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PROCEEDING TO RESOLVE ISSUES IN DOCKET NO. 53719 RELATED TO TRANSPORTATION ELECTRIFICATION AND CHARGING INFRASTRUCTURE	§ § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

AMERICANS FOR AFFORDABLE CLEAN ENERGY'S
REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

AUGUST 15, 2024

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TO THE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION OF TEXAS:

Americans for Affordable Clean Energy (AACE) timely files this Reply to Exceptions to the Proposal for Decision (PFD) for consideration by the Public Utility Commission of Texas (Commission). The Office of Policy and Docket Management issued a memorandum requiring the Reply to Exceptions to the PFD be filed by August 15, 2024.[1] Therefore, this Reply to Exceptions is timely filed. In support thereof, AACE respectfully shows as follows:

I. INTRODUCTION AND DISCUSSION

The PFD correctly concluded that both the Transportation Electrification and Charging Infrastructure (TECI) and Transportation Electrification and Charging Demand Adjustment (TECDA) Riders should be approved. In recommending approval of the two Riders, the Administrative Law Judge (ALJ) was correct in finding that the TECI Rider provides sufficient cost recovery mechanism and does not result in cost-shifting to non-participating customers; does not impede competition; and is not preferential, prejudicial, or discriminatory. The ALJ was further correct in finding the TECDA Rider does not result in cost shifting from participating customers to non-participating customers, and is not preferential, prejudicial, or discriminatory. However, the ALJ failed to adopt AACE's modifications to the TECDA Rider.

Commission Staff (Staff) and the Office of Public Utility Counsel (OPUC) except to the ALJ's approval of the TECI and TECDA Riders, recommending denial of both Riders.[2] Staff continues to assert its recommendation that Entergy Texas, Inc. (ETI) should establish a separate

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[1] Exceptions and Replies Memorandum (Jul. 16, 2024).

[2] Commission Staff's Exceptions to the Proposal for Decision at 1 (Aug. 1, 2024) (Staff Exceptions); Office of Public Utility Counsel's Exceptions to the Proposal for Decision at 1 (Aug. 1, 2024) (OPUC Exceptions).

electric vehicle (EV) rate class instead of the TECI and TECDA Riders.[3] Staff contends a separate EV rate class would provide customers with transparency and predictability, allow the Commission and stakeholders to review the costs, and would be consistent with standard ratemaking practices and with setting rates in the normal manner authorized under Chapter 36 of the Public Utility Regulatory Act (PURA).[4] While AACE is not opposed to the creation of an EV rate class, AACE is concerned with the expediency of approval of a path forward.

Staff responds to concerns with delay in being able to establish an EV rate class by arguing that ETI can submit a base rate application prior to its next deadline to file a base rate application or ETI can seek approval of a separate EV rate class with demand charges outside of a base rate case,[5] and ETI can seek approval to establish additional EV rate options outside of a base rate case as necessary.[6] Although Staff is correct that these are avenues ETI can take to create an EV rate class, denying the Riders and ordering ETI to create an EV base rate class would delay the support ETI could provide private businesses by installing and using EV charging stations. Thus, this process would not be the most efficient and expediated process.

In addition to Staff's continued recommendation for a separate filing to establish an EV rate class, Staff and OPUC's Exceptions should be dismissed, as set forth below, and the Commission should adopt the PFD in full, with AACE's modification to the TECDA Rider.

A. TECI RIDER

Staff excepts to the ALJ's finding that the TECI Rider provides a sufficient cost recovery mechanism and does not result in cost-shifting to non-participating customers.[7] AACE maintains that the ALJ's findings were correct, and, pursuant to PURA § 42.0103(o)(3) and (p)(2), the TECI Rider and Agreement provides sufficient cost recovery mechanisms that recover all electric utility-related costs under the TECI Rider and prevents costs from being shifted onto non-participating customers.

PURA § 42.0103(o)(3) and (p)(2) provide that the person entering into an agreement with an electric utility for the utility to own or operate a public electric vehicle charging station on the

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[3] Staff Exceptions at 2-3.

[4] *Id.* at 2.

[5] *Id.* at 4.

[6] *Id.* at 5.

[7] *Id.*

person's property "pays for all electric utility-related costs under a tariff approved by the commission that provides for full recovery of the costs of the public electric vehicle charging station from the person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service"[8] and the commission shall "ensure that revenue collected by an electric utility under an agreement under Subsection (o) allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station from the person and not the utility's other customers."[9] AACE contends that the TECI Rider as revised by ETI in Docket 55338 meets these requirements.

The TECI Rider specifies that "the Customer will enter into an Agreement with the Company and agree to pay to the Company (i) a net monthly charge based on the investment by the Company in such TE and charging infrastructure and other modifications to Company's facilities, subject to adjustment, and the monthly percentages below, as appropriate, and (ii) an agreed-upon fixed amount to cover operation and maintenance ("O&M") expenses based on the Customer's desired level of warranty, insurance, remote monitoring, access, and network services."[10] Further the Rider includes language specifying that "the Customer shall be billed and agrees to pay in accordance with the applicable rate schedules under which electric service is provided."[11] The agreement further breaks down the fees owed by customers partaking in the TECI Rider including an Infrastructure Charge, O&M Charge, and Monthly Billing.[12] The Monthly Billing fees include the "minimum monthly charge under the Customer's base rate schedule for the first four years of the contract period"[13] which includes "projected annual non-fuel firm rate schedule revenues, plus base rate cost recovery mechanisms."[14] The detailed language in both the Rider and Agreement provides the costs related to a customer participating in the TECI Rider and how ETI will recover all related costs from that customer, and not from non-

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[8] Public Utility Regulatory Act, Tex. Util. Code § 42.0103(o)(3) (PURA).

[9] PURA § 42.0103(p)(2).

[10] Supplemental Direct Testimony and Exhibits of Samantha F. Hill, Exhibit SFH-S-1 at 1 (Sept. 20, 2023).

[11] *Id.* at 5.

[12] *Id.*, Exhibit SFH-S-2 at 3.

[13] *Id.*

[14] *Id.*, Exhibit SFH-S-1 at 5.

participating customers. Thus, the ALJ was correct in finding that the TECI Rider provides sufficient cost recovery mechanisms.

Although AACE does not agree with Staff's recommendation to deny approval of the TECI Rider, AACE does find merit in Staff's recommendation to include a condition that would prohibit ETI from recovering any unrecovered TECI Rider costs as bad debt expenses from any customers, specifically recovery of bad debt expenses from non-participating customers.[15] AACE believes the inclusion of this condition would provide a safeguard to non-participating customers from bearing any costs related to the TECI Rider.

For the foregoing reasons, AACE recommends the Commission approve the TECI Rider and include Commission Staff's recommended condition.

B. TECDA RIDER

Staff and OPUC except to the ALJ's recommendation that the TECDA Rider be approved; arguing that the Rider is unreasonably preferential, prejudicial, and discriminatory.[16] However, as the ALJ correctly finds, the TECDA Rider is not preferential, prejudicial, or discriminatory, and should be approved as it will not result in cost shifting from participating customers to non-participating customers[17] and the Rider itself does not constitute a discounted rate.[18]

AACE maintains its position that the TECDA Rider should be approved, and Staff and OPUC's Exceptions to the PFD should be rejected. It is critical that ETI establish and implement a tool that can be used to mitigate the inherent barrier that sporadic, high demand charges pose to EV investment. Further, ETI has proven through the Ratepayer Impact Measure (RIM) test, the TECDA Rider would not only provide benefits to participating customers, but non-participating customers as well. The RIM test considers the incremental benefits of the utility's proposal and the costs associated with providing the service.[19] The results from the test indicated a lower rate requirement from all customers.[20] Thus, indicating that the demand relief provided by the TECDA Rider would not result in lost revenues. As the ALJ pointed out, although OPUC disapproves of

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[15] Staff Exceptions at 11.

[16] OPUC Exceptions at 2; Staff Exceptions at 14.

[17] Proposal for Decision at 36 (Jun. 21, 2024) (PFD).

[18] PFD at 37.

[19] Entergy Texas, Inc.'s Initial Brief at 20 (Apr. 15, 2024) (Entergy Initial Brief).

[20] *Id.*

the RIM test, OPUC did not provide alternative modeling or analysis to disprove the RIM test results.[21] Based on the modeling that was presented by ETI, the issue of potential cost shifting should not be a valid reason to deny the TECDA Rider when the Rider provides a benefit to all customers.

Further, as AACE has previously proposed, the TECDA Rider should be modified by increasing the limitation of its application to the first 30,000 kW of load and extending the life of the TECDA Rider beyond the first five-years after initially taking electric service.[22] An increase in these limitations will allow site hosts full relief and continued protection from the high demand charges faced when investing in EV charging stations.

AACE urges the Commission to reject Staff and OPUC's Exceptions to the PFD and instead modify the PFD to incorporate AACE's proposed modifications to the TECDA Rider in order to encourage continued investments in EV charging stations by private, unregulated businesses.

II. CONCLUSION

For the foregoing reasons, AACE respectfully requests the Commission modify and adopt a PFD consistent with AACE's Exceptions. AACE also requests any such other relief to which they have shown themselves entitled.

[21] PFD at 35-36.

[22] Americans for Affordable and Clean Energy's Initial Brief at 6 (Apr. 15, 2024).

Respectfully submitted,

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ATTORNEYS FOR AMERICANS FOR AFFORDABLE CLEAN ENERGY

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 15, 2024, in accordance with the Order Suspending Rules, issued in Project No. 50664.

JAMIE L. MAULDIN