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<b>PROCEEDING TO RESOLVE ISSUES</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>IN DOCKET NO. 53719 RELATED TO</b>	<b>§</b>	
<b>TRANSPORTATION</b>	<b>§</b>	
<b>ELECTRIFICATION AND CHARGING</b>	<b>§</b>	<b>OF TEXAS</b>
<b>INFRASTRUCTURE</b>	<b>§</b>	

**ENTERGY TEXAS, INC.’S REPLY TO EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

Entergy Texas, Inc. (“ETI”) timely files its Reply to Exceptions to the Proposal for Decision (“PFD”), which was issued by the presiding Administrative Law Judge (“ALJ”) on June 21, 2024, respectfully showing as follows:

**I. Introduction and Background**

ETI initially proposed two transportation electrification (“TE”)<sup>1</sup> riders, the Transportation Electrification and Charging Infrastructure Rider (“TECI Rider”) and the Transportation Electrification and Charging Demand Adjustment Rider (“TECDA Rider”),<sup>2</sup> over two years ago in connection with its base rate case. The riders are designed to help accomplish Governor Abbott’s directive that “every Texan” be able to “access the infrastructure they need to charge an EV.”<sup>3</sup> Included in that charge was the specific requirement that Texans be able to “easily get from Beaumont to El Paso and Texline to Brownsville in an EV—with a focus on rural placement and connectivity.”<sup>4</sup> While ETI’s rate case was pending, the Texas Legislature passed Senate Bill 1002 (“SB 1002”),<sup>5</sup> which acknowledges that “electric utilities . . . and the commission have important

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<sup>1</sup> TE infrastructure and equipment includes make-ready infrastructure, electric vehicle (“EV”) supply equipment, and shore power connections for marine-type applications, necessary to provide electricity to charge the battery inside electric transportation equipment or to connect such equipment directly to the local electric grid.

<sup>2</sup> The riders are sometimes referred to as “TECI” and “TECDA” (for instance, in the tariffs themselves) and sometimes as “TECI-1” and “TECDA-1” (for instance, in the testimony of ETI witness Samantha Hill). For purposes of this reply, ETI uses TECI and TECDA.

<sup>3</sup> Direct Testimony of Jeremiah W. Cunningham, SPS Ex. 1, Attachment JWC-2 at 1 (Bates 35).

<sup>4</sup> *Id.*

<sup>5</sup> Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53. Now codified at Public Utility Regulatory Act (“PURA”) § 42.0101 *et seq.*

roles to fill in supporting the installation and use of infrastructure for [EV] charging,”<sup>6</sup> and declares as a State policy the “rapid installation and widespread use” of electric vehicle (“EV”) charging stations.<sup>7</sup> Approval of the TECI and TECDA Riders, as the ALJ recommends, will undoubtedly help further this State priority.

Through the TECI Rider, ETI will partner with interested nonresidential customers and competitive third-party charging providers to establish charging stations on customer premises under a Commission-approved tariff. The rider aligns with the legislative intent of fostering a competitive environment for private investment in EV charging solutions by connecting ETI’s nonresidential customers with competitive providers of EV charging equipment and offering the utility’s expertise to overcome technical barriers that can prevent its customers from installing EV chargers, whether for their own or the public’s use.

The TECDA Rider is designed to promote private sector investment in public EV charging stations by offering temporary and self-adjusting relief from outsized demand charges during the nascent stages of EV adoption. This rider not only provides a bridge to the future of widespread EV adoption, but also contributes to Governor Abbott’s vision for EV travel across Texas.

Every EV charging stakeholder group that participated in this case—including competitive service providers,<sup>8</sup> municipalities,<sup>9</sup> utility and industry associations,<sup>10</sup> environmental groups,<sup>11</sup> and businesses interested in installing EV charging infrastructure<sup>12</sup>—support the TECI Rider and

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<sup>6</sup> PURA § 42.0101(c).

<sup>7</sup> PURA § 42.0101(b).

<sup>8</sup> Direct Testimony of Justin D. Wilson, ChargePoint Ex. 1.0 at 5; Cross-Rebuttal Testimony of Justin D. Wilson, ChargePoint 4.0 at 14-15; Direct Testimony of Matthew McCaffree, FlashParking Ex. 1 at 6-7, 9.

<sup>9</sup> *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Silsbee Economic Development Corporation Letter at 1 (Mar. 9, 2023); Docket No. 53719, Huntsville Walker County Chamber of Commerce Letter at 1 (Mar. 14, 2024); Greater Beaumont Chamber of Commerce Letter at 1 (May 4, 2023); *see* Docket No. 53719, Port Arthur Transit Letter (supporting TECDA Rider).

<sup>10</sup> Rebuttal Testimony of Samantha F. Hill, ETI Ex. 53, Exhibit SFH-R-1 at 2-5 (Bates 52-55) (Edison Electric Institute letter dated Nov. 15, 2022); *see* SPS Ex. 1 at 8-9; Cross-Rebuttal of Jeremiah W. Cunningham, SPS Ex. 2 at 5-7 (supporting ownership of EV charging facilities by vertically integrated utilities); Docket No. 53719, Southwestern Electric Power Company Letter at 1 (Jan. 27, 2023) (same); Docket No. 53719, El Paso Electric Company’s Statement of Position at 1 (Oct. 25, 2022) (same).

<sup>11</sup> Docket No. 53719, United States Business Council for Sustainable Development Letter at 1-2 (Mar. 14, 2023); Docket No. 53719, The Center for Climate and Energy Solutions Comments at 1-2 (Mar. 31, 2023).

<sup>12</sup> Americans for Affordable Clean Energy’s Initial Brief at 4 (“AACE’s Initial Brief”); Docket No. 53719, Letter from Cinemark, Dillard’s Lineage Logistics, Ross, Staples, and Target Representatives at 1 (Apr. 17, 2023); *see* Direct Testimony of Eric S. Austin, Walmart Ex. 1 at 10 (supporting the TECDA Rider).

TECDA Rider. In its initial brief, Americans for Affordable Clean Energy (“AACE”), a coalition of owners and operators of convenience stores, public travel center facilities, and truck stops that provide retail fuel supply stated, “AACE believes the TECI Rider is in compliance with PURA Chapter 42 and urges the Commission to approve the TECI Rider in order to support the proliferation of EV charging in Texas.”<sup>13</sup> Likewise, Walmart, the only private customer to file testimony in this severed proceeding, recommends approval of the TECDA Rider “for customers investing in the transition to electric transportation . . . allowing a more robust charging network for public and fleet use.”<sup>14</sup>

ETI appreciates the ALJ’s considerable time and attention in Docket Nos. 53719 and this severed proceeding, meticulously examining the evidence and arguments, hearing live testimony, and arriving at a well-reasoned recommendation that the Commission approve both the TECI Rider and TECDA Rider. The two riders not only comply with PURA’s statutory requirements but are also critical to advancing Texas’s commitment to developing a TE network. Their approval would be a significant step towards a connected EV future in Texas.

## **II. Reply to Exceptions**

### **A. TECI Rider**

The TECI Rider enables nonresidential ETI customers in good standing to enter an agreement with ETI to own and/or maintain TE infrastructure, including EV charging stations,<sup>15</sup> on the customers’ property.<sup>16</sup> Pursuant to the TECI Rider and related customer agreement, only the customer will be providing EV charging service. That TECI *customer* will determine whether the charging service is for public or private use.<sup>17</sup> A participating TECI customer will determine

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<sup>13</sup> AACE’s Initial Brief at 4.

<sup>14</sup> Post-Hearing Brief of Walmart, Inc. at 6–7 (“Walmart’s Initial Brief”).

<sup>15</sup> Chapter 42 defines “electric vehicle” as a “vehicle that is propelled by one or more electric motors using energy stored in the form of a rechargeable battery.” PURA § 42.0102(2). While EVs are commonly thought of as cars, trucks, or buses, boats also fit within the definition. For purposes of this reply, when ETI uses the term EV in discussing Chapter 42 or in responding to Staff’s arguments, it should be read to include shore power connections, as described in note 1 (*i.e.*, the terms EV and TE are generally interchangeable).

<sup>16</sup> Supplemental Direct Testimony and Exhibits of Samantha F. Hill, ETI Ex. 95, Exhibit SFH-S-2 (Bates 20-45); PURA § 42.0103(o).

<sup>17</sup> ETI Ex. 95 at 5-6.

the physical access to and use of the EV charging station, and set any prices for the EV charging service.<sup>18</sup> ETI will *not* be providing EV charging service, whether to the public or otherwise.<sup>19</sup>

Staff was the only party to file exceptions regarding the TECI Rider, repeating many of the same arguments from their briefs, which the ALJ has already considered and ruled on. The only new arguments raised by Staff are based on the Proposal for Decision in El Paso Electric Company’s proceeding in Docket No. 54614 (“EPE PFD”),<sup>20</sup> which concerns a pilot EV charging proposal based on very different evidentiary record and case history. ETI addresses Staff’s exceptions below.

**1. PURA Chapter 42 does not restrict the type of services utility customers provide to themselves or others.**

Staff’s exceptions fundamentally misconstrue the scope and intent of PURA Chapter 42. At its core, the statute defines what utilities *cannot* do (*i.e.*, provide public EV charging service to end-users outside of specified exceptions). The statute does not seek to define or enable everything utilities or customers *can* do. Because the TECI Rider supports the Governor’s and State’s policy of advancing the deployment of EV chargers and charging service, provides a solution to customer frictions, and does not run afoul of Chapter 42’s prohibitions, it should be approved. Staff cites the EPE PFD to suggest that the Commission should prohibit ETI from owning non-public (private-use) EV charging stations installed on customers’ premises.<sup>21</sup> Staff’s suggestion stands in opposition to both the letter and the spirit of the statute. As explained more detail below, the statute does not seek to restrict how customers decide to use EV chargers.

As explained in ETI’s Reply Brief, Chapter 42 regulates when an electric utility may provide “electric vehicle charging service”<sup>22</sup> or own or operate “a public electric vehicle charging station.”<sup>23</sup> “Electric vehicle charging service” means “sales made from a public electric vehicle

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<sup>18</sup> ETI Ex. 95 at 6-7; PURA §§ 42.0103(o)(2)(A)-(B).

<sup>19</sup> ETI Ex. 95 at 5-6; PURA § 42.0103(o)(1)(A).

<sup>20</sup> *Application of El Paso Electric Company for Approval of Texas Electric Vehicle-Ready Pilot Programs*, Docket No. 54614, Proposal for Decision (Jun. 28, 2024) (pending).

<sup>21</sup> Commission Staff’s Exceptions to the Proposal for Decision at 13 (Aug. 1, 2024) (“Staff’s Exceptions”).

<sup>22</sup> PURA § 42.0103(b)(1) (“An electric utility may not provide electric charging service directly to a customer except as provided in this section.”).

<sup>23</sup> PURA § 42.0103(o).

charging station to the public.”<sup>24</sup> And a “public electric vehicle charging station” means “any level two charging station or direct-current fast charging station that delivers electricity... and is accessible for commercial use by the public.”<sup>25</sup> The definition *excludes* vehicle charging equipment that is:<sup>26</sup>

- (A) used by an electric utility, a transmission and distribution utility, or an affiliate to charge:
  - (i) an electric vehicle owned by the utility or affiliate; or
  - (ii) as an incident of employment, an electric vehicle owned by an employee of the utility or affiliate; or
- (B) located on the premises of a customer of an electric utility, a transmission and distribution utility, or an affiliate and:
  - (i) used by the customer or the customer’s tenants, affiliates, or guests; and
  - (ii) not used commercially for electric vehicle charging service.

Based on these exclusions, Chapter 42 does not attempt to regulate or restrict whatsoever the ownership or service related to private-use EV charging equipment. Contrary to Staff’s spurious position, Chapter 42 does not need to *enable* a utility’s involvement in private-use EV charging equipment.

Even with respect to the public-use case, PURA Chapter 42 restricts the type of charging *service* electric utilities can provide; it *does not* restrict (1) an electric utility’s ownership of TE infrastructure or (2) the type of service the utility *customer* can provide to itself or others. PURA § 42.0103(b) provides, “An electric utility: (1) may not provide electric vehicle charging service directly to a customer except as provided by this section,”<sup>27</sup> where “electric vehicle charging service” means EV charging sales directly to the public end-user.<sup>28</sup> Therefore, Chapter 42 bars electric utilities from making EV charging sales directly to the public, end-user (*e.g.*, the driver of a car) unless otherwise provided by an exception in the statute. Notably, there is no use case under ETT’s TECI (or TECDA) offerings in which the utility is providing charging *service* at all, whether public or private.

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<sup>24</sup> PURA § 42.0102(4).

<sup>25</sup> PURA § 42.0102(7).

<sup>26</sup> *Id.*

<sup>27</sup> PURA § at § 42.0103(b) (emphasis added).

<sup>28</sup> PURA § 42.0102(4).

This interpretation is consistent with ETI's testimony on SB 1002 before the Senate Business & Commerce Committee on March 21, 2023:

We've heard from schools and local communities that would like to have EV chargers, who for example need to be able to charge school buses/transit buses. Importantly, the agreed to language allows for a voluntary program where the cost for EV chargers are borne by the customers hosting that equipment and not by any other customers.<sup>29</sup>

Adopting the finding from the EPE PFD would not only be improper from an evidentiary standpoint, it would also thwart the legislative intent by impeding, rather than promoting, private investment in TE infrastructure. Moreover, Staff's recommendation to limit ETI's TECI offering to customers desiring to install public EV charging stations is ironic, given that a key aim of Chapter 42 is to regulate the provision of *public* charging service and exclude from such restrictions the private-use cases. Staff's recommendation is contrary to the statute and should not be adopted.

**2. Staff failed to show that its proposed "EV Rate Class" is more reasonable than ETI's proposed tariffs.**

Staff reasserts its recommendation for a separate EV rate class.<sup>30</sup> Although the applicant typically has the burden of proof, "the burden of production shifts when a party proposes a change to the application. It is then incumbent on the challenging party to produce credible evidence that its proposal is more reasonable than the applicant's."<sup>31</sup> Staff did not produce credible evidence that its proposed EV rate class was more reasonable than ETI's TE riders, particularly given: (1) PURA Chapter 42 does not require a separate EV rate class, (2) the TECI Rider is tailored for customers to choose from a variety of options from competitive providers, including the level and type of O&M (*e.g.*, extended warranty, networking service), and (3) PURA § 42.0103(o) expressly contemplates utilities and customers "entering into agreements."<sup>32</sup> As an initial matter,

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<sup>29</sup> Senate Committee on Business & Commerce (Part II) on SB 1002, 88th Leg., R.S. (Mar. 21, 2023), available at: [https://lcsenate.granicus.com/MediaPlayer.php?view\\_id=53&clip\\_id=17427](https://lcsenate.granicus.com/MediaPlayer.php?view_id=53&clip_id=17427) at 9:54–11:11.

<sup>30</sup> Staff's Exceptions at 2–5.

<sup>31</sup> *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rerearing at Conclusion of Law No. 9A (Mar. 19, 2018).

<sup>32</sup> See PFD at 20–21, 24–25.

Staff essentially concedes that Chapter 42 does not require an EV rate class,<sup>33</sup> but nevertheless suggests ETI apply for a separate EV rate class at some later date.<sup>34</sup> ETI initially requested approval of these riders over two years ago in July 2022, and SB 1002 became effective almost a year ago.<sup>35</sup> The time to act is now—any further delay would run counter to the State’s policy of promoting the “rapid installation and widespread use” of EV charging equipment and the development of the EV market.<sup>36</sup>

Staff attempts to argue that permitting customers to install only *public* (as opposed to private-use) EV charging will result in less variety of options and more standardization.<sup>37</sup> However, as discussed above, Chapter 42 does not restrict the types of service *customers* provide with EV charging stations. Rather, Chapter 42 merely puts parameters around a utility’s ability to provide EV charging service directly to the public. Also, more standardization implies less options for customers, limiting competition among third-party providers. Staff’s proposal is at odds with the Legislature’s desire for utility contracts and tariffs to help foster the development of the competitive EV charging market.

Lastly, Staff’s contention that the TECI Rider lacks transparency and will pose challenges for the Commission and the parties’ review in a future rate case is meritless.<sup>38</sup> ETI confirmed that “all of the charges, materials, supplies, capital, O&M, used to fulfill the TECI Rider agreement will be accounted for in an identifiable way.”<sup>39</sup> Each agreement will be assigned a unique work order number or project code, enabling ETI to provide the cost details in a future rate case to meet its burden that it has complied with Chapter 42.<sup>40</sup>

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<sup>33</sup> See Staff’s Exceptions at 2 (asserting a separate EV rate class would be “much more reasonable” for implementing the TE-related policies); see also *id.* at 4 (explaining “Staff’s reference to PURA § 42.0103(m) was to convey that an EV rate class would be entirely consistent with setting rates in the normal manner authorized under Chapter 36 of PURA,” which implies it is not required).

<sup>34</sup> *Id.* at 4–5.

<sup>35</sup> PFD at 1–2.

<sup>36</sup> PURA § 42.0101(b).

<sup>37</sup> Staff’s Exceptions at 3.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> Tr. at 70:8–10 (Hill Cross) (Apr. 5, 2024).

<sup>40</sup> *Id.* at 70:11–15.



**3. ETI will recover the costs to serve participating TECI Rider customers from those customers.**

There are no under-recovered costs to be imposed on non-participating customers. Participating TECI Rider customers will pay for both: (1) the TE charging infrastructure and O&M expenses to cover the cost of “owning, constructing, financing, operation and maintaining”<sup>41</sup> the TE infrastructure through their monthly TECI payments; and (2) the electric service to provide electricity to the EV chargers, though their established base rate schedule.<sup>42</sup>

Staff’s argument that the TECI Rider’s revenue credit mechanism, which Staff repeatedly mischaracterizes as a “subsidy” throughout their exceptions,<sup>43</sup> will result in unrecovered costs has been rejected by the Legislature and the Commission. PURA § 42.0103(o)(3) expressly recognizes that the “incremental revenues paid by” the participating customer are included when confirming that customer is paying the overall “electric utility-related costs.” Thus, even if Staff’s characterization was correct (which it is not), the revenue credit is expressly permitted by statute. The TECI Rider applies a four-year revenue credit to the costs charged under the TECI Rider, reflecting ETI’s Commission-approved line extension policy, which offsets required customer contributions based on expected incremental revenues from the new service extension.<sup>44</sup> In both scenarios, a customer is not required to reimburse ETI for the new facilities to the extent the forecasted incremental revenues for the first four years of service (which would not exist otherwise) cover the cost of ETI’s investment.<sup>45</sup> ETI’s TECI Rider will appropriately credit participating customers for projected incremental revenues (with a backstop make-whole payment if they fall short)<sup>46</sup> in accordance with PURA § 42.0103(o)(3) and Commission precedent.

Moreover, Staff’s exceptions continue to mischaracterize Ms. Hill’s Rebuttal Testimony and her testimony at trial. Staff presents a table that it says demonstrates “significant subsidization and discriminatory treatment,” but what Staff refers to as the “Total Paid by non-TECI Rider

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<sup>41</sup> PURA § 42.0103(p)(2).

<sup>42</sup> ETI’s Reply Brief at 14–15; PFD at 18–19, 24.

<sup>43</sup> Staff’s Exceptions at 2, 9, 11–13.

<sup>44</sup> ETI’s Reply Brief at 15–16.

<sup>45</sup> *Id.*

<sup>46</sup> Supplemental Direct Testimony and Exhibits of Samantha F. Hill, ETI Ex. 95 at 7.

Customer”<sup>47</sup> is instead “**Total ETI Costs**,” as shown in Ms. Hill’s Supplemental Rebuttal Exhibit.<sup>48</sup> Staff conflates a non-participating TECI customer with ETI to support its unfounded claim.

Staff then repackages the Office of Public Utility Counsel’s (“OPUC”) argument that there *could be* unrecovered attendant, overhead, or indirect costs associated with the TECI Rider that are borne by non-participating customers at some future time.<sup>49</sup> But, as the ALJ acknowledged, OPUC “failed to explain how there would be outstanding costs attributable to a participating customer that might be shifted to non-participating customers if the participating customer pays under the tariffed rate for electric delivery service as well as all of the costs specific to electric vehicle charging and infrastructure under the TECI Rider.”<sup>50</sup> As discussed above, ETI plans to track TECI-related costs to meet its burden of proof in a future rate case, at which time Staff will have the opportunity to propound discovery as well.

Finally, Staff excepts the ALJ’s finding that ETI would be required to seek leave from the Commission to be able to recover bad debt expense based on the EPE PFD.<sup>51</sup> The ALJ in this case considered this issue in the initial PFD in Docket No. 53719 and again in the instant PFD.<sup>52</sup> The ALJ correctly found that ETI “already bears the risk of accruing a bad debt expense if a participating customer defaults and [] would be required to seek leave from the Commission to recover that expense.”<sup>53</sup> Bad debt expense is part of the cost of doing business, and Staff’s suggestion is premature and outside of the scope of this proceeding. Any challenge to the recoverability of bad debt expense can be considered if and when ETI seeks to recover those costs in a base rate case. Also, the EPE PFD is based on the facts and circumstances specific to EPE’s proposed pilot programs and should not be imposed on ETI.

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<sup>47</sup> Staff’s Exceptions at 9.

<sup>48</sup> *See, e.g.*, Supplemental Rebuttal Testimony and Exhibit of Samantha F. Hill, ETI Ex. 96, Exhibit SFH-SR-1 at 2 (Bates 26) (showing Total ETI costs of \$200,972).

<sup>49</sup> Staff’s Exceptions at 10.

<sup>50</sup> PFD at 19.

<sup>51</sup> Staff’s Exceptions at 11.

<sup>52</sup> PFD at 25.

<sup>53</sup> *Id.*

#### 4. The TECI Rider fosters the development of the EV charging market.

Chapter 42 establishes a framework for electric utilities' participation in developing infrastructure to support the proliferation of EV charging stations. The TECI offering not only complies with PURA § 42.0103(o), it creates "avenues for [EV] charging service providers to generate business through services obtained via new clients."<sup>54</sup> The ALJ's finding that the TECI Rider facilitates the expansion of the EV charging market is proper.<sup>55</sup>

Staff's exception to this finding is based on unfounded arguments outside of the scope of Chapter 42 and conflicts with third-party providers' positions. First, the statutory-based revenue credits, which Staff mischaracterizes as "subsidies," do not hinder competition.<sup>56</sup> Second, Staff argues that ETI's list of approved vendors is not competitively neutral but fails to explain how the list would deter third-party providers from competing in ETI's service area or being added to ETI's approved vendor list.<sup>57</sup> Third, as discussed above, Chapter 42 does not prohibit private-use EV charging; therefore, Staff's suggested finding from the EPE PFD should not be adopted.<sup>58</sup> Fourth, and most importantly, the intervenors representing the private competitive sector, including AACE,<sup>59</sup> FlashParking, and ChargePoint, all support the TECI Rider. FlashParking witness Matthew McCaffree testified, "The Entergy proposal appears to be *competitively neutral* and would allow FlashParking and others to develop EV charging stations in Entergy's service area."<sup>60</sup> In its reply to exceptions in Docket No. 53719, ChargePoint stated, "The TECI Rider is a cost-based solution that allows site hosts to choose their preferred charging solution and, as a result, will support the competitive charging market."<sup>61</sup> The unfounded opposition of Staff's witness, whose testimony was not informed by any independent review or analysis of the EV charging

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<sup>54</sup> PFD at 26.

<sup>55</sup> *Id.*

<sup>56</sup> Staff's Exceptions at 11–12.

<sup>57</sup> *See id.* at 12.

<sup>58</sup> *Id.* at 12–13.

<sup>59</sup> AACE's Initial Brief at 4.

<sup>60</sup> FlashParking Ex. 1 at 7 (emphasis added).

<sup>61</sup> Docket No. 53719, ChargePoint, Inc.'s Reply to Exceptions at 3 (Jul. 19, 2023).

market,<sup>62</sup> and who has no particular expertise or experience in this area,<sup>63</sup> should not usurp the positions of the very competitive providers Staff purports to protect. The TECI Rider should be approved.

#### **5. The TECI Rider is not preferential, prejudicial, or discriminatory.**

The TECI offering will be available to all nonresidential customers in good standing seeking agreements in ETI's service area, on a nondiscriminatory basis under PURA § 42.0103(p)(1).<sup>64</sup> Participating customers will be responsible for the monthly charges under the TECI Rider as well as their established base rate schedule for electric delivery service. The ALJ correctly found that the TECI Rider is offered on a non-discriminatory basis and recovers all TECI-related costs from participating customers.<sup>65</sup>

Staff's exceptions to the PFD fail here for the same reasons described above—the revenue offsets are not impermissible “subsidies” and ETI will fully recover TECI-related costs from participating customers.<sup>66</sup> Staff also argues that ETI has not demonstrated that its TECI Rider will be offered on a non-discriminatory basis, based on ETI's lack of control over EV charging prices and O&M costs, as well as ETI's discretion in applying the revenue offset.<sup>67</sup>

Regarding ETI's lack of control in setting EV charging prices, the TECI Rider is designed to give the customer sole discretion in setting prices, as required by PURA § 42.0103(o)(2)(B). Staff's suggestion that ETI should have control over prices would run afoul of the statute. ETI's lack of control over O&M costs reflects the TECI program's partnerships with third-party providers for these services, an important aspect to promoting competition and the expansion of the EV charging market. As ETI explained in its reply brief, competitive EV charging providers must be able to adjust their prices to account for changing circumstances.<sup>68</sup> As the market develops, price reductions will be passed on to consumers. Whether it is the price charged by the

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<sup>62</sup> Tr. at 41:11-17 (Abbott Cross) (Apr. 5, 2024).

<sup>63</sup> See ETI Ex. 98 at 4-5; Staff Ex. 7 at WBA-1.

<sup>64</sup> ETI Ex. 40 at 12.

<sup>65</sup> PFD at 24, 27.

<sup>66</sup> Staff's Exceptions at 13.

<sup>67</sup> *Id.* at 14.

<sup>68</sup> ETI's Reply Brief at 17.

TECI customer to drivers for EV charging or the prices paid by TECI customers for EV equipment and O&M sourced from competitive providers, Staff offers the illogical assertion that ETI's offering is discriminatory because it lets the market set the prices. Not only can ETI not discriminate regarding matters it does not control, the market pricing dynamic is exactly what happens *outside* of ETI's TECI offering. Vendors selling EV charging equipment set prices based on what the market will bear, as do the providers of EV charging service to end-use drivers. Staff's argument on this point directly conflicts with its position on competition and claims discrimination in a situation in which ETI intentionally does not control prices. Lastly, as stated above, the statutorily permitted revenue offset operates like ETI's Commission-approved line extension policy—it is not applied in a discriminatory manner by ETI as Staff alleges. The TECI Rider is not preferential, prejudicial, or discriminatory.

## **B. TECDA Rider**

### **1. The TECDA Rider will generate incremental revenues, which in turn will put downward pressure on ETI customers' rates.**

Unpredictable demand charges can make investments in EV charging stations uneconomic during the early EV adoption period. The TECDA Rider addresses this cost barrier by providing temporary, self-adjusting demand relief and billing certainty, incentivizing customers who may be on the fence to invest in EV charging infrastructure and equipment. This investment will result in incremental revenues, which would not exist but for the TECDA Rider. For example, a Schedule General Service ("GS") customer, such as an apartment building, electing to participate in the TECDA program will pay not only for the electricity used by its tenants, but *also* the customer charge, energy charge, and demand charge (as adjusted by the TECDA Rider, if any) for the separately metered account used to provide electricity to its EV chargers.<sup>69</sup> The customer's new, separately metered EV charging will generate incremental revenues to ETI, which exceed the demand adjustment. This is precisely what ETI's unrebutted Ratepayer Impact Measure ("RIM") test shows. The RIM test compared the charges (revenue benefits) from TECDA Rider customers with the marginal costs of serving those customers, including incremental capacity supply costs, incremental energy supply costs, embedded transmission-related costs, and embedded

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<sup>69</sup> ETI's Initial Brief at 15.

distribution-related costs.<sup>70</sup> As discussed in ETI's initial and reply briefs, the RIM test resulted in net benefits in every scenario analyzed over a 10-year period, meaning the revenues exceed the marginal costs.<sup>71</sup> Therefore, contrary to Commission Staff's and OPUC's conclusory allegations, there are no costs to be shifted to other customers. Rather, the incremental revenues will offset ETI's rates, benefitting ETI customers.

Neither Commission Staff nor OPUC provided any analysis to support their speculative cost-shifting concerns, nor did any party refute the RIM test. Moreover, the ALJ did not place the burden of proof on OPUC, as OPUC alleges.<sup>72</sup> Instead, the ALJ analyzed the evidence in the record (including Ms. Hill's pre-filed testimony, live testimony, and the RIM test), and the lack of evidence from OPUC to the contrary. The ALJ properly placed the burden of proof on ETI and correctly found that ETI proved, by a preponderance of the evidence, that the TECDA Rider will not result in cost shifting from participating customers to non-participating customers.<sup>73</sup>

**2. The TECDA Rider is not a discounted rate under PURA § 36.007, nor is it unreasonably preferential, prejudicial, or discriminatory under PURA §§ 36.003 or 36.007.**

The ALJ considered OPUC's and Staff's characterization of the TECDA Rider's demand relief mechanism as a discounted rate and found their arguments unpersuasive.<sup>74</sup> The ALJ correctly reaffirmed the finding from the initial PFD in Docket No. 53719 that the TECDA Rider does not constitute a discounted rate under PURA § 36.007.<sup>75</sup> Even if the Commission disagrees on this point, that is not the end of the inquiry. PURA § 36.007(a) allows the Commission to approve retail tariffs that contain "charges that are less than rates approved by the regulatory authority but not less than the utility's marginal cost" so long as they are not "unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive."<sup>76</sup> ETI met this standard,

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<sup>70</sup> ETI Ex. 53 at 30.

<sup>71</sup> ETI's Initial Brief at 20–21; ETI's Reply Brief at 27–28.

<sup>72</sup> Office of Public Utility Counsel's Exceptions to the Proposal for Decision at 3–4 (Aug. 1, 2024) ("OPUC's Exceptions").

<sup>73</sup> PFD at 35–36.

<sup>74</sup> *Id.* at 37.

<sup>75</sup> *Id.*

<sup>76</sup> PURA § 36.007(a).

demonstrating through the RIM test that the net benefits exceed the marginal costs and that the increased revenues from EV charging will reduce overall rates.<sup>77</sup> Thus, the TECDA Rider cannot be unreasonably preferential, prejudicial, or discriminatory to any class of ETI customers.<sup>78</sup> The ALJ correctly found that ETI is permitted to set parameters on who may opt into the TECDA Rider, and that it is not preferential, prejudicial, or discriminatory.<sup>79</sup> In other words, it is not “discriminatory” or “preferential” to limit the applicability of a tariff to a subset of a utility’s customers based on reasonable criteria. There is also no cost shifting under PURA § 36.007(d), because there are no such costs.<sup>80</sup> Staff’s TECDA “cost”-shifting complaint is really a complaint that other customers will receive less of a net benefit that would not otherwise exist at all, but for ETI’s TECDA Rider. As discussed above and at length in ETI’s reply brief, the revenues from TECDA Rider customers are incremental and would not exist but for the rider.<sup>81</sup> Thus, rejecting the TECDA Rider, as Staff proposes, would *further* reduce the benefits to other customers by eliminating the incremental offsetting revenues altogether.

Staff then misapplies an interim order addressing unbundling issues from over 20 years ago to argue that the TECDA Rider results in customers being billed based on monthly kilowatt-hour (“kWh”) energy usage instead of non-coincident peak (“NCP”) demand.<sup>82</sup> In ETI’s reply brief, ETI describes effective rates on a per kWh basis to highlight the challenges demand charges pose for Schedule GS customers.<sup>83</sup> This approach aligns with how ETI’s stakeholders analyze their demand charges.<sup>84</sup> Moreover, since that interim order, the Commission has recognized that certain customers should pay less than their NCP demand charges in specific circumstances. During unbundling, the Commission recognized that seasonal agricultural customers required

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<sup>77</sup> ETI’s Reply Brief at 26–28.

<sup>78</sup> *Id.* at 28; PURA §§ 36.003(b), 36.007(a)

<sup>79</sup> PFD at 37–38.

<sup>80</sup> ETI’s Reply Brief at 28.

<sup>81</sup> *Id.* at 26–28.

<sup>82</sup> Staff’s Exceptions at 16 (referencing *Generic Issues Associated with Applications for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 and Public Utility Commission Substantive Rule § 25.344*, Order No. 40: Interim Order Establishing Generic Customer Classification and Rate Design (Nov. 22, 2000)).

<sup>83</sup> ETI’s Reply Brief at 24.

<sup>84</sup> *See* ChargePoint Ex. 4.0 at 13 (“When traditional demand-based rates are applied to EV charging customers with low utilization and high demand it results in unpredictable electricity bills with a high “effective cost per kWh” for the site host.”).

demand relief based on their variable usage patterns.<sup>85</sup> Eleven years later, the Commission extended this exception to transmission and distribution utilities' nonresidential secondary voltage customers with annual load factors less than 25% in adopting 16 Texas Administrative Code § 25.244.<sup>86</sup> By referencing this rule, ETI was illustrating an example of Commission-authorized demand relief for low load factor customers to show that such relief is permissible.<sup>87</sup> ETI's position is not misleading, contrary to Staff's claims. Indeed, the PFD describes ETI's position as "liken[ing]" the TECDA Rider to the rule.<sup>88</sup>

In addition, OPUC's exception based on its analogy to the discounted rates for certain institutions of higher education and military bases under PURA §§ 36.351 and 36.354 is flawed,<sup>89</sup> because it incorrectly assumes the TECDA Rider is a discounted rate and that there will be costs shifted to non-participating customers. Because the TECDA Rider will result in incremental revenues, not costs, it is not necessary to impose protections as OPUC suggests. Further, OPUC's offhand remark regarding rate case expenses should be disregarded as outside of the scope of this proceeding.<sup>90</sup> ETI is not seeking approval, in this proceeding, of rate case expenses incurred from its participation in this proceeding, and OPUC is free to challenge the reasonableness of such expenses if and when ETI seeks to recover them.

**3. The TECDA Rider furthers the goals of Chapter 42 even if the specific statutory requirements do not directly apply.**

Chapter 42 of PURA does not specifically address the TECDA Rider's rate design mechanism, so its statutory requirements do not apply. The ALJ properly found that "[n]ewly implemented PURA Chapter 42 does not provide statutory language pertaining specifically to rate design, the ratemaking component addressed by the mechanism provided by the TECDA Rider."<sup>91</sup>

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<sup>85</sup> *Application of Central Power & Light Company for Approval of Unbundled Cost of Service Rate Pursuant to PURA § 39.201 & Public Utility Commission Substantive Rule § 25.344*, Docket No. 22352, Order at 36 (Oct. 5, 2001).

<sup>86</sup> ETI's Reply Brief at 25 (citing 16 TAC § 25.244(c)).

<sup>87</sup> ETI's Reply Brief at 25.

<sup>88</sup> PFD at 30–31.

<sup>89</sup> OPUC's Exceptions at 5.

<sup>90</sup> *Id.* at 6.

<sup>91</sup> PFD at 35.



While Staff conceded this point in its initial brief,<sup>92</sup> Staff now attempts to argue that the TECDA Rider is not “based on cost causation principles” under PURA § 42.0101(d)(2).<sup>93</sup> As an initial matter, since Chapter 42’s statutory requirements do not address rate design mechanisms, they should not apply to the TECDA Rider. Instead, as the Commission’s Preliminary Order contemplates, the question becomes whether the TECDA Rider complies with other statutory requirements, such as PURA §§ 36.003 and 36.007, discussed above.<sup>94</sup>

Nevertheless, Staff takes exception to the ALJ’s holistic approach to the analysis of the TECDA Rider under Chapter 42, rather than “focusing on one factor, namely whether the rider is based on cost causation principles.”<sup>95</sup> The ALJ did not ignore the “cost causation principles” factor as Staff claims; rather, the ALJ properly analyzed the legislative intent based on statutory construction principles. Staff also relies on a single sentence from Walmart’s brief that “modified rates may not be cost-based, and as such, could create inter- or intra-class subsidies.”<sup>96</sup> But Walmart was explaining its support of modified rates in the short-term to build out a robust EV charging infrastructure and the return to standard rates over the longer term as EV adoption develops, which is exactly what ETI’s temporary, self-adjusting TECDA Rider is designed to do.<sup>97</sup> Essentially, Staff mischaracterizes Walmart’s position, while ignoring Walmart’s overall support of the TECDA Rider, as “needed to support third-party investment in EV charging equipment.”<sup>98</sup> In the same way that Staff selectively emphasizes one sentence from Walmart’s brief, disregarding its overall suggestion, Staff similarly relies on “cost causation principles” despite the clear legislative objective to encourage investment in public EV charging infrastructure. The TECDA Rider will further the goals of Chapter 42 and should be approved.

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<sup>92</sup> See Commission Staff’s Initial Brief at 15 (Apr. 15, 2024) (“[T]he type of rate design measure proposed by the TECDA Rider is not explicitly included in Chapter 42 of PURA . . .”).

<sup>93</sup> Staff’s Exceptions at 14–15.

<sup>94</sup> Supplemental Preliminary Order at 5 (Dec. 14, 2023).

<sup>95</sup> Staff’s Exceptions at 14.

<sup>96</sup> Staff’s Exceptions at 15; Walmart’s Initial Brief at 5.

<sup>97</sup> See Walmart’s Initial Brief at 5–6.

<sup>98</sup> *Id.* at 5.

### III. Conclusion

In fulfilling its “important role[] . . . in supporting the installation and use of infrastructure for electric vehicle charging,” ETI is seeking approval of its two TE tariffs.<sup>99</sup> The TECI Rider enables ETI to partner with interested nonresidential customers and competitive third-party charging providers to set up charging stations on customer premises, under a Commission-approved tariff. This competitively neutral tariff satisfies the requirements under PURA § 42.0103(o) and will “foster the rapid installation and widespread use” of EV charging stations.<sup>100</sup> The ALJ correctly determined that the TECI Rider recovers all TECI-related costs from participating customers, facilitates competition, and is not unreasonably preferential, prejudicial, or discriminatory.<sup>101</sup>

The TECDA Rider will stimulate private sector investment in EV charging stations by providing temporary and self-adjusting demand relief during the early stages of EV adoption. By addressing a well-known rate design barrier during these early stages, it encourages customers to install EV charging stations, resulting in incremental revenues that benefit all ETI customers by putting downward pressure on everyone’s rates. The TECDA Rider aligns with the goals of Chapter 42 by encouraging “competitive private investment in the deployment” of EV charging stations.<sup>102</sup> The TECDA Rider should be approved, consistent with the ALJ’s reasoned recommendation.<sup>103</sup>

Both the TECI Rider and TECDA Rider comply with PURA and are critical to fostering investment in EV charging stations to advance Texas’s TE goals. The PFD’s recommendations should be adopted.

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<sup>99</sup> PURA § 42.0101(c).

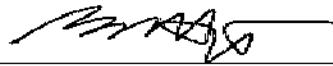
<sup>100</sup> PURA § 42.0101(b).

<sup>101</sup> PFD at 22–27.

<sup>102</sup> PURA § 42.0101(a).

<sup>103</sup> PFD at 35–38.

Respectfully submitted,



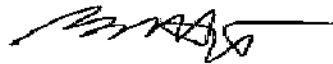
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**ATTORNEYS FOR ENTERGY TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Entergy Texas, Inc.'s Reply to Exceptions to the Proposal for Decision was served by electronic delivery on all parties of record in this proceeding on August 15, 2024.



George G. Hoyt