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| APPLICATION OF ENTERGY | § | BEFORE THE STATE OFFICE |
| TEXAS, INC. FOR AUTHORITY TO | § | OF |
| CHANGE RATES | § | ADMINISTRATIVE HEARINGS |

**AMERICANS FOR AFFORDABLE
CLEAN ENERGY'S REPLIES TO EXCEPTIONS
TO PROPOSAL FOR DECISION**

JULY 19, 2023

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**AMERICANS FOR AFFORDABLE CLEAN ENERGY’S
REPLIES TO EXCEPTIONS TO PROPOSAL FOR DECISION**

Americans for Affordable Clean Energy (AACE) timely files these Replies to Exceptions to the Proposal for Decision (PFD) for consideration by the Public Utility Commission of Texas (Commission) and respectfully shows as follows:

I. INTRODUCTION

AACE is appreciative for the consideration of the administrative law judge (ALJ) on these novel issues and agrees with the ALJ’s decision to defer the decision of Issue Nos. 68 and 69 to the Commission due to the impending implementation of the Public Utility Regulatory Act (PURA) Chapter 42. However, as discussed in Exceptions, AACE excepts to the PFD’s holding that if the Commission determines electric utility ownership of electric vehicle (EV) charging is appropriate, the Commission approve the Transportation Electrification and Charging Infrastructure (TECI) Rider and deny the Transportation Electrification and Charging Demand Adjustment (TECDA) Rider.¹ AACE files these Replies to Exceptions to respond to the exceptions filed by Entergy Texas, Inc. (ETI or Company), Commission Staff (Staff), ChargePoint, Inc. (ChargePoint), and the Office of Public Utility Counsel (OPUC).

The main issue in this matter is electric utility ownership of transportation electrification (TE) charging infrastructure and equipment. This issue is directly addressed by Senate Bill (SB) 1002, which was passed by the 88th Legislature in the time between the date ETI filed its application and the PFD was filed. SB 1002 creates a new chapter, Chapter 42, of PURA that addresses EV charging facilities and establishes a framework for related issues with an effective date of September 1, 2023.² As the ALJ notes in the PFD, SB 1002 specifically “provides conditions on how electric utilities operating outside of and within ERCOT may provide EV

¹ SOAH Proposal for Decision with Memorandum at 2 (Jun. 19, 2023) (PFD).

² *Id.* at 16.

charging service directly to customers, including authorizing the ownership of EV charging facilities and EV-related infrastructure and equipment.”³ As a consequence of the impending change in law, the ALJ defers both decisions of Issues Nos. 68 and 69.

AACE reiterates its request that the Commission dismiss Issues Nos. 68 and 69, without prejudice. If the Commission decides these issues prior to implementing the statute, the order issued in this case will determine policy and will have broad implications on all subsequent applications. Dismissing these issues without prejudice gives the Commission the opportunity to make a guided and accurate decision on the execution of the two riders in line with PURA Chapter 42 after its implementation. AACE supports Staff’s recommendation in its Exceptions to the PFD, proposing that “the regulatory framework and policy be developed through a rulemaking proceeding where the Commission may benefit from considering the different proposals from a consolidated rulemaking project rather than being considered on a piecemeal basis.”⁴ Dismissing Issues Nos. 68 and 69 will allow the Commission to take time and develop the regulatory framework through a rulemaking proceeding without implementing policy that may not be in line with SB 1002. Further, as also provided by Staff, two other vertically integrated utilities, El Paso Electric Company and Southwestern Public Service Company, have filed applications with EV-related tariffs included in them.⁵ As Staff notes, these filings presumably include proposals and rate designs that vary from each other and ETI’s tariffs in the current proceeding.⁶ If the Commission reviews each vertically integrated utility’s current proposed tariff, the Commission will be setting precedent and developing regulatory framework in a piecemeal manner instead of in a rulemaking proceeding where Commission can perform a thorough analysis with the benefit of input provided by multiple stakeholders.

Therefore, in order to allow for guided and accurate implementation of SB 1002, the Commission should dismiss Issues Nos. 68 and 69 without prejudice in order to allow for the

³ PFD at 16, citing Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (to be codified at Tex. Util. Code Ch. 42).

⁴ Commission Staff’s Exceptions to the Proposal for Decision at 2 (Jul. 12, 2023) (Staff’s Exceptions).

⁵ *Id.* at 1; citing *Statement of Intent and Application of El Paso Electric Company for Approval of Texas Electric Vehicle Ready Pilot Programs and Tariffs*, Docket No. 54614 (pending) and *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 54634 (pending).

⁶ *Id.*

Commission to appropriately implement PURA Chapter 42 as provided in SB 1002 without setting precedent and policy that could affect current and future applications. Further, dismissing these issues without prejudice will allow ETI to file its TECI and TECDA Riders in a separate filing after PURA Chapter 42 becomes effective.

However, if the Commission chooses not to dismiss Issues Nos. 68 and 69 without prejudice, AACE recommends the Commission reject the ALJ's recommendation to approve the TECI Rider and deny the TECDA Rider,⁷ as discussed below.

IV. VERTICALLY INTEGRATED ELECTRIC UTILITY OWNERSHIP OF TE AND CHARGING INFRASTRUCTURE

In the PFD, the ALJ finds, as of the effective date of the new PURA Chapter 42 under SB 1002, it is appropriate for a vertically integrated electric utility to own TE charging infrastructure and equipment.⁸ However, since the effective date is in the future, the ALJ defers the issue of appropriateness of vertically integrated electric utility ownership of TE charging infrastructure and equipment as it is considered in the current proceeding to the Commission.⁹ As discussed above, AACE proposes the Commission dismiss Issues Nos. 68 and 69 without prejudice.

If the Commission does not dismiss Issues Nos. 68 and 69, AACE re-urges the Commission to approve the ALJ's finding that AACE's argument regarding legislative intent related to EV charging in PURA is persuasive. ETI incorrectly excepts to this finding stating that the ALJ offered an incorrect legal interpretation of PURA § 31.002(6).¹⁰ The legislature's amendment to PURA § 31.002(6) was intended to provide regulatory clarity regarding the status of companies that primarily provide EV charging stations, specifically by exempting EV charging companies from the definition of electric utilities, thereby removing those companies from the regulation of the Commission.¹¹ ETI's recommendation to omit the PFD's finding that "the amendment to PURA § 31.002(6) does not support the position that all vertically integrated electric utilities may own all

⁷ PFD at 2.

⁸ *Id.* at 16-17.

⁹ *Id.* at 17.

¹⁰ Entergy Texas, Inc.'s Exceptions to the Proposal for Decision at 10 (Jul. 12, 2023) (ETI's Exceptions).

¹¹ PFD at 16, citing Americans for Affordable Clean Energy's Reply Brief at 7-8 (Jan. 27, 2023) (AACE's Reply Brief).

aspects of EV charging related infrastructure and equipment” should be rejected.¹² The PFD is correct in finding the amendment to PURA does not support the position that all vertically integrated electric utilities may own all aspects of EV charging related infrastructure and equipment, and instead provides regulatory clarity to the competitive providers of electric charging services in order to help facilitate the development of and competition of EV charging stations for customers.¹³ Therefore, AACE urges the Commission to reject ETI’s recommendation to omit the ALJ’s finding and, instead, approve the ALJ’s conclusion that AACE’s position that the purpose of the amendment to PURA § 31.002(6) was intended to provide regulatory clarity to be persuasive.¹⁴

AACE further reiterates its previous arguments regarding the appropriateness of utility ownership of EV charging stations. As discussed in AACE’s Exceptions to the PFD, it is currently not appropriate for an electric utility to own EV charging stations; however, it is appropriate for an electric utility in vertically integrated areas to own make-ready infrastructure.¹⁵ A make-ready model – in which the utility owns and operates the make-ready EV charging infrastructure and unregulated businesses, referred to as site hosts, own and operate EV charging stations – allows for the much needed proliferation of TE infrastructure and EV charging stations and is consistent with the proposed PURA Chapter 42. PURA Chapter 42, as written in SB 1002, allows for make-ready models in both areas inside and outside of ERCOT. Such a make-ready model allows for electric utilities and site hosts to focus on their core competencies. As ETI notes in its Exceptions to the PFD, “utilities are likewise experienced in installing and maintaining equipment similar to make-ready EV charging infrastructure, and should be permitted to install, own, and maintain such make-ready infrastructure on their customers’ behalf.”¹⁶ Alternatively, site hosts have the experience and knowledge in providing customer amenities and other services that customers have

¹² ETI’s Exceptions at 10-11.

¹³ AACE’s Reply Brief at 7-8, citing Commission Staff’s Initial Brief on Issues 68 and 69 at 6. (Jan. 13, 2023) (Staff’s Initial Brief).

¹⁴ PFD at 16.

¹⁵ Americans for Affordable Clean Energy’s Exceptions to Proposal for Decision at 4 (Jul. 12, 2023) (AACE’s Exceptions).

¹⁶ ETI’s Exceptions at 9.

come to expect while refueling their vehicles.¹⁷ Additionally, as discussed in its exceptions, AACE urges the Commission to consider its position that allowing a monopoly, such as an electric utility in a vertically integrated area, to participate in a competitive market prior to the proper implementation of PURA Chapter 42, would result in the unavoidable disruption to the potential development of a competitive EV charging market.¹⁸

The legislation supports the competitive market and proliferation of EV charging through SB 1002 by allowing an electric utility operating outside of ERCOT to submit a proposal to provide EV charging service, but also allowing a person other than the electric utility to notify the Commission that they intend to provide EV charging service in an adequate manner.¹⁹ This proposed structure allows a utility to provide service in an area where there may be inadequate service, but also gives private, unregulated businesses the ability to intervene and show capability of providing reasonable and adequate service in the area before the Commission authorizes a utility to own EV charging stations. This is an important provision that allows continued growth of TE charging infrastructure and equipment, while also protecting the competitive EV charging market from the unavoidable disruption that a monopoly may cause when participating in the competitive market. If the Commission decides in this proceeding this issue on ETI ownership, or more broadly, the policies surrounding electric utility ownership in non-ERCOT areas, private, unregulated businesses will not have the opportunity to intervene and prove their ability to provide adequate EV charging service. That outcome is not consistent with SB 1002. Thus, it is not appropriate to authorize electric utilities to enter the competitive market as currently proposed. The EV charging market is still in its early adoption period and market forces have only begun to push private businesses to meet demand,²⁰ therefore, it is important to allow private businesses the opportunity to intervene before an electric utility provides EV charging services, as provided in SB 1002 in order to avoid disruption of the competitive market by electric utilities.

For the foregoing reasons, AACE reasserts its recommendation that the Commission dismiss Issues Nos. 68 and 69 without prejudice. However, if the Commission does not dismiss

¹⁷ AACE's Reply Brief at 4.

¹⁸ AACE's Exceptions at 5.

¹⁹ Act of May 19, 2023, 88th Leg., R.S., S.B. 1002 (2023).

²⁰ AACE's Initial Brief at 5.

Issues Nos. 68 and 69, AACE reasserts its position that it is inappropriate for an electric utility in a vertically integrated area to own EV charging equipment, but it is appropriate for an electric utility to own make-ready infrastructure. AACE further recommends the Commission approve the ALJ's determination that the current statutory framework does not authorize integrated electric utilities to own all aspects of EV charging-related infrastructure and equipment as ETI proposes.²¹

V. ETI OWNERSHIP OF TE AND CHARGING INFRASTRUCTURE AND PROPOSED RIDERS

A. ETI's Proposed TECI-1 and TECDA-1 Riders

AACE excepts to the ALJ's recommendation, contingent upon Commission finding ETI's proposed EV charging ownership permissible, that the Commission approve the proposed TECI Rider and deny the TECDA Rider.²²

B. Discussion and Analysis on Proposed Riders

1. The Commission Should Deny the TECI Rider Because it is Not Consistent with SB 1002, nor is it Appropriate for an Electric Utility in a Vertically Integrated Area to Own EV Charging Stations or a Monopoly to Compete in a Competitive Market, and the TECI Rider is not Similar to Previously Approved Riders as Related to Issues Nos. 68 and 69.

The ALJ improperly finds that the TECI Rider should be approved, as it relates to the rate aspect of the Rider. AACE reiterates its arguments stated above as they pertain to the TECI Rider. AACE additionally asserts the arguments below.

In its Exceptions to the PFD, ETI states its position that the TECI Rider is consistent with the new statutory language of PURA Chapter 42 as enacted by SB 1002.²³ ETI Further claims, "in no way will ETI's proposal hinder solutions the market could otherwise provide or compete with private entities that desire to offer charging to the public for compensation."²⁴ This, however, is not totally correct. As proposed, under the TECI Rider, site hosts who participate have the ability to choose the charging equipment and network service providers from a list of prequalified vendors.²⁵ Such a pre-approved list – one that is solely authored and approved by ETI – raises

²¹ PFD at 16.

²² *Id.* at 15.

²³ ETI's Exceptions at 11.

²⁴ *Id.* at 5.

²⁵ Entergy Texas, Inc.'s Initial Brief Addressing Preliminary Order Issue Nos. 68 and 69 at 12-13

competitive concerns. Limiting vendors that site hosts are able to choose from creates a lack of diversity, which in turn hinders the competitive market. Such a hinderance directly goes against the legislative intent of SB 1002 which states “the legislature finds that it is necessary to implement competitively neutral policies to encourage competitive private sector investment in public electric vehicle charging station deployment.”²⁶

Additionally, as Staff correctly identifies in its Exceptions, “the fact that non-participating customers may potentially foot some of the costs is in direct contravention of SB 1002.”²⁷ Staff points to Section 42.0103(p)(2) of SB 1002’s proposed PURA Chapter 42, which requires the Commission to “ensure that revenue collected by an electric utility under an agreement...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.”²⁸ As proposed, the TECI Rider does not provide non-participating customers protection against bearing some costs that are borne due to participating customers defaulting on payments. In its exceptions, ETI states, “no costs associated with ETI’s investment will be imposed on the Company’s other customers...”²⁹ However, ETI provides no additional support for what may occur when a customer defaults. Furthermore, customer defaults are not the only cost shifting concern. Unless ETI tracks every single cost associated with owning and operating infrastructure under the TECI Rider, including labor and maintenance then there will be inherent cost shifting. ETI has no proposed terms for non-participating customer protection, even after multiple parties raised this concern. This lack of customer protection in the TECI Rider is not consistent with the new statutory language of PURA Chapter 42. Hindering the competitive market by limiting the vendors available for site hosts to choose from and lacking protections for non-participating customers are two examples of how the TECI Rider is not consistent with the statutory language of PURA Chapter 42, nor the legislative intent in creating Chapter 42. Therefore, AACE re-iterates its position that the Commission reject the PFD’s recommendation and deny the TECI Rider.

Jan. 13, 2023) (ETI’s Initial Brief); *see also* in ETI Exhibit No. 53 at Bates 27.

²⁶ Act of May 19, 2023, 88th Leg., R.S., S.B. 1002 (2023) (to be codified at PURA § 42.0101(d)(1)).

²⁷ Staff’s Exceptions at 3.

²⁸ *Id.*, citing Act of May 8, 2023, 88th Leg., R. S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (to be codified at Tex. Util. Code Ch. 42).

²⁹ ETI’s Exceptions at 6.

As Staff states in its Exceptions to the PFD, the PFD acknowledges the potential for non-participating customers to incur charges in certain circumstances, but states the net benefits outweigh that risk.³⁰ Staff correctly notes that this statement was improperly based on a comparison of the TE charging infrastructure and equipment to infrastructure that is developed under ETI's Commission approved Additional Facilities Charger (AFC) Rider and Area Light Service (ALS) Rider.³¹ This comparison is inappropriate. Non-residential TE and charging infrastructure is new infrastructure to ETI and other vertically integrated utilities, unlike infrastructure in the AFC and ALS Riders, therefore, the record and history of usage is not sufficient to conclude that the benefits of the TECI Rider outweigh the costs that non-participating customers may bear.³² Moreover, as stated in AACE's Exceptions, the ALJ's conclusion that the Rider is similar to the ALS and AFC Rider is inappropriate because the comparison made is one relating to the cost recovery mechanism, which is not the question raised in Issues Nos. 68 and 69 – questions concerning ownership of TE related infrastructure and facilities.³³ Therefore, the ALJ is unjustified in reaching such a conclusion.

If the Commission were to approve the TECI Rider, AACE supports OPUC and Staff's suggestions, re-urging the Commission to include protections for non-participating customer classes from bearing the unrecovered costs from defaulting customers.³⁴ AACE further urges the Commission to maintain costs created by and associated with the TECI Rider in a separate account to avoid ETI considering these costs in its next base rate case.³⁵ Although ETI claims that recovering costs from the site hosts who opt to partake in the Rider would ensure costs associated with ETI investment will only be charged to those customers and not non-participating ratepayers,³⁶ market distortion still occurs since utilities are able to invest risk free. As such, the Commission should reject the ALJ's recommendation to adopt the TECI Rider.

³⁰ Staff's Exceptions at 2.

³¹ *Id.* at 2-3.

³² *Id.* at 3.

³³ AACE's Exceptions at 7.

³⁴ OPUC's Exceptions to the Proposal for Decision at 2 (Jul. 12, 2023) (OPUC's Exceptions); *see* also Staff's Exceptions at 3.

³⁵ AACE's Initial Brief at 6, citing OPUC Ex. 47 at Bates 34.

³⁶ AACE's Reply Brief at 11, citing ETI's Initial Brief at 16.

2. The Commission Should Approve the TECDA-1 Rider Because it Would Not Only Benefit Site Hosts, but the EV Market as a Whole, Which Outweighs Cost-Shifting Concerns.

The PFD erred in recommending the denial of ETI's proposed TECDA Rider based on cost-shifting concerns raised by Staff and OPUC, specifically concerns of potential under-recovered revenues.³⁷

AACE agrees with ETI's position that a cost-shifting concern should not support a conclusion that the TECDA Rider is unreasonably preferential or discriminatory.³⁸ Further, as ETI notes, the PFD unjustly recommends denial of the Rider based on the failure of ETI to show that its cost recovery from participating customers would not be unreasonably preferential, prejudicial, or discriminatory.³⁹ Such a presumption that a proposed rate is unreasonably preferential, prejudicial, or discriminatory unless the utility proves otherwise is incorrect.⁴⁰ The cost-shifting concerns raised by OPUC and Staff are unsupported by evidence that would show the Rider is unreasonably preferential, prejudicial, or discriminatory. This concern, when compared to the benefits of the TECDA Rider, is outweighed by such benefits.

The TECDA Rider removes demand charge barriers that unregulated businesses face when entering the EV charging station market, which would promote the growth of EV charging stations. Demand charges in the EV charging market are high due to the fact that EV charging stations tend to have sporadic periods of high demand, but relatively low energy utilization often seen during the early adoption period of charging stations.⁴¹ ETI's business customers have stated that this creates a barrier for investment in EV charging stations.⁴² A limitation on such demand, as proposed by ETI in its TECDA Rider, would encourage investments by private businesses in EV charging stations resulting in the proliferation of EVs in Texas. As applied, the Rider results in more certain monthly electricity bills because the customer avoids being billed for any demand

³⁷ PFD at 36.

³⁸ ETI's Exceptions at 12-13.

³⁹ *Id.* at 14.

⁴⁰ *Id.*

⁴¹ AACE's Initial Brief at 8, citing ChargePoint Ex. 1.0 at Bates 19.

⁴² ETI Ex. 53 at Bates 41.

that exceeds the limited demand charge amount. Such a result encourages private businesses to invest in EV charging stations.

The TECDA Rider is reasonable because it is limited in use for five years after the site host initially takes electric service, and at 30,000 KW of load.⁴³ The Rider is also a temporary solution because it is self-correcting. As ETI asserts, the site host bills would automatically adjust back to the standard Rate Schedule GS Rates if the station's utilization increased above the 15% monthly load factor floor, and thus is expected to "phase out" on its own in the next few years as EVs and EV charging stations increase.⁴⁴ As proposed, the TECDA Rider is limited to five years, however, AACE agrees with ChargePoint's recommendation to remove this limitation since the high demand charges could remain an issue even after five years.⁴⁵

Moreover, as AACE mentions in its Exceptions, the ALJ fails to make note of the Ratepayer Impact Measure (RIM) test done by ETI.⁴⁶ The RIM test considers incremental benefits of the utility's proposal and the costs associated with providing the service.⁴⁷ The results from the test indicated a lower rate requirement from all customers.⁴⁸ The TECDA Rider is temporary, as noted by ChargePoint, the amount of participating customers will decrease over time, which will ensure that any potential impact on non-participating customers would be minimal.⁴⁹ Further, as ChargePoint discusses, "ETI would receive incremental revenue from EV charging not just from customers on the TECDA Rider but from a wide variety of customers."⁵⁰ This is one way in which ETI would be able to obtain the under-recovered revenues that ETI would have recovered from the participating customers in TECDA Rider if the Rider were not in place. For these reasons, the issue of cost shifting is not a valid reason to deny the TECDA Rider, which as shown by the RIM test, benefits all customers.

⁴³ *Id.* at Bates 34.

⁴⁴ ETI's Initial Brief at 24.

⁴⁵ ChargePoint, Inc's Exceptions to the Proposal for Decision at 8 (Jul. 12, 2023) (ChargePoint's Exceptions), *see also* ChargePoint Ex. 1.0 at Bates 21.

⁴⁶ AACE's Exceptions at 10.

⁴⁷ ETI's Initial Brief at 24.

⁴⁸ *Id.*

⁴⁹ ChargePoint Ex. 1.0 at Bates 21.

⁵⁰ ChargePoint's Exceptions at 6.

AACE reasserts its position that the TECDA Rider is a reasonable effort to mitigate the inherent barrier caused by demand charges that is confronted by unregulated businesses interested in investing in and owning EV charging stations. The benefit of the TECDA Rider outweighs the cost-shifting concerns raised by Staff and OPUC. Thus, the PFD's recommendation would result in an unjustified denial of the TECDA Rider and should be rejected by the Commission.

VI. CONCLUSION

AACE respectfully requests the Commission dismiss Issues Nos. 68 and 69 without prejudice, as discussed above. However, if the Commission does not dismiss the issues, AACE requests the Commission reject the PFD's recommendation to approve the TECI Rider and deny the TECDA Rider consistent with AACE's previously filed Exceptions and reject ETI's Exceptions as they apply to the TECI Rider discussed above.

Respectfully submitted,

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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 July 19, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



JAMIE L. MAULDIN