In terms of the TCTX Pilot Program, the Commission does not have the general authority to authorize the program for non-public EV charging stations. Specifically, the ALJs correctly concluded that ownership and operation of non-public EV charging facilities and infrastructure should be left to the competitive private market.<sup>14</sup> Although EPE did not specifically except to this conclusion, Staff reiterates that allowing EPE to offer the TCTX Pilot Program to such customers would allow EPE to inappropriately provide a competitive service that is not authorized under Chapter 42 of PURA.<sup>15</sup> To expand, such ownership should be left to competitive providers based on the underlying principles of PURA and the Commission's rules regarding regulation of electric public utilities, including PURA § 11.002 and 16 Texas Administrative Code § 25.1, which importantly require the Commission to facilitate competition.<sup>16</sup> Aside from Staff's exceptions to the approval of the TCTX Pilot Program as applied to public EV charging stations, allowing EPE to offer the TCTX Pilot Program for purposes of non-public EV charging stations would contravene the Commission's mission to facilitate competition, especially given the legislative framework in Chapter 42 of PURA that is designed specifically to proliferate *public* EV charging stations, and not non-public EV charging stations, for direct use by the general public.

### III. CONCLUSION

Staff is grateful for the reasoned consideration of the ALJs; however, Staff reiterates its exceptions to the PFD, as well as its limited support of the PFD, and respectfully requests that the Commission consider Staff's exceptions, as well as Staff's reply herein to EPE's exceptions. Further, Staff respectfully requests that if the Commission desires to establish or facilitate EV-specific treatments in EPE's rates and tariffs, instead of approving EPE's EV-ready pilot programs and tariffs, it should allow EPE to request the establishment of an EV rate class in a future proceeding.

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<sup>14</sup> PFD at 29.

<sup>15</sup> Staff's Exceptions at 13 (citing to Commission Staff's Initial Brief at 19 (Apr. 18, 2024) (Staff's Initial Brief)).

<sup>16</sup> Staff's Initial Brief at 19.

Dated: August 19, 2024

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 19, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles  
Scott Miles