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Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Interim Chair Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Grace Lager
Commission Advising

RE: *Proceeding to Resolve Issues in Docket No. 53719 Related to Transportation
Electrification and Charging Infrastructure*, Docket No. 55338, Draft
Supplemental Preliminary Order, December 14, 2023 Open Meeting, Item
No. XX.

DATE: December 6, 2023

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the December 14, 2023 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the December 14, 2023 open meeting.

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DOCKET NO. 55338

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

DRAFT SUPPLEMENTAL PRELIMINARY ORDER

Entergy Texas, Inc. filed an application in Docket No. 53719¹ requesting authority to change its Texas retail rates. The Commission severed two contested issues related to transportation electrification and charging from Docket No. 53719 into this proceeding. This preliminary order identifies the issues that must be addressed.

1. Background: Docket No. 53719

On July 1, 2022, Entergy Texas filed an application in Docket No. 53719 requesting authority to change its Texas retail rates based on a historical test year of January 1, 2021 through December 31, 2021. The application included a request for approval of new Transportation Electrification and Charging Infrastructure (TECI) and Transportation Electrification and Charging Demand Adjustment (TECDA) riders. Entergy Texas proposed the TECI-1 rider to allow Entergy Texas to partner with interested non-residential customers to plan, construct, own, operate, and maintain infrastructure and equipment related to transportation electrification on customer-owned property.² Entergy Texas proposed the TECDA-1 rider to provide demand-charge relief for non-residential customers that install infrastructure to charge electric vehicles and take new separately metered electric service under Entergy Texas's rate schedule for general service.³

On July 6, 2022, the Commission referred Docket No. 53719 to the State Office of Administrative Hearings (SOAH). On August 4, 2022, the Commission issued a preliminary

¹ *Application of Entergy Texas, Inc. for Authority to Change Rates*, Docket No. 53719, Order (Aug. 24, 2023).

² Statement of Intent and Application at 7.

³ *Id.* at 7–8.

order, which included issue numbers 68 and 69 related to transportation electrification and charging infrastructure.

In SOAH Order No. 11 filed on December 1, 2022, the SOAH administrative law judges (ALJs) decided to have preliminary order issue numbers 68 and 69 decided on written submission. On January 13, 2023, the following parties submitted initial briefs on preliminary order issue numbers 68 and 69: Entergy Texas; Southwestern Public Service Company (SPS); Americans for Affordable Clean Energy (AACE); FlashParking Inc.; ChargePoint, Inc; Office of Public Utility Counsel (OPUC); and Commission Staff. On January 27, 2023, Entergy Texas, SPS, El Paso Electric Company, AACE, ChargePoint, OPUC, and Commission Staff filed reply briefs.

On May 10, 2023, Entergy Texas filed an unopposed agreement addressing all contested issues except preliminary order issue numbers 68 and 69. The SOAH ALJ granted a partial remand to the Commission of the agreed issues.

After the close of briefing, the governor signed Senate Bill 1002 (SB 1002),⁴ which addresses the operation of public electric-vehicle charging stations. On June 19, 2023, the SOAH ALJ filed a proposal for decision addressing issues 68 and 69 related to transportation electrification and charging infrastructure.

On August 16, 2023, the Commission severed issues 68 and 69 related to transportation electrification and charging infrastructure into the current proceeding.⁵ The Commission determined it must consider SB 1002 when making a decision regarding Entergy Texas's proposed electric vehicle charging riders. The Commission also found that to adjudicate Entergy Texas's proposed riders under the new legislation, further development of the record was required. To allow the parties to continue litigating these issues, the Commission transferred applicable portions of the record to the current proceeding. The Commission ordered Entergy Texas to file revised versions of both the TECI-1 and TECDA-1 tariffs and that a procedural schedule be adopted to allow the parties to respond to Entergy Texas's filings. The Commission also determined that exhibits admitted in SOAH Order No. 14 filed on December 28, 2022, would be deemed admitted in the new proceeding.

⁴ Act of May 8, 2023, 88th Leg., R.S., 2023 Tex. Sess. Law Serv. Ch. 53 (S.B. 1002) (codified at Tex. Util. Code ch. 42).

⁵ Order Severing Issues (Aug. 16, 2023).

II. Current Proceeding

In Order No. 1, filed on August 22, 2023, the Commission ALJ determined that the parties to Docket No. 53719 are deemed to be parties to this proceeding and denied Entergy Texas's request for a prehearing conference. In Order No. 2, filed on September 5, 2023, the ALJ established a procedural schedule. In Order No. 3, filed on September 13, 2023, the ALJ granted ChargePoint's motion to withdraw as a party in this proceeding.

On September 20, 2023, Entergy Texas filed supplemental direct testimony and exhibits, including a revised TECI-1 tariff. Entergy Texas asserts that the TECI-1 rider and related agreement comply with Chapter 42 of PURA. Entergy Texas states that it is not proposing any changes to the TECDA-1 rider because it is not impacted by Chapter 42 of PURA. Thus, Entergy Texas requests that the Commission approve the TECI-1 rider and related agreement as revised in this proceeding, and the TECDA-1 rider as originally filed in Docket No. 53719.⁶

On October 11, 2023, OPUC requested a hearing on the merits. On October 18, 2023, Commission Staff also requested that this proceeding be referred to SOAH for a hearing on the merits.

Entergy Texas was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by November 6, 2023. Entergy Texas, AACE, and Commission Staff timely filed a list of issues.

III. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁷ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

TECI-1 Rider

1. Do the proposed rates for the TECI-1 rider comply with the requirements of Chapter 42 of PURA?

⁶ Supplemental Direct Testimony and Exhibits of Samantha F. Hill at 10–11 (Sep. 20, 2023).

⁷ Tex. Gov't Code § 2003.049(e).

2. Does the TECI-1 rider comply with the requirements of PURA § 42.0103(o) regarding site hosting agreements?
 - a. Will a person who is not an electric utility or an affiliate be able to enter an agreement with Entergy Texas to own or operate a public electric vehicle charging station on the person's property?
 - b. Will Entergy Texas *not* be providing electric vehicle charging service to the public?
 - c. Will Entergy Texas *not* brand or market the public electric vehicle charging station as owned or operated by the utility, including by presenting the utility's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the public electric vehicle charging station?
 - d. Will the person solely determine the physical access to and use of the public electric vehicle charging station necessary to carry out responsibilities associated with ownership and operation of the public electric vehicle charging station; and prices for the electric vehicle charging service?
 - e. Will the person pay for all electric utility-related costs under the proposed tariff, and will the tariff provide 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?
3. Will Entergy Texas offer service under the terms of the tariff to other persons seeking agreements in the Entergy Texas's service area on a nondiscriminatory basis under PURA § 42.0103(p)(1)?
4. Will the revenue collected by Entergy Texas under each agreement with a participating person allow 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 under PURA § 42.0103(p)(2)?
5. Do the proposed rates comply with the requirements of PURA § 36.003?
 - a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?

- c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?

TECDA-1 Rider

6. Do the proposed rates for the TECDA-1 rider comply with the requirements of Chapter 42 of PURA?
7. Do the proposed rates for the TECDA-1 rider comply with the requirements of PURA § 36.003?
 - a. Is the rate just and reasonable?
 - b. Is the rate not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the rate sufficient, equitable, and consistent in application to each class of consumer?
8. What are the estimated costs of the TECDA-1 rider?
9. Is Entergy Texas proposing to recover these costs in this proceeding?
10. Is the proposed rate, with a billing demand adjustment, a discounted rate under PURA § 36.007?
11. What impacts will there be on current customers who enroll in the TECDA-1 rider if Entergy Texas's application is granted?
12. What impacts will there be on Texas customers who do not enroll in the TECDA-1 rider if Entergy Texas's application is granted?
13. What, if any, conditions should be placed on approval to ensure that Texas customers who have not enrolled in the TECDA-1 rider are not unreasonably affected by approval of Entergy Texas's application?
14. Do Entergy Texas's proposed programs and the corresponding tariffs comply with all other applicable requirements of PURA and Commission rules?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code § 2003.049(e).

IV. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER