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APPLICATION OF ENTERGY TEXAS, INC. FOR AUTHORITY TO CHANGE RATES	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION

The Staff (Staff) of the Public Utility Commission of Texas (Commission) is grateful for the reasoned consideration of the Administrative Law Judge (ALJ) for the State Office of Administrative Hearings (SOAH). This proceeding presented novel issues, and the ALJ has carefully considered each of the issues in this proceeding. While Staff agrees with the Proposal for Decision’s (PFD) finding to ultimately defer to the Commission on the issue concerning the appropriateness of any vertically integrated electric utility owning transportation and electrification (TE) and charging infrastructure as considered in the current proceeding, in light of the recently passed Senate Bill (SB) 1002,¹ Staff respectfully excepts to a portion of the PFD that could potentially misinform the Commission's policy determinations for electric vehicle (EV) related tariffs that go beyond this proceeding. In particular, Staff disagrees with the PFD's holding that ETI’s proposed Transportation Electrification and Charging Infrastructure Rider (TECI-1 Rider) should be approved.

Staff acknowledges the potential benefits that ETI’s proposed EV-related riders may have and that the Legislature has recognized the need to stimulate the growth of electric vehicle charging infrastructure through a framework that includes a role for electric utilities to partake. Staff notes however that at least two other vertically integrated utilities—El Paso Electric Company and Southwestern Public Service Company, both who intervened and participated in this proceeding—have requested approval of their own EV-related tariffs in other proceedings,² which presumably will encompass proposals and rate designs that vary from each other, as well as ETI’s tariffs in

¹ Proposal for Decision at 16-17 (Jun. 19, 2023) (PFD).

² *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).

this proceeding. Even within the context of this proceeding, there were varying opinions among the parties, between the vertically integrated utilities and the competitive providers alike.³ Additionally, with the new legislative framework enacted through SB 1002 that will require additional analysis by Staff and the Commission than a determination under this proceeding allows, Staff recommends 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. Further, the Commission may also benefit from input from the industry, customers, and the competitive providers that are already in the market for TE and charging infrastructure.

II. EXCEPTIONS

In response to Preliminary Order No. 69, whether ETI should be allowed to own TE and charging infrastructure—including vehicle-charging facilities—in the manner it has proposed in its application, the PFD concluded that, as it relates to the rate design, the TECI-1 Rider should be approved as it is not unreasonably preferential, prejudicial, or discriminatory.⁴ Staff excepts to this conclusion and reiterates that due to the rider's non-standard pricing that is tailored to individual customers and is dependent on customer-specific details unavailable at this time, the Commission cannot sufficiently analyze relevant infrastructure costs and rider revenues to make an appropriate and required review, running the risk to other customers if costs and revenues associated with the TECI-1 Rider do not match up.⁵ The PFD even acknowledges the potential for non-participating customers to incur charges in certain circumstances, but indicates that the net benefits outweigh that risk.⁶ However, the only benefits listed by the PFD include ETI's indication that the infrastructure built as a result of the TECI-1 Rider will benefit all customers, even if only incrementally, based on equating the TE and charging infrastructure to infrastructure that is developed under ETI's Commission-approved Additional Facilities Charge Rider, Option B and its Commission-approved Area Lighting Service Rider.⁷ The comparison, however, should

³ Commission Staff's Reply Brief on Issues 68 and 69 (Jan. 27, 2023) (Staff's Reply Brief).

⁴ PFD at 31-33 and Conclusion of Law No. 9a.

⁵ Staff's Reply Brief at 7-8.

⁶ PFD at 32-33.

⁷ *Id.*

not be given weight, considering that non-residential TE and charging infrastructure are a new infrastructure to ETI and the other vertically integrated utilities, such that the record is not sufficient to conclude that the benefits will outweigh the costs that non-participating customers may come to bear.

Furthermore, the fact that non-participating customers may potentially foot some of the costs is in direct contravention of SB 1002. Specifically, under the new Chapter 42 of the Public Utility Regulatory Act (PURA),⁸ PURA § 42.0103(p)(2) 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.”⁹ Staff does note that PURA § 42.0102 differentiates between charging stations and make-ready infrastructure,¹⁰ with PURA § 42.0103(d) stating that “[the] section does prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the electric utility’s regulated services.”¹¹ Thus, to the extent the Commission determines to uphold the PFD and approve the TECI-1 Rider, Staff recommends that it should be necessary to protect the non-participating classes from bearing any of the costs associated with the rider as it pertains to the costs for the charging stations. Accordingly, Staff recommends that the Commission order ETI to use the methods recommended by the Office of Public Utility Counsel (OPUC)¹² or substantially similar methods to protect the non-participating classes, to the extent the Commission determines such methods prevent the TECI-1 Rider from remaining unreasonably preferential and discriminatory. In addition, to ensure compliance with the Legislative findings under PURA § 42.0101 for EV-related tariffs to be developed and implemented in a competitively neutral manner, Staff recommends that the TECI-1 Rider include the conditions recommended by FlashParking, Inc.¹³ or substantially similar conditions. Lastly, the rider should also be adjusted to

⁸ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016.

⁹ 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).

¹⁰ *Id.*

¹¹ *Id.*

¹² OPUC’s Post-Hearing Initial Brief on Preliminary Order Issues Nos. 68 and 69 at 4-5 (Jan. 13, 2023).

¹³ FlashParking, Inc.’s Initial Brief EV Charging Infrastructure Issues at 9 (Jan. 13, 2023).

use ETI's pre-tax weighted-average cost of capital approved by the Commission in this proceeding, consistent with PURA § 42.0103(n).¹⁴

III. CONCLUSION

Staff is grateful for the reasoned consideration of the ALJ. However, Staff excepts to the limited portion of the PFD as described above. Staff respectfully requests that these exceptions be taken into consideration. Furthermore, Staff requests that its recommendation for a rulemaking be taken into consideration as well.

Dated: July 12, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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¹⁴ 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).

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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 12, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles